

Sustainable Water Network (SWAN)

**Response to the Draft Flood Risk Management
Plan for UoM 22 Laune - Maine - Dingle Bay**



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1 Introduction to SWAN

The Sustainable Water Network (SWAN) is an umbrella network of 26 of Ireland's leading environmental NGOs, national and regional, working together to protect and enhance Ireland's aquatic resources through coordinated participation in the implementation of the Water Framework Directive (WFD), the Marine Strategy Framework Directive (MSFD) and other water-related policy and legislation. SWAN member groups are listed in Appendix 1. SWAN has been actively engaged in Water Framework Directive (WFD) and other water policy implementation at both national and River Basin District (RBD) level since 2004, representing the environmental sector on WFD River Basin District (RBD) Advisory Councils, the South Eastern RBD Management Group, The Irish Water Stakeholder Forum and other water policy-related fora.

2 Interaction of the Floods Directive and the Water Framework Directive

2.1 Overview of the EU Water Framework Directive (2000/60/EC)

2.1.1 Directive Scope

The EU Water Framework Directive (2000/60/EC) is a progressive and ambitious piece of legislation which aims to realise the effective co-ordination of water policy and regulation to provide the framework for the protection of all waters (rivers, lakes, canals, reservoirs, estuaries, coastal waters, groundwaters, wetlands) and other water-dependent ecosystems and associated wildlife and habitats. The Directive adopts a holistic approach to surface water and groundwater management by introducing broad ecological objectives for the protection and restoration of aquatic ecological health. Additional core objectives are sustainable water management, elimination of pollutant sources and mitigation of the effects of flood and drought. Member States must ensure that all EU ground and surface waters (rivers, lakes, transitional waters and coastal waters) achieve 'good status' by 2015 (or 2021, 2027, with certain exemptions). Artificial water bodies are required to meet 'good ecological potential'. 'Good status' means both 'good ecological status' and 'good chemical status'. The WFD has five status classes: high, good, moderate, poor and bad. Sites at the top end of the high status scale are benchmark or reference condition sites; the achievement of 'good status' indicates only slight deviation from this reference condition. The WFD also clearly identifies the protection of the water needs of wetlands depending directly on aquatic ecosystems as part of its purpose in Article 1 (a), although this protection is afforded indirectly via associated groundwaters and surface waters.

2.1.2 WFD Objectives

The main objectives of the WFD are:

- To protect and, where necessary, to improve the quality of all our inland and coastal waters, groundwaters and associated wetlands, and to prevent their further deterioration;
- To achieve 'good status' for all these waters by 2015;
- To promote the sustainable use of water;
- To reduce the pollution of water by particularly hazardous 'priority' substances; and
- To lessen the effects of flooding and drought.

2.1.3 WFD Requirements

The key requirements of the Directive are:

Water quality based around the concept of ecological quality

The Directive requires the quality 'status' of water bodies to be measured using ecological rather than just traditional physical and chemical parameters, with more emphasis on the quality of the biological communities of a water body.

Water management at the level of river catchments

The WFD functional unit is based on river catchments or collections of river catchments (River Basin Districts), rather than along traditional political divisions (County Councils in Ireland). 'River basins' or 'catchments' are made up of lakes, rivers, streams, groundwater and estuaries, as well as the land that surrounds these, and drains into them. In this way the Water Framework Directive promotes the very necessary integrated approach to water management.

Active involvement of the public

The WFD emphasises consultation, public involvement and access to information more than any previous EU Directive. Article 14 of the WFD requires that '*the active involvement of all interested parties*' must be encouraged by every Member State. In this way, the WFD presented a new and exciting opportunity for communities and interest groups to get involved in the management of water resources at local and regional (RBD) level.

Development of River Basin Management Plans

River Basin Management Plans (RBMPs) are essentially a RBD management tool. The plans must include objectives for each water body; reasons for achieving WFD objectives and a programme of measures (POMS) to facilitate the achievement of WFD objectives.

The WFD specifies two types of measures (basic and supplementary) for achieving water protection objectives. Basic measures are legally required within every water body and include eleven European Directives and eleven other basic measures. Member States have more flexibility in how they implement the eleven other basic measures. Supplementary

measures are required in cases where basic measures are deemed to be inadequate to facilitate the achievement of 'good' status and other WFD objectives.

2.1.4 Establishment of Water Body Status

The status of a surface water body (described above in Section 2.1.1), is determined by assessing both ecological and chemical quality elements. Ecological status for rivers is assessed using four quality elements describing biological quality, physicochemical components, pollutants and hydromorphology, outlined in Table 2.1.

Table 2.1 Quality elements for the classification of ecological status for rivers¹

Biological elements		<ul style="list-style-type: none"> • Composition and abundance of aquatic flora • Composition and abundance of benthic invertebrate fauna • Composition, abundance and age structure of fish fauna
Hydromorphological elements supporting the biological elements		<ul style="list-style-type: none"> • Hydrological regime <ul style="list-style-type: none"> - Quantity and dynamics of water flow - Connection to groundwater bodies • River continuity • Morphological conditions <ul style="list-style-type: none"> - River depth and width variation - Structure and substrate of the river bed - Structure of the riparian zone
Chemical and physicochemical elements supporting the biological elements		<ul style="list-style-type: none"> • General <ul style="list-style-type: none"> - Thermal conditions - Oxygenation conditions - Salinity - Acidification status - Nutrient conditions • Specific pollutants <ul style="list-style-type: none"> - Pollution by all priority substances identified as being discharged into the body of water - Pollution by other substances identified as being discharged into the body of water

¹ WFD Annex V.

The WFD further sets out the conditions for each element that is required for assigning status. Since flood-protection works typically involve physical modifications to rivers, the hydromorphological elements for high status are presented in Table 2.2. For the other status categories, good and moderate status, the hydromorphological requirement is 'Conditions consistent with the achievement of the values specified for the biological quality elements'. This is based on the assumption that if a river is at 'good status', then the hydromorphological elements must be at 'good' status as well, since the hydromorphological elements support the biological elements.

Table 2.2 River hydromorphological quality elements for high status

Element	High status
Hydrological regime	The quantity and dynamics of flow, and the resultant connection to groundwaters, reflect totally, or nearly totally, undisturbed conditions.
River continuity	The continuity of the river is not disturbed by anthropogenic activities and allows undisturbed migration of aquatic organisms and sediment transport
Morphological conditions	Channel patterns, width and depth variations, flow velocities, substrate conditions and both the structure and condition of the riparian zones correspond totally or nearly totally to undisturbed conditions.

Annex V of the WFD also sets out the quality elements for the classification of ecological status of lakes, transitional waters, coastal waters and artificial and heavily modified surface water bodies.

2.1.5 Heavily Modified Water Bodies

If a water body has been designated as 'artificial' or 'heavily modified', then it does not have to reach 'good ecological status' but rather 'good ecological potential'. Under the WFD, an 'artificial water body' is defined as '*a body of surface water created by human activity*', while a heavily modified water body (HMWB) is defined as:

'a body of surface water which as a result of physical alterations by human activity is substantially changed in character, as designated by the Member State in accordance with the provisions of Annex II'.²

A surface water body can only be designated as artificial or heavily modified if the hydromorphological changes required to achieve good status would have significant adverse effects on a number of beneficial objectives, one of which is flood protection. Therefore, if a water body has existing flood defence structures in place that will prevent that water body from achieving good status but the removal of the structures would have significant adverse effects on flooding, then that water body could be designated as an

² WFD Article 2 (8 and 9).

HMWB. The full list of beneficial objectives that qualify as having '*significant adverse effects*' are as follows:³

- (i) *The wider environment;*
- (ii) *Navigation, including port facilities, or recreation;*
- (iii) *Activities for the purposes of which water is stored, such as drinking water supply, power generation or irrigation; and*
- (iv) *Water regulation, flood protection, land drainage, or*
- (v) *Other equally important sustainable human development activities'.*

Another condition that must be satisfied in order for a water body to be designated as artificial or an HMWB is that the beneficial objectives, for technical or financial reasons, cannot be achieved by better environmental options.⁴ Therefore, for example, environmentally better alternatives to achieve flood protection must be considered. However, if the water body is to be designated as an HMWB, then the reasons for this must be included in the RBMPs.⁵ It is also important to note that it is the Commission's view that:

*'Maintenance or rebuilding of existing infrastructure is only possible if there are no better environmental options which maintain the flood protection levels'.*⁶

Member States are still required to protect and enhance artificial and heavily modified water bodies, but not to restore them. However, they are required to achieve good ecological potential and good surface water chemical status.⁷

2.1.6 Exemptions to Meeting WFD Objectives

Under Article 4 of the Directive, Member States are required to implement the necessary measures to achieve the above objectives, primarily to ensure all bodies of surface water and groundwater achieve good status (or good potential for HMWBs); to prevent deterioration of the status of all bodies of surface water and groundwater, and to prevent or limit the input of pollutants into groundwater. Exemptions to achieving these objectives are however permitted under strict conditions and these are also set out in Article 4 of the Directive, with Articles 4.4 4.5, 4.6 and 4.7 describing the conditions under which exemptions to these objectives can be applied.

³ WFD Article 4 (3)(a).

⁴ WFD Article 4 (3)(b).

⁵ WFD Article 13.

⁶ EC (2014) *Links between the Floods Directive (FD 2007/60/EC) and Water Framework Directive (Water Framework Directive (WFD 2000/60/EC)*. Resource document. European Union, Luxembourg.

⁷ WFD Article 4 (1)(a)(iii).

Firstly, Member States can extend the deadline (Article 4 (4)) by which good status is to be reached to 2021 or 2027 provided that no further deterioration occurs in the status of the affected body of water and a number of other conditions are met.⁸

Secondly, they can achieve less stringent objectives under certain conditions (Article 4 (5)):

- When a body of water is affected by a human activity and the environmental and socioeconomic needs of the activity cannot be achieved by other means, which are a significantly better environmental option, not entailing disproportionate costs;
- No further deterioration occurs;
- The highest ecological and chemical status possible is achieved for surface waters and the least possible changes to good groundwater status are caused, given impacts that could not reasonably have been avoided due to the nature of the human activity; and
- The reasons are specified in the River Basin Management Plan.

Thirdly, Member States can have a temporary deterioration in status arising from natural causes or "*force majeure*" (Article 4.6). These include droughts, floods, earthquakes, etc.

Finally, under Article 4.7, Member States are not in breach of the Directive when:

- "*Failure to achieve good groundwater status, good ecological status or, where relevant, good ecological potential or to prevent deterioration in the status of a body of surface water or groundwater is the result of **new modifications to the physical characteristics of a surface water body** or **alterations to the level of bodies of groundwater**; or*
- *Failure to prevent deterioration from high status to good status of a body of surface water is the result of **new sustainable human development activities**" (authors' emphasis).*

And ALL the following conditions are met:

- The reasons for the modifications or alterations are of **overriding public interest** and/or the **benefits to the environment** and to society of achieving the environmental objectives are **outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development**;

⁸ 1.) Necessary improvements cannot be achieved within the timescale due to reasons of technical feasibility, disproportionate expense or prohibitive natural conditions and 2.) the deadline extension; reasons for this and a summary of the measures necessary to bring the bodies of water progressively to the required status are set out in the RBMP.

- The benefits served by the modifications or alterations cannot for reasons of **technical feasibility** or **disproportionate cost** be achieved by other means, which are a significantly **better environmental option**;
- All practical steps are taken to mitigate the adverse impacts; and
- The reasons for those modifications or alterations are set out and explained in the River Basin Management Plan.

In summary, under Article 4.7, exemptions can be applied to a development that has the potential to prevent the achievement of WFD objectives, if it entails new physical modifications or '*sustainable human development activities*' (the latter applies to deterioration from high to good status only) and fulfils the requirements above. Flood protection works potentially fall under both of these. We will return to this in the next Section.

2.2 Impacts of Flood Works on WFD Objectives

As part of the second cycle of review and development WFD River Basin Management Plans (RBMPs), Member States are required to identify significant pressures and impacts of human activity. '*Floods and water*' and '*Physical Changes*' have been identified as Significant Water Management Issues (SWMI) in Ireland by the Department of the Environment, Community and Local Government (DECLG).⁹ Flood defence works involve many types of physical modifications which can deteriorate and impair the hydromorphological conditions of water bodies as outlined in Table 2.3, including structure of the river bed and of the riparian zone. Hydromorphological elements support the biological elements, and both are quality elements for the classification of ecological status as described above. These physical modifications can result in changes to water flow and morphology and impair sediment dynamics, which in turn has many negative ecological impacts, as outlined in Table 2.4.¹⁰

⁹ DECLG (2015) [Significant Water Management Issues in Ireland](#). Public Consultation Document. DECLG.

¹⁰ EC (2006) *WFD and Hydromorphological Pressures*. Technical report.

Table 2.3 Impact of flood works on river hydromorphology (Source EC¹¹, 2006)

Impacts on hydromorphology: deteriorations, impairments of hydromorphological conditions	Physical modification				
	Cross profile construction (dams, weirs, locks, impoundments)	Longitudinal profile construction	Channelisation, straightening	Bank reinforcement, bank fixation, embankments	Deepening (channel maintenance, dredging, removal or replacement of material)
Disruption in river or estuary continuum & sediment profile	x		x	x	x
Change in hydrological regime: low/reduced or increased flow, artificial discharge and level regime	x	x	x	x	x
Change in (soil) erosion/sediment transport/silting	x		x	x	x
Change in river profile (length and transverse profile)	x	x	x	x	x
Disruption in lateral connectivity, detachment of oxbow lakes/wetlands	x	x	x	x	
Restriction/loss of flood plains or intertidal area	x	x	x		
Change in connection with groundwater, alteration of ground-water level	x	x	x		x

¹¹ EC (2006) *WFD and Hydromorphological Pressures*. Technical report.

Table 2.4 Ecological impacts due to change in water flow, sediment dynamic impairment and morphological changes (Source EC, 2006¹²)

Change in water flow	<ul style="list-style-type: none"> • Change and loss of habitats diversity and quality (due to the modifications of hydraulic conditions and sediments transport, and to the building of structures) • Change in oxygen rate, temperature (increased temperature in zones of low flow), sediments and nutrients loading (accumulation linked with decreased self-purification) • Change in biological communities: decrease of richness and diversity of fish, benthic invertebrates, macrophyte populations; structuration toward lentic communities if long water storage; development of phytoplankton • Disruption of species migration and development
Sediment dynamics impairment	<ul style="list-style-type: none"> • Change and loss of habitats diversity and quality (due to the removal of bed and banks material and vegetation, and to interrupted sediments transport) • Altered species development and change in biological communities (macrophytes, benthic invertebrates, fish) linked to the alterations of habitats • Ecological impacts of altered dredging regime associated with changes in accretion/erosion
Morphological changes	<ul style="list-style-type: none"> • Change and loss of habitats diversity and quality (due to the modifications of hydraulic conditions and sediments transport and to the building of structures) • Change in oxygen rate, temperature (increased temperature in zones of low flow), sediments and nutrients loading (accumulation linked with decreased self-purification) • Change in biological communities: decrease of richness and diversity of fish, benthic invertebrates, macrophyte populations; structuration toward lentic communities if long water storage; development of phytoplankton • Disruption of species migration and development

Therefore, flood defence measures involving physical modifications can create significant adverse impacts on aquatic ecosystems, as has been recognised in the DECLG's SWMI document.¹³ For example:

'Impoundments and flow regulation change natural flow and sediment conditions that can alter the ecosystem structure and may reduce habitat diversity ...

¹² EC (2006) *WFD and Hydromorphological Pressures*. Technical report.

¹³ DECLG (2015) [Significant Water Management Issues in Ireland](#). Public consultation document. DECLG.

Channelisation and in-stream dredging can lead to significant physical changes and reduce biodiversity and damage habitats. They alter natural river flow and can give rise to the accumulation of sediment due to channel widening or erosion of the bed and banks as a result of channel deepening. Shoreline reinforcements and sea defences may also prevent the natural migration of the shoreline and result in habitat loss.'

It is important that these '*significant physical changes*' are considered in both the FRMPs and the RBMPs, since they potentially impact both hydromorphological and biological conditions of affected waterbodies and hence their WFD ecological status. It is important to emphasise that any activity that will negatively impact the WFD status of a water body is only permitted under the WFD if the strict conditions, set out in Article 4 and described in the previous section are met:

- (a) *'All practicable steps are taken to mitigate the adverse impact on the status of the body of water;*
- (b) *The reasons for those modifications or alterations are specifically set out and explained in the river basin management plan required under Article 13 and the objectives are reviewed every six years;*
- (c) *The reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment and to society of achieving the objectives set out in paragraph 1 are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development; and*
- (d) *The beneficial objectives served by those modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by other means, which are a significantly better environmental option.'*

The FRMP Strategic Environmental Assessment (SEA) (pg. 61) stresses the necessity of compliance with these extremely exacting conditions by stating:

'Any proposed future development must be designed and implemented such that it will not result in deterioration in existing waterbody status and will not impede the achievement of the good status by the required timescale.'

The Commission has produced a guidance document¹⁴ on the use of WFD exemptions and has also stressed and discussed the importance of the use of '*better environmental options*':

¹⁴ EC (2009) *Guidance Document on Exemptions to the Environmental Objectives*. CIS WFD Guidance document no. 20. European Communities, Luxembourg.

*'When managing rivers, lakes and coastal areas, the best environmental options need to be identified, especially **when new flood defence structures** are considered that could lead to a degradation of water resources.'*¹⁵

It is important to note that the reasons for any exemptions must be set out in the RBMPs.

It is unclear as to whether there has been any legal analysis on the potential application of WFD exemptions to flood protection developments. However, the EU Guidance Documents offer some assistance. The 'Guidance document on exemptions to the environmental objectives'¹⁶ defines "new modifications" as "modifications to the hydro-morphological characteristics of the water body". Since flood management measures may alter hydro-morphological characteristics of water bodies, it should follow therefore that they should be considered new modifications therefore qualify under the Art 4.7 exemption. However, the definition of 'sustainable human development activities' is vaguer, with the guidance document stating:

*'The exact definition for an activity falling under sustainable development will ... depend on the time, scale, involved stakeholders and information available.'*¹⁷

The Guidance document also emphasizes the importance of two final provisions in Article 4:

'Like all WFD exemptions, article 4.7 does not apply when the provisions of articles 4.8 and 4.9 are not fulfilled. In other words, use of the exemptions is allowed when they guarantee at least the same level of protection as existing Community legislation and provided that they do not permanently exclude or compromise the achievement of the wider objectives of the WFD in other bodies of water within the same river basin district.'

While there is to date no case law in relation to the WFD in Ireland to assist in examining the potential implications for flood management activities, the recent ECJ ruling on Case C-461/13¹⁸ on the dredging for navigation of the river Weser in Germany is extremely relevant. It found that:

'Article 4 (1)(a)(i) to (iii) of [the WFD] must be interpreted as meaning that the Member States are required — unless a derogation is granted — to refuse

¹⁵ EC (2011) *Towards Better Environmental Options for Flood Risk Management*. European Commission DG Environment, Brussels, Belgium.

¹⁶ European Commission, Directorate-General for the Environment, (2009) *Guidance document on exemptions to the environmental objectives*. No 20. Publications Office, Luxembourg.

¹⁷ European Commission, Directorate-General for the Environment, (2009) *Guidance document on exemptions to the environmental objectives*. No 20. Publications Office, Luxembourg

¹⁸ Case C-461/13 *Bund für Umwelt und Naturschutz Deutschland* <http://curia.europa.eu/juris/documents.jsf?num=C-461/13>

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

Although it is not yet clear how this will translate into project-level consents, there is a strong argument, which has been articulated by the EU Commission Water Unit that this should lead to ex-ante WFD-specific assessments for individual projects, including developments associated with flood protection.

3 Coordination of the Floods Directive with the WFD

3.1 Reasons and Benefits

There are a range of compelling reasons for close coordination between implementation of the Floods Directive (FD) and WFD. According to the Commission¹⁹ such coordination '*... offers the opportunity to adopt a new approach to optimize the mutual synergies and minimise conflicts between them.* It describes the reasons for this as follows:

- *The overlap of legal and planning instruments in many Member States;*
- *Planning and management under both Directives generally use the same geographical unit, i.e. the river basin, which acts as a natural 'reference area' for both water quality and flood risk management;*
- *Aiding the efficiency of the implementation of measures and increasing the efficient use of resources. Measures taken under one Directive may have an influence on the objectives under the other. Coordination provides an opportunity to maximise synergies by identifying cost measures which serve multiple purposes and can result in "win-win" measures being implemented; and*
- *An expectation from many stakeholders that an integrated approach will be taken.'*

The Commission has identified the many benefits of coordinating the FD with the WFD, and these are summarised in Table 3.1. There are also many flood risk management measures that have multiple benefits for water quality. In particular, the Commission has identified river and floodplain restoration as providing a '*significant contribution to both FD and WFD objectives*' as floodplains can play an important role in flood risk management

¹⁹ EC (2014) *Links between the Floods Directive (FD 2007/60/EC) and Water Framework Directive (Water Framework Directive (WFD 2000/60/EC)*. Resource document. European Union, Luxembourg.

and are vital to WFD quality indicators such as fish and invertebrates which are highly dependent on these habitats.²⁰

Table 3.1 Summary of the benefits of coordinating the FD with the WFD (Source EC, 2014)

Benefits of coordinating the FD with the WFD	
Improving efficiency via:	<ul style="list-style-type: none"> • Presenting information to the public in one place • Cross referencing of objectives to ensure mutual benefits realised • Coordinating consultations on FRMPs and RBMPs increases the opportunities for synergies to be recognised
Information exchange via:	<ul style="list-style-type: none"> • Collecting data once and using it many times • Integration of data, which allows for easier identification of pressures on the water environment • Sharing data assists better understanding of the issues and potential solutions to identify reductions in flood risk and improving the environment
Achieving common synergies and benefits having regard to the environmental objectives laid down in Article 4 of the WFD including:	<ul style="list-style-type: none"> • Improved integrated river basin management • Identify areas where measures can meet both FD and WFD aims, e.g. river and floodplain restoration, use of Sustainable Drainage Systems (SuDS), changes in land management and creation of multifunctional wetlands

Article 9 of the Floods Directive (FD) explicitly requires that Member States coordinate the FD with the WFD:

'Member States shall take appropriate steps to coordinate the application of this Directive and that of Directive 2000/60/EC focusing on opportunities for improving efficiency, information exchange and for achieving common synergies and benefits having regard to the environmental objectives laid down in Article 4 of Directive 2000/60/EC.'

Ultimately coordination is vital so as to ensure that all pressures and potential impacts of proposed measures included in these FRMPs are included in the characterisation process for the WFD and thus in the river basin management planning process, with strict application of exemption criteria where proposed measures will compromise WFD mandatory requirements.

²⁰ EC (2014) *Links between the Floods Directive (FD 2007/60/EC) and Water Framework Directive (Water Framework Directive (WFD 2000/60/EC)*. Resource document. European Union, Luxembourg.

3.2 Coordination of Administration Arrangements of the WFD

Article 3 of the FD requires Member States to make use of the administration arrangements within river basin districts of Article 3 (1), (2), (3), (5) and (6) of the WFD.²¹ To coordinate the administrative arrangements of the WFD and the FD, most Member States have assigned the same competent authority for both Directives. Ireland has assigned different competent authorities for each Directive. This can pose difficulties in coordinating the two Directives; the FD requires a description of the coordination process with the WFD in the Flood Risk Management Plans (FRMPs).²² The Commission states that:

*'It is recognised that even with consultation and coordination systems in place, effective coordination can still be difficult owing to differences between CAs such as: funding mechanisms, differing objectives, corporate structures and language. Effective coordination can be achieved by ensuring adequate communication throughout the process to ensure mutual awareness of objectives, direction, progress and decisions. This may involve cross-representation of CAs in the management structures for both Directives, both at national and RBD level in addition to close communication (e.g. via workshops, meetings) particularly at critical stages (e.g. development of measures).'*²³

The draft FRMP (pg. 40) describes this coordination as occurring via bilateral meetings, cross-representation on management groups, exchange of information and coordination on measures. The information provided on these in the draft FRMP is vague in that it just outlines the process but not how/if effective coordination of implementation is being achieved. Further detail is required regarding the ongoing collaborative decision-making process for dovetailing implementation of these directives. It would appear to SWAN that operational coordination is minimal since the measures proposed in the draft FRMPs have, to our knowledge, not thus far been included in the WFD characterization process, despite the significant hydromorphological, and ecological impacts these may have on affected water bodies. Nor, is there any indication in the FRMPs, or in the public domain, of ongoing regular operational collaboration between scientists working on implementation of the FD with those working on the WFD. Indeed, on reading the FRMP, one would be forgiven for thinking they were developed in almost complete isolation from the dedicated WFD Catchment Management team in the EPA who are leading work on WFD implementation.

3.3 Coordination of the FRMP and RBMP

In line with what the Commission has highlighted, because Ireland has different competent authorities for the FD and WFD, it is vital that there be effective coordination at the critical

²¹ See section 2.2.

²² Annex A II (3).

²³ EC (2014) *Links between the Floods Directive (FD 2007/60/EC) and Water Framework Directive (Water Framework Directive (WFD 2000/60/EC)*. Resource document. European Union, Luxembourg.

stage of developing the flood risk management measures. From the draft FRMP, it is evident that this coordination has been very limited, calling into question how effective these measures will prove.

Article 7 (2) of the FD states that:

'Member States shall establish appropriate objectives for the management of flood risks ... focusing on the reduction of potential adverse consequences of flooding for ... the environment ...'

Article 7 (3) also requires that the plans must include measures that achieve the environmental objectives in accordance with Article 7 (2) and flood-related measures taken under the WFD. Article 7 (3) states that:

*'**Flood risk management plans shall take into account** relevant aspects such as costs and benefits, flood extent and flood conveyance routes and areas which have the potential to retain flood water, such as natural floodplains, **the environmental objectives of Article 4 of Directive 2000/60/EC**, soil and water management, spatial planning, land use, nature conservation, navigation and port infrastructure'. (SWAN's emphasis)*

In ostensibly reflecting this, one of the environmental objectives in the draft FRMP (pg. 51) is to 'Support the objectives of the WFD', with the sub-objective that the measures 'Provide no impediment to the achievement of water body objectives and, if possible, contribute to the achievement of water body objectives'.

The FRMP (pg. 41) also states that:

'The process for the development and appraisal of possible flood risk management methods includes an assessment against the objectives and requirements of the WFD (see Objective 3.a, Table 6.1). In this way, the potential contribution of flood risk management measures towards, or potential impacts on, the objectives of the WFD are embedded into the process for the identification of preferred measures.'

Although the objectives of the WFD may have been 'embedded' into the process, this demonstrably does not ensure that the management measures proposed will not have significant negative impacts on the achievement of WFD objectives, as is evidenced by the FRMP Strategic Environmental Assessment (SEA) which will be discussed in Section 4.

The draft FRMP (pg. 41) has provided brief examples of what is/will be done with regards to coordination between the competent authorities to take into account the potential impact of WFD measures on flood risk, to identify measures that contribute to achieving the objectives of both directives and to address conflicting measures as follows:

'The OPW is liaising with the EPA on the potential impact of WFD measures on flood risk, which are typically neutral (no impact), or may have some benefit in reducing runoff rates and volumes (e.g., through agricultural measures such as minimising soil compaction, contour farming or planting, or the installation of field drain interception ponds).

The OPW will continue to work with the EPA and other agencies implementing the WFD to identify, where possible, measures that will have benefits for both WFD and flood risk management objectives, such as natural water retention measures. It is anticipated that this is most likely to be achieved in areas where phosphorous loading is a pressure on ecological status in a sub-catchment where there is also an identified potentially significant flood risk (i.e., an AFA). This coordination will also address measures that may otherwise cause conflict between the objectives of the two Directives.'

SWAN welcomes the fact that the OPW has been liaising with the EPA, however it is difficult to ascertain the effectiveness of this as the coordination process outlined above does not explain how the OPW is currently working *with the EPA 'to identify, where possible, measures that will have benefits for both WFD and flood risk management objectives, such as natural water retention measures'*. This lack of clarity is of particular concern to SWAN, given that there are few measures proposed in the FRMP that would have such benefits in particular natural water retention measures which will be further described in Section 6.

Nor is there any explanation in the FRM Plan as to how *'measures that may otherwise cause conflict between the objectives of the two directives'* are being addressed, apart from recommending mitigation measures in the SEA.

The FRMP has identified many negative impacts which would result from the physical modifications that are being proposed as part of the flood risk management measures. It is unacceptable that the impacts or mitigation have not been adequately covered in this plan or any reference made to WFD Article 4 criteria for exemptions.

Article 7 (3) of the FD requires that the FRMPs take the characteristics of the river basins into account and also to promote sustainable land-use practices and the improvement of water retention. Thus the FRM plans, along with the WFD RBM plans, should be based around integrated river basin management and so benefit greatly from being developed in coordination with the RBM Plans. Indeed, the development of the FRMPs are required to be coordinated with the reviews of the WFD River Basin Management Plans, under Article 9 (2) of the FD which states that:

'... the development of the first FRMPs and their subsequent reviews as referred to in Articles 7 and 14 of this Directive shall be carried out in coordination with, and may be integrated into, the reviews of the RBMPs provided for in Article 13 (7) of the WFD'.

SWAN understands that for various political and other reasons, the development of both these plans is happening over different timescales. It is our position that this, along with having separate Competent Authorities, has resulted in a serious lack of coordination in the implementation of the two Directives, as is evidenced in the plans by the reliance on structural measures for flood risk management, which will have negative impacts on WFD objectives.

4 Proposed Measures

4.1 AFA Scale Options

Water bodies identified in the South Western RBMP 2009-2015 have programmes of measures to achieve WFD objectives. The FRMP SEA (pg.57) reports that

'The Laune and the Maine River catchments are generally classified as having moderate status or less under the Water Framework Directive (refer to Figure 6.9).'

Therefore it is important that, as the FRMP objective states, any proposed measures '*provide no impediment*' to achieving good status, as the water bodies in this UoM are already at risk of not meeting WFD objectives and any additional pressure would further exacerbate this risk. The preferred structural measures for 3 AFAs were assessed in the SEA and would have significant negative impacts on water quality in relation to WFD objectives. The proposed measures for these AFAs which would significantly impact water quality include:

- New river flood defence walls
- New river embankments
- Storage
- Flow diversion
- Stream and bank excavation
- New sea walls and embankments

The impacts of these physical modifications have been set out above in Section 2.2 but an example is:

'The River Maine is salmonid and considered sensitive it has a poor to good WFD status. During the construction phase there is potential for short term impacts on sensitive waterbodies (-2).'

The impacts in relation to the Habitats Directive include

'Flesk has pearl mussel populations in close proximity to proposed embankment locations. Very high risk of sediment runoff into the watercourse with significant implications for conservation objectives (-5).'

Any negative impacts on aquatic species such as the Freshwater Pearl Mussel must be taken into account when assessing WFD impacts as they are an intrinsic element of the ecological status of the water body. This is not mentioned in the WFD impacts and it is not clear if this has been taken into account in the assessment. This point is not just relevant to this FRMP but to all the FRMPs.

The draft FRMP (pg. 54) states that:

'The Environmental Report identifies, evaluates and describes the likely significant effects on the environment of implementing the potential measures set out in the Draft FRMP, with a view to avoiding adverse effects, and also, where appropriate, to set out recommendations as to how any identified adverse effects can be mitigated, communicated and monitored.'

Although the impacts on water status of implementing the proposed measures and the mitigation measures are briefly outlined in the SEA and FRMP more comprehensive descriptions should have been included. Projects will be subject to the applicable planning and/or consent processes, however there are no regulatory controls on physical modifications to water bodies. This is in spite of the WFD Article 11, which requires *'measures to ensure that the hydromorphological conditions of the bodies of water are consistent with the achievement of the required ecological status'* for water bodies. The 2010 Shannon RBM Plans²⁴ recognised that physical modifications of water bodies *'... can reduce the diversity of plant and animal communities either directly by affecting habitats or indirectly by changing natural processes.'* It is extremely worrying that the required regulatory system for their control has not been introduced. The RBM Plans further state that *'... proposed authorisation regulations for ... physical modifications ... are under preparation'* and that a *'formal legal mechanism'* to address morphological pressures on the coastal environment including *'coastal defence, built structures (urbanisation and ports and harbours) and dredging'* will be provided by a *'proposed amendment to the legislative framework, to regulate physical modifications having an adverse impact on the water environment.'* However, these regulations have yet to be introduced six years later, as highlighted in the DECLG's recent SWMI document:²⁵

²⁴ Shannon River Basin District (2010) *River Basin District Management Plan for the Shannon*. Limerick County Council, Limerick.

²⁵ DECLG (2015) [Significant Water Management Issues in Ireland](#). Public consultation document. DECLG.

'Several Irish studies commissioned to support implementation of the WFD have highlighted the need to introduce an authorisation system to control activities involving physical modifications to surface waters (e.g. flood defences, port development, hydropower development, arterial drainage). It is intended to address this deficiency through the establishment, via legislation, of a new single comprehensive regulatory framework.'

The DECLG attributed the delay of this legislation to the *'current poor understanding of the relationship between morphological alterations to surface waters and the ecological impacts'* and that *'Work is on-going to improve our understanding of these complex environmental pressures.'* It is extremely worrying that we will not have these regulations for some time, yet as stated in the FRMP SEAs for the Shannon:

'Consultation with the DECLG has confirmed that they are currently in the process of reviewing water legislation on a number of fronts, including controls on physical modifications, however it may be some time before the regulation concerning controls on physical modifications are implemented.'

It is furthermore of extreme concern that significant structural options are being proposed in the FRMPs despite this acknowledged *'current poor understanding of the relationship between morphological alterations to surface waters and the ecological impacts'*. It is difficult to understand how an adequate Environment Impact Assessment of such projects can be conducted, especially in terms of the impacts on the aquatic ecology, given this poor understanding. The lack of both regulatory controls and understanding of ecological impacts is even more reason to apply the precautionary principle when it comes to mitigation.

Also, as the Local Authorities will be responsible for implementing the proposed options, SWAN members have raised doubts about the decisions that LAs have made in the past in not proceeding with EIA and AA screening when required in the case of physical modifications to rivers, and also that there is no follow up assessment/monitoring of projects to ensure that mitigation has been implemented.

4.2 Unit of Management Measures

These are some of the measures which are to be applied across the entire UoM including the AFAs.

4.2.1 Application of the Guidelines on the Planning System and Flood Risk Management

This measure on the application of the Guidelines on the Planning System and Flood Risk Management is as follows:

'The Planning Authorities will ensure proper application of the Guidelines on the Planning System and Flood Risk Management (DECLG/OPW, 2009) in all planning and development management processes and decisions in order to support sustainable development.'

SWAN welcomes the inclusion of this measure, however enforcement of the guidelines is needed to ensure their proper application. Currently it is unclear which body can provide such enforcement. To regain public confidence in the planning system following the findings of the Mahon Tribunal, SWAN has recommended that a separate independent oversight authority be established to ensure that national planning policy is correctly implemented and to oversee complaints against planning authorities. In the absence of such an authority, many SWAN members are extremely sceptical about the full and effective application of these Guidelines especially as the current need for housing increases the risk of inappropriate development including on land that is at risk from flooding.

In this context, it is of the utmost concern to SWAN that the draft FRMP (pg. 69) states that:

'In flood-prone areas where development can be justified (i.e., re-development, infill development or new development that has passed the Justification Test), the planning authorities can manage the risk by setting suitable objectives or conditions, such as minimum floor levels or flood resistant or resilient building methods'.

SWAN members strongly disagree with this proposal and recommend that there be no further development in any flood-prone areas, notwithstanding the 'Justification Test'.

Apart from the above measure on the Application on the Guidelines on the Planning System specific reference should also be made in the FRMPs on ensuring the Application of the EIA (Agricultural) Regulations 2011 and the Planning & Development (Amendment) (No. 2) Regulations This has relevance for flood-risk management, as the EIA (Agriculture) Regulations are intended to control agricultural land drainage, which reduces the capacity of the land to store water and further increases the volume of water flow in streams and rivers, which then requires the continuance of arterial drainage schemes and other flood-risk management measures. The EIA (Agriculture) Regulations have the potential to provide additional flood protection at a catchment scale if they are implemented correctly.

The EIA (Agriculture) Regulations are administered by the Department of Agriculture and govern drainage works on lands used for agriculture (excluding the drainage and reclamation of wetlands). The threshold for required screening is above 15 hectares. If the proposed area for agricultural drainage (not wetland drainage) is above 15 hectares, an application for screening must be submitted to the Minister for Agriculture, who considers whether the proposed activity is likely to *inter alia* have significant effects on the

environment or on a European site. Where s/he considers that the proposed activity is likely to have a significant effect on the environment, or on a Natura 2000 site, the activity may not proceed *“without a consent given consequent to an application for consent accompanied by an environmental impact statement, or a Natura impact statement, as the case may be”*.²⁶

However, the system is fragmented and confusing for landowners, planning officials and other stakeholders; for this and other reasons it is ultimately ineffectual.

Secondly, wetland drainage, apart from habitat and biodiversity loss, also results in a loss of water storage and would contribute to flood flow volume. The Planning & Development (Amendment) (No. 2) Regulations control the drainage and reclamation of wetlands (including estuarine marshes or callows), which is the only element of the activities covered by the European Court of Justice judgment in Case C-66/06 remaining within the planning system. The threshold above which a landowner must conduct a mandatory environmental impact assessment (EIA) is 2 hectares, and the threshold above which they must apply for planning permission (and screening for EIA) is 0.1 hectares.

There is much confusion and a lack of enforcement in this regime. The system has a built-in temptation for landowners carrying out drainage works in wetland areas above 0.1 hectares to deem the land ‘used for agriculture’ and not an actual wetland. This then leads to confusion regarding the definition of a wetland. While wetlands are defined in the regulations and guidelines, this is a sufficiently ambiguous area to have facilitated many incidences of unregulated wetland drainage (ie without planning consent) of which SWAN members are aware.

The separation of responsibilities between the DAFM and DECLG also leads to fragmentation in the system. Under the current system, wetlands are at risk from cumulative effects, as there is no centrally administered system in place for cross-reporting, and no integrated assessment of proposed drainage works on agricultural lands and within wetlands. In the absence of a clear strategy for cross-reporting, permission may be simultaneously granted for drainage both within a wetland and on adjacent agricultural land, the combined effects of which may seriously damage the site.

SWAN members still regularly encounter unregulated wetland drainage for agricultural purposes (riparian and other) both below and above these thresholds. For example, SWAN members An Taisce and Coastwatch were involved in a case of infilling/reclamation of large areas of wetland in 2014 and 2015 adjacent to the R478 between Lahinch and Liscannor, Co. Clare, adjacent to the Inagh River Estuary SAC site code 000036). The An Bord Pleanala decision was that drainage/infilling of a wetland had been carried out, and thus that the

²⁶ Department of the Environment (2011) *Guidance for Planning Authorities on Drainage and Reclamation of Wetlands*. Consultation draft. September 2011.

works were not exempted development and should not have been carried out without planning consent and the appropriate environmental assessment.

Therefore proper enforcement of these regulations could contribute to both FD and WFD objectives.

4.2.2 Sustainable Urban Drainage Systems

The draft FRMP (pg. 69) states that:

'Sustainable Drainage Systems (SUDS) can play a role in reducing and managing run-off to surface water drainage systems as well as improving water quality and contributing to local amenity. SUDS comprise a wide range of techniques, including swales, basins, ponds and infiltration systems. In accordance with the Guidelines (see Section 8.2.1.1), planning authorities should seek to reduce the extent of hard surfacing and paving and require the use of sustainable drainage techniques to reduce the potential impact of development on flood risk downstream.'

SWAN welcomes the inclusion of the SuDs measure, however in relation to new housing developments the Guidelines²⁷ referred to above, stated that:

'The Department is currently reviewing its document "Recommendations for Site Development Works for Housing Areas" which traditionally was used to provide guidance on design standards for smaller drainage systems. The aim of this review is to set out best practice in regard to the use of Sustainable Drainage Systems in respect of surface water drainage.'

However, the review of this document²⁸ has still not been published. This review is urgently required in particular due to the increase in proposed housing developments. The Guidelines also state that:

'With regard to the increasingly frequent trend of paving over entire residential garden areas to provide off street car parking or hard landscaping under the exempted development provisions of planning legislation, the Department intends to review such provisions to ensure that only those complying with sustainable drainage principles will be exempted thus limiting the run-off which would otherwise contribute to overwhelming the drainage systems'.

²⁷ DECLG (2009) [The Planning System and Flood Risk Management](#). Guidelines for planning authorities. DECLG and the OPW.

²⁸ DELG (2008) [Recommendations for Site Development Works for Housing Areas](#). DELG, Government publication, Dublin.

These provisions have yet to be reviewed and hard paving of garden areas is still exempted from planning legislation. This poses a significant pressure in terms of increased urban run-off and renders the recommendation in the draft FRMP that *'planning authorities should seek to reduce the extent of hard surfacing and paving'* *"In accordance with the Guidelines'* in order to *'reduce the potential impact of development on flood risk downstream'* somewhat redundant. It is an oversight that this lacuna is not identified in the draft FRM Plan and SWAN recommends that this is rectified, with a recommendation in the final Plan to address the lacuna.

4.2.3 Ongoing Maintenance of Arterial Drainage Schemes

There is little information on the existing Arterial Drainage Schemes in place in these UoMs, other than a list of the schemes in the FRMP. Arterial Drainage Schemes typically involve increasing the conveyance capacity (e.g. dredging), which can impact on aquatic ecology of the watercourse. The potential for in-combination effects on water bodies as a whole (including those outside of Nature sites) needs to be taken into account. Although the schemes are not a part of the CFRAM study, they need to be assessed for their impact on the WFD status of affected waterbodies along with all other proposed measures. It is not clear if these were taken into account in the MCA analysis or SEA for the FRMP WFD objective. A brief look through the SEA for the Arterial Drainage Scheme 2016-2021²⁹ highlights a number of negative impacts on WFD objectives that these schemes would have. The environmental assessments relating to arterial drainage schemes are available on the OPW website,³⁰ and given the significance of these schemes in terms of physical modifications of the affected watercourses, this should have been mentioned in the FRMP. SWAN does not have the capacity to separately review these assessments in the given consultation timeframe, and as a minimum a summary of these reports should have been included in the FRMPs.

4.2.4 Enhance Existing Protection Works

The FRMP (pg. 71) states that:

'Some natural features can provide defences against floods, or form part of a defence in depth. For example, sand dunes and flood marshes often form effective barriers against flooding in coastal areas. These features may be vulnerable to rapid erosion and some enhancement may be useful to retain their effectiveness.'

SWAN appreciates the recognition of the role that natural features play in flood defence but would like to know how these features will be protected and what enhancement is

²⁹ <http://www.opw.ie/en/media/2016-2021arterial-drainage-maintenance-sea-scoping-report-activities.pdf>

³⁰ <http://www.opw.ie/en/floodriskmanagement/operations/environmentalactivities/>

being proposed. It is important that any enhancement of existing structural features must be WFD compliant.

4.2.5 Land-Use Management and Natural Water-Retention Measures

The Floods Directive requires that:

'Flood risk management plans shall take into account ... areas which have the potential to retain flood water, such as natural floodplains, the environmental objectives of Article 4 of Directive 2000/60/EC, soil and water management, spatial planning, land use, nature conservation ...'

Land-use management and natural water retention measures (NWRMs) are described earlier in the FRMP (pg. 73) as follows:

'Flood flows depend on how much rain falls in the catchment and the pattern of rainfall, and also on how much and how rapidly the rain runs off the land into the river. The volume and rate of runoff can be reduced by changing land use practices, such as by reducing stocking rates, changing the way ploughing is undertaken (e.g., along contours rather than perpendicular to contours), rewetting cutaway bogland and by planting hedgerows across hillsides. Similarly, excess runoff can be stored in wetlands, micro-detention basins, or be attenuated in small streams and channels through the use of obstructions to flow, such as large woody-debris dams. [...] These types of measures have the potential to help to achieve the goals in a range of areas, including water quality, nature conservation/biodiversity, agriculture and forestry, green growth and climate change mitigation and adaptation (EU, 2014), and as such would be best addressed on a multi-sectoral level to promote integrated catchment management.'

It is to be welcomed that the plan recognises that land use can be managed so as to reduce runoff and also that it recognises the benefits that NWRMs can bring to other areas, including water quality and integrated catchment management. It is therefore disappointing that this broad recognition is not then reflected in any proposed measures. The related measure in the FRMP merely entitled an *'Assessment of Land Use Management and Natural Water Retention Measures'*, described as follows:

'The OPW will continue to work with the EPA and other agencies implementing the WFD to identify, where possible, measures that will have benefits for both WFD and flood risk management objectives, such as natural water retention measures'.

SWAN welcomes the fact that the OPW is liaising with the EPA *'to identify, where possible...'* NWRMs, which would have benefits for both flood risk management and WFD objectives, However, the assessment of these measures should be well progress by this stage, with at

least some initial specific measures presented in the FRMP, It is disappointing that, to SWAN's knowledge work with the EPA on these measures has not yet started, or at best is in its infancy, with the result that no natural water retention measures have either been identified or put forth in this FRMP. Were that the case, they would have contributed meaningfully to the implementation of integrated catchment management. Well-documented examples of land-use management and NWRMs have been identified and promoted by the Commission, which has also highlighted benefits to both the FD and WFD, a summary of which will be presented in the following Section 6.

5 Natura Sites

5.1 Impacts on Natura Sites

UoM 22 contains 3 Special Protection Areas (SPAs) and 13 Special Areas of Conservations (SACs). Impacts on Natura 2000 sites' conservation objectives resulting from the proposed Flood Risk Management Options (FRMO) are likely to occur in Killarney AFA, Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC. Mitigation has been proposed for the FRMOs in both Natura 2000 sites, but this is not considered sufficient to completely ameliorate the likely impacts both in the short-term (localised disturbance to otters and Lesser Horse shoe bats) and long-term (siltation of spawning ground, spread of invasive plant species). Other non-structural FRMOs to replace construction with significant impacts should be considered. Works in AFAs Castleisland and Dingle are unlikely to impact on the qualifying interests of Natura 2000 Sites objectives but are likely to affect Annex II species (otters, salmon) which may move in and out of these sites.

Table 5.1 Assessment of likely impacts of proposed Flood Risk Management Options (FRMO) on NATURA 2000 sites within Laune - Maine - Dingle Bay UoM 22 from Appropriate Assessment (AA) and review by the Sustainable Water Network (SWAN), including reference to the Strategic Environmental Assessment.

AFA	Proposed FRMO	AA impacts	SWAN impact assessment
Castleisland	<p>Flow Diversion & Western Flood Defences</p> <ul style="list-style-type: none"> • Construction of an open channel to divert the Anglore Stream around Tullig • Fuvial flood defences comprising of walls and embankments. 	<ul style="list-style-type: none"> • Castleisland AFA does not overlap with any Natura 2000 site boundary. The Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (004161) is approx. 5km north of the AFA. This is designated <i>Circus cyaneus</i>. There is no suitable <i>C. cyaneus</i> nesting and foraging habitat within Castleisland environs. • Potential of works to spread invasive plant species • Release of sediment and pollutants to the watercourse. The Maine is salmonid. The proposed works require instream works. Sedimentation during spawning season could have detrimental effects on salmonid populations. • Disturbance of otters due to removal of considerable hedgerows and treeline 	<p>In addition to AA impacts Annex II species otter and salmon likely to be negatively affected.</p>
Dingle	<p>Storage & Flood Defences -</p> <ul style="list-style-type: none"> • Provision of a storage area on the Dingle Stream upstream of the town • Tidal flood defences comprising of sea walls and embankments. 	<ul style="list-style-type: none"> • No Natura 2000 sites within the AFA or within the zone of impact of therefore no potential for significant impacts on Natura 2000 site. Mount Brandon Special Area of Conservation SAC is located immediately north of Dingle AFA. The Dingle Peninsula Special Protection Area (SPA) is approximately 2.5km south of Dingle AFA. • Potential disturbance to conservation interests of the SPA during the construction stage is extremely unlikely given distance from SPA. • Works likely to cause spread of invasive plant species • Construction of the storage tank and flood defence walls likely result in the permanent loss of fisheries habitat and localised disturbance to otter feeding 	<p>In addition to AA impacts Annex II species otter and salmon likely to be negatively affected.</p>

Killarney	Flood Defences - Fluvial flood defences comprising of walls, embankments along with flood resilience of some properties.	<ul style="list-style-type: none"> • Impacts on the conservation interests of the Killarney National Park SPA are extremely unlikely given that the flood walls and embankments would be constructed within the urban setting and works are proposed for outside of the SPA boundary. • Potential significant impacts likely/uncertain for Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC. Potential for sediment runoff to impact on <ul style="list-style-type: none"> • Freshwater Pearl Mussel • Sea lamprey • Brook lamprey • River lamprey • Salmon • <i>Ranunculion fluitantis</i> and <i>CallitrichoBatrachion</i> vegetation • High potential for localised disturbance to species - otter, Lesser Horse shoe bats and for deterioration in local habitat • High potential for translocation of Japanese Knotweed which is common throughout the area locally 	In addition to AA impacts the SEA notes that removal of riparian habitat to accommodate embankment is unlikely to result in damage to otter habitat because of urban setting of AFA, however otters often commute through urban areas and may use embankment as resting spots.
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5.2 Mitigation

Mitigation proposals from Habitats Directive Assessment and Strategic Environmental Assessment for UoM 18 that are applicable to all AFAs include:

- A Construction Environmental Management Plan (CEMP) will be required during the construction phase of the proposed option. Measures included in the CEMP should include pollution control measures such as sediment control, storage of materials and location of refuelling areas. All measures are required to be in compliance with the CIRIA guide C741 - Environmental good practice on site guide.
- Works should only commence once a detailed method statement has been agreed with Inland Fisheries Ireland. All works should be undertaken in line with the requirements of "Guidelines on Protection of Fisheries during construction works in and adjacent to waters".
- Conducting of bank-side works in dry weather conditions to reduce runoff.
- Vegetation of the embankment with fast growing grass mix such that runoff will be minimised.
- Monitoring of Receiving Waters during Construction.

Detailed designs for flood risk management options will not be developed as part of the Flood Risk Management Plans but rather options will be progressed by the Office of Public Works on a scheme by scheme basis following the publication of the Plans.

Mitigation proposals from the Sustainable Water Network for UoM 18 that are applicable to all AFAs include:

- Avoid unnecessary vegetation clearance.
- Maintain a green barrier to reduce stream bank erosion.
- Reinstatement of appropriate riparian vegetation once works completed rather than fast growing grass.

Table 5.2: Assessment of effect of proposed mitigation options on assessed impacts on NATURA 2000 sites. CA= complete amelioration of likely impact, PA=partial amelioration, NO= no amelioration possible, RI=residual impact (rate: significant, insignificant, none)

AFA	SWAN Assessment of impact of pFRMO	AA mitigation	Assessment of AA mitigation	SWAN mitigation proposal
Castleisland	Works unlikely to impact on Natura 2000 sites.	As above.	PA	Implement all proposed mitigation. Survey for otters carried out and mitigations put in place to reduce impacts on otter and salmon.
Dingle	Works unlikely to impact on Natura 2000 sites.	Additional measures should include for the management of invasive species	PA	Implement all proposed mitigation. Survey for otters carried out and mitigations put in place to reduce impacts on otter and salmon.
Killarney	Works are likely to significantly impact on Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC conservation objectives.	Measures to include <ul style="list-style-type: none"> • no significant impact on populations of otter and Lesser Horse Bats • Management of invasive species • Works should only commence once a detailed method statement has been agreed with Inland Fisheries Ireland. 	PA	Mitigations based on no instream works. No instream works to occur without addition assessment of ecological impacts.

5.3 Recommendations

- Within the Draft Flood Risk Management Plan non-structural measures were not considered in the development of options based on structural measures. However, we believe non-structural measures should be evaluated in the earliest plans and should have bearing on the development of structural measures and not simply be complementary to them. Integrated flood management using the best mix of structural and non-structural and natural including addressing objectives at a basin level rather than isolated flood management options should be the starting point of FRMPs.
- A strategy to manage floods in an ecological manner should be based on improving river basin land-use, prevent in rapid run-off both in rural and urban areas. Where possible restore rivers natural flood zones.
- Conserve, protect effectively and, where possible, restore vegetation and forests in mountainous areas, riparian woodland and meadows.
- The assessment for Killarney has been done under the assumption that there will be no instream works. If instream works are to occur at any point during works, permission must be sought from NPWS and an appropriate EIA must be undertaken, given the likely impact on Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC conservation objectives.
- Extent and knowledge of floating river vegetation in watercourses on a national basis is limited and more surveys are needed to map distribution. In lieu of more extensive data, the precautionary principle should be invoked to ensure no loss of this habitat.
- Where impacts on Natura Sites have been assessed as uncertain/likely a qualified ecologist should be present onsite while proposed works are carried out and to monitor effectiveness of mitigation.
- Monitoring of baseline environmental conditions and significant effects on the environment as a result of the implementation of the FRMPs must be transparent and results of such should be made available to interest groups and stakeholders promptly.

The main impacts resulting from preferred flood risk management measures in UoM 22 result from the potential release for the release pollution and sediment into rivers during works. Implementation of mitigation measures meeting required standards and based on precautionary principle should reduce impacts to acceptable levels.

Significant effects were determined as likely or uncertain for the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC due to flood risk management options in Killarney AFA. The main threats relate to impacts associated with the potential release of sediment and pollution on Natura 2000 conservation objectives relating to salmon, lamprey and fresh water pearl mussels; disturbance to otter, Lesser Horse shoe bats and the potential for the spread of invasive plant species.

SWAN believes that these issues are significant in their long-term impact on the conservation interests of the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC.

Additional mitigation or compensation measures will be required to achieve “no impact” on the SAC.

6 Integrated Flood-Risk Management

In its recommendations for better policy integration, the EU WFD Common Implementation Strategy document on hydromorphological pressures states that:

'Flood-risk management is probably the policy with the best potentialities for synergies with other aspects of water management, provided that adequate strategies are implemented. In some cases, traditional engineering solutions (dams, channelisation or dykes) have not delivered the expected results. The occurrence of floods cannot be reduced completely and the consequences of future floods are likely to have an increasing social and economic impact. Moreover, the prioritisation for locating flood defences to protect particular sites or land uses is being reviewed. Thus, another approach of flood-risk management is now promoted: an integrated flood risk management focusing on prevention, protection and preparedness (including forecasting). In this framework, , making space for river and coastal flooding in the areas where the human and economic stakes are relatively low, represents a more sustainable way of dealing with floods.'³¹

Taking a catchment based approach represents a more sustainable way of dealing with floods.

6.1 Catchment-Based Approach

Catchment flood management is described as *'an approach to coordinating measures to manage flood risks. It offers a framework where many aspirations and plans can be brought together in a coherent and flexible way to manage pressures across catchments.'*³² As acknowledged in the FRMP, the use of structural engineering measures has been the predominant method of addressing flood risk in urban areas through the use of flood relief schemes. However, it is now government policy (Flood Policy Review) to take a new approach to flood-risk management, and this is also described in the FRMP (pg. 5) as moving towards:

- ***'A catchment-based context for managing risk;***
- *More pro-active flood hazard and risk assessment and management, with a view to avoiding or minimising future increases in risk, e.g., from development in floodplains; and*
- *Increased use of non-structural and flood impact mitigation measures.'*

³¹ CIS (2008) *Common Implementation Strategy for the WFD*. Policy paper on WFD and hydromorphological pressures. Focus on hydropower, navigation and flood defence activities. Recommendations for better policy integration.

³² Scottish Government.

The full potential of taking an integrated catchment management approach has not been realised in the FRMP, as there has been a lack of full coordination with the WFD and integration and alignment with the development of the RBMP.

The FRMP states that *'engineered solutions to manage existing and potential future risks are likely to continue to form a key component of the overall national flood risk management programme and strategy'*. SWAN acknowledges that in some instances, structural engineering solutions may be, for various reasons, either the only option, or necessarily part of the solution required to address flood risk. However, at present the plans as presented are overly reliant on such options, neglecting to fully consider the catchment-based approach, which would mandate increased use of measures such as NWRMs and other win-win options for both the WFD and FD. In fact, there are a significant number of measures that could be taken to reduce the risk of flooding that could also contribute to achieving WFD objectives. These 'win-win' measures include:

1. Increasing natural retention and storage capacity (e.g. floodplain restoration);
2. Adaption of structural measures (e.g. flood defences) to take WFD obligations into account; and
3. Using Sustainable Drainage Systems (SuDS) and increasing storm drain capacities to decrease urban flooding.³³

In terms of an illustrative example, the catchment-based approach proved key to the success of the Farming Floodplains for the Future project in England:³⁴

'Its aim has been to understand, through delivery, how the farmed landscape can be viably managed in ways that reduce flood risk downstream, whilst enhancing the natural environment. Through successful delivery (including eight demonstration sites featured in a series of case studies), the project has shown that farmers and landowners can be engaged in flood risk management and, with the right incentives, can be encouraged to implement flood-alleviation measures on the ground. The key to success is taking a catchment-wide approach, focussing in headwaters and on tributaries, delivering cumulative gain through the downstream. The project has shown that this can be achieved through simple, natural, low-tech solutions, resulting in schemes that are sustainable, cost effective, require minimal maintenance and fit comfortably alongside existing farm enterprises.'

It is negligent and demonstrative of worryingly narrow thinking that such catchment-based approaches to land-use management and NWRMs, incorporating for example agri-environmental schemes has so far been excluded to the extent that it has from the FRMP measures.

³³ EC (2014) *Links between the Floods Directive (FD 2007/60/EC) and Water Framework Directive (Water Framework Directive (WFD 2000/60/EC)*. Resource document. European Union, Luxembourg.

³⁴ Jones M. (2010) [Farming Floodplains for the Future](#). Final Report. Staffordshire Wildlife Trust.

6.2 Natural Water-Retention Measures

Increasing the natural retention and storage capacity is an example of a Natural Water Retention Measure and this can be used as part of a natural flood-management strategy. Natural flood-management is used to reduce and delay the volume of water flowing downstream which will in turn reduce the flood level and risk. The Commission view is that '*Flood risk management should work with nature, rather than against it*' and that the '*ecosystem based approach is a more efficient way of adapting than simply focusing on physical infrastructure*'.³⁵ The Commission has given examples of natural flood-management strategies that could meet the requirements of the FD and WFD as follows:³⁶

- **'Storing water** by using and maintaining the capacity of ponds, ditches, embanked reservoirs, channels or land;
- **Increasing soil infiltration**, potentially reducing surface runoff, although this can be offset by greater subsurface flows. Free draining soil will make saturation less likely, and evaporation from soil can also make space for water;
- **Slowing water down** by increasing resistance to its flow, for example, by planting floodplain or riverside woods; and
- **Reducing water flow connectivity** by interrupting surface flows of water, for example, by water storage or planting buffer strips of grass or trees.'

Ireland-applicable examples of natural approaches in reducing flooding, including NWRMs, and which should be included as measures in the FRMP, are presented in Table 5.1.

Table 5.1 Natural approaches in reducing flooding (Source EC, 2011)³⁷

Technique	Potential locations	Key goals
Hedgerow planting and management	Planted across slope along existing field boundaries	To enhance infiltration and storage within soils, and to impede overland flow of water and sediments
Blocking of inappropriate artificial drains using dams (permanent)	Any artificial drain throughout catchment, provided it would not increase flood risk to structures or property	To slow flows, enhance water storage and intercept excess sediments. Will eventually fill in over time
Wetland restoration	Flat upland areas, hillfoots and floodplains prone to waterlogging	To enhance flood storage capacity throughout the catchment
Native mixed woodland on hillslopes	Deforested and drained hillslopes	To intercept rainfall and enhance soil storage capacity, and to reduce erosion

³⁵ EC (2011) *Towards Better Environmental Options for Flood Risk Management*. European Commission DG Environment, Brussels, Belgium.

³⁶ EC (2014) *Links between the Floods Directive (FD 2007/60/EC) and Water Framework Directive (Water Framework Directive (WFD 2000/60/EC)*. Resource document. European Union, Luxembourg.

³⁷ EC (2011) *Towards Better Environmental Options for Flood Risk Management*. European Commission DG Environment, Brussels, Belgium.

Planting riparian buffer zones, or water margins	All watercourses, particularly heavily modified watercourses and those within artificially drained areas	To impede overland flow, enhance soil storage capacity and intercept mobilised debris and sediments
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The Commission has stressed *'the need to improve long term flood risk management policies'*, and that natural flood-management and green infrastructure have important roles to play in future measures to prevent flood damage, particularly in view of climate change. This approach can provide a 'win-win' for FD, WFD and climate change mitigation objectives by eliciting benefits such as:

'Contribution to the protection and restoration of ecosystems (floodplain and coastal ecosystems), mitigation of climate change impacts by conserving or enhancing carbon stocks or by reducing emissions caused by e.g. wetland and river ecosystem degradation and loss and, provision of cost effective protection against some of the threats that result from climate change such as increased floods'.³⁸

The negative impact that hard engineering can have on water quality and ecosystems makes it all the more important that other solutions that work with nature are given more prominence than at present in the FRMP. As the Commission emphasises:

'Working with nature and strengthening ecosystems and their services to reduce flooding is about restoring rivers' natural ability to store or slow down flood waters the restoration of floodplains and wetlands [...] This can be achieved by Green Infrastructure restoring natural features and characteristics of catchments and coastlines, such as wetlands, floodplains ...'³⁹

Under the FD Article 4, Member States need to take floodplains as natural retention areas into account when assessing the adverse consequences of future floods; the value of floodplains' potential as natural retention areas is also asserted under Article 7 when it comes to developing flood-risk management plans. The restoration of floodplains and wetlands are an example of NFWM and should be included as a measure in the FRMP. This is the type of measure that could contribute to achieving both FD and WFD objectives. The Commission has summarised their usefulness in this aspect and for reducing flooding in Belgium by stating that:

'The goods and services that wetlands provide to humanity are numerous and fundamental to meeting some of [the] most basic human needs. Wetlands are an effective buffer against flooding as they can store water in their soil or retain it as surface water thereby slowing down the rate of flooding. Wetlands and areas set aside for temporary storage of flood water have proved successful in reducing flooding for instance in the recent Belgian floods.'⁴⁰

³⁸ EC (2011) *Towards Better Environmental Options for Flood Risk Management*. European Commission DG Environment, Brussels, Belgium.

³⁹ EC (2011) *Towards Better Environmental Options for Flood Risk Management*. Note by DG Environment.

⁴⁰ EC (2011) *Towards Better Environmental Options for Flood Risk Management*. Note by DG Environment.

The conservation and restoration of the natural functions of wetlands and floodplains are a key feature of integrated flood-risk management, providing opportunities for synergies with the WFD as described in the WFD CIS,⁴¹ in which examples of how and where this has been implemented successfully are described. For example:

- Space for River in the Loire/Alliver
- Room for the River in the Rhine Delta
- Making Space for Water in England
- Flood Plain Restoration in Tisza
- Coastal Flood Plain Restoration in the Wash in England

6.3 Integrated Governance

One of the major obstacles when it comes to water management in Ireland is the lack of coherent legislation and integrated governance. It is clear from extensive work on implementation of the Water Framework Directive over the past 15 years that an integrated approach is crucial to effective water management. Developing the Plans is the only a minor step in the context of the significant challenging in implementing them. In fact, there is now consensus amongst key government bodies and water management experts including the Department, the EPA and City and County Managers Association (CCMA) that as stated in the 2010 River Basin Management Plans themselves, implementation of the WFD failed in the first cycle because river basin management was '*.. assigned across a range of organisations with no single body having ultimate responsibility*' and that water management was '*fragmented along administrative lines*' and thus did not '*facilitate analysis, identification and implementation of the most cost-effective solutions to manage water...*' These conclusions apply equally to that particular area of water management being addressed in the FRM Plans, that is flood management and there is much that can and should be learned from the failure of the first WFD cycle in relation to necessary conditions for successful implementation.

SWAN has made a number of submissions to the Department regarding integrated governance,⁴² a detailed discussion of which is beyond the scope of this submission. However suffice to say here that the proposed new governance system, which has been developed by the Department, does not provide the mechanisms necessary for the best-practise Integrated Catchment Management approach being promoted by the EPA; that is mechanisms to facilitate catchment-level decisions regarding selection of regarding the selection and implementation of water management measures, at a catchment level, including flood management. So it is regrettable that the OPW appears to play a particularly peripheral role in the new water management arrangements with very little ongoing day-to-day collaboration with the EPA Catchment Management Unit.

⁴¹ CIS (2008) *Common Implementation Strategy for the WFD*. Policy paper on WFD and hydromorphological pressures. Focus on hydropower, navigation and flood defence activities. Recommendations for better policy integration.

⁴² For example SWAN (2010) SWAN proposal for a new system of water governance. Sustainable Water Network, Dublin.

Furthermore it is unclear whether and how the role of Local Authorities in implementing the FRM Plans will be incorporated into the new water governance system.

In addition to administrative arrangements a fundamental element of governance are the underpinning formal institutions, including laws and policies.⁴³ However, here too a fragmented approach to floods management is evident. Under the Regulations transposing the Floods Directive⁴⁴, the OPW is the competent authority for implementing the Floods Directive and has the responsibility for developing the preliminary flood-risk assessment, the flood risk and flood hazard maps, and for developing the FRMPs, which need to be approved by the Minister for Finance. However once completed, it is the Local Authorities who decide whether to adopt the plans; the OPW *'have an oversight responsibility to monitor and report on progress in implementation'*, but the responsibility for implementing the measures proposed in the plans lies with *'various organisations'* as outlined in the FRMP (FAQ section). There is also a requirement that the OPW *'promote the co-ordinated implementation of the Directive across river basin districts or other units of management'*. It is unclear how this coordination will be achieved and how an integrated catchment-based approach to flood management will be achieved given that implementation is the responsibility of authorities whose borders are administrative rather than catchment-based. This appears to represent a perpetuation of the fragmented approach to water management criticised in the 2010 River Basin Management Plans.

7 Public Participation and Active Involvement

Notwithstanding the extensive (and presumably costly) information and communications exercise in which the OPW and its consultants have engaged, it is SWAN's contention that the OPW's public engagement on the draft Flood Risk Management Plans is unsatisfactory and flawed in a number of fundamental ways. These relate to the requirements of the Aarhus Convention and the Floods Directive regarding, respectively, early and effective opportunities for the public to participate in decision-making and the requirement to encourage active public involvement.

In addition to the specific obligations in the Floods Directive, discussed below, the FRM Plan has numerous environmental dimensions and consequently requires the application of demonstrably rigorous public participation as described in Article 6 of the Aarhus Convention,⁴⁵ which specifically refers to public participation rather than consultation, and specifies what is necessary for public participation where *"decisions on proposed activities ... which may have a significant effect on the environment"* (Clause 1 b) are being considered". Most importantly, Article 6, clause 8, specifies that *"due account is taken of the outcome of public participation"* in any decision. The Convention also gives extensive details as to the provision of information for the public. Article 6 of the

⁴³ OECD (2011) OECD Studies on Water: Water Governance in OECD Countries — A Multi-Level Approach. Organisation for Economic Co-operation and Development, Paris.

⁴⁴ European Communities (Assessment and Management of Flood Risks) Regulations 2010.

⁴⁵ UNECE (1998) Convention on Access to information, public participation in decision-making and access to justice in environmental matters.

Environmental Impact Assessment Directive also requires that *'The public concerned shall be given early and effective opportunities to participate in the environmental decision-making procedures.'*

7.1 Public Participation - Requirements of the Floods Directive

The Floods Directive requires only that Member States make drafts of the PFRAs, flood-hazard maps and flood-risk maps available to the public. However, as well as making the FRM plan publicly available, there is an additional specific obligation to *'encourage active involvement of interested parties in the production, review and updating of the flood risk management plans'*. It furthermore requires that the FRMP include a summary of the public information and consultation measures/actions taken.⁴⁶

7.2 Effective Public Participation and Active Involvement

While the Directive does not define 'active involvement', much work has been done on this in relation to the WFD, which has a similar requirement. Active involvement of stakeholders means allowing them to actively participate in decision-making regarding the FRM Plan. According to the EU Common Implementation Strategy guidance document:⁴⁷

"Active involvement ... means that stakeholders actively participate in the planning process by discussing issues and contributing to their solution. Essential to active involvement is the potential for participants to influence the process."

A full discussion on the key elements of effective public participation/active involvement is beyond the scope of this submission, but it is well rehearsed in the literature and has been set out by SWAN in various submissions to DHPCLG.⁴⁸ A diverse range of mechanisms and particular techniques can be employed to actively involve the public,⁴⁹ which the OPW could be guided on by a relevant independent professional. Some simple distinctions are commonly recognised which broadly reflect the direction of communication and the flow of information.⁵⁰

- **"Information"**, where the stakeholders are essentially passive recipients of information from the sponsor(s) of the exercise (information flowing from the sponsor(s) to the stakeholders);

⁴⁶ FD Annex A (II) (2).

⁴⁷ (EC 2003) *Common Implementation Strategy for the Water Framework Directive (2000/60/EC)*. See <http://bit.ly/2cZbNK2>

⁴⁸ Sustainable Water Network (SWAN), 2012. SWAN Recommendations for Public Participation Mechanisms in the Department of Environment Community & Local Government (DECLG) 4-Tier Water Governance Proposal. Submission to DECLG and Sustainable Water Network (2012) Getting it Right ✓ or Getting it Right ✓ Ticking boxes vs. delivering genuine public participation in water management in Ireland. Presentation to The joint meeting of the Task Force on Public Participation in Decision-making of the Aarhus Convention & the Meeting of the Parties to the Protocol on Water & Health on 'Public Participation in Environmental Decision Making: Focus on Water and Health', June 2012

⁴⁹ E.g. Rowe, G. & Frewer, L.J. (2005) A typology of public engagement mechanisms. *Science, Technology & Human Values*, Vol. 30 (2), 251-290

⁵⁰ OECD (2001) *Citizens as partners: information, consultation and public participation in policy-making*. PUMA, OECD.

- **“Consultation”**, where the stakeholders feedback their views, analyses, recommendations, and so forth, in response to a request from the exercise sponsor(s) – (information flowing from stakeholders to sponsor); and
- **“Participation”**, where the sponsor(s) and stakeholders engage in dialogue, allowing change by all parties and collaborative development of the proposal/decision or other, with stakeholders making input in designing how they participate.⁵¹

The most fundamental distinction between these categories relates to the different opportunities they provide for stakeholders to influence the outcome of the process. While specifically concerned with public agencies and decision-making, the recent [Maastricht Recommendations on Public Participation in Decision-making](#), published by the UN to support compliance with the Aarhus Convention, makes clear that *“public participation should be seen by all parties as a prerequisite of effective action and an opportunity for real influence, not merely as a formal procedural requirement”* (p.12) (SWAN’s emphasis).

In light of the above, to fulfil the **requirements of effective and meaningful participation**, certain conditions need to be met. Briefly, it requires that those whose interests are, or may be, affected by the matter concerned are:

- a. Made aware of their potential interest(s) and the nature of the proposal;
- b. Given access to adequate information and technical expertise to fully appreciate what is being proposed and the possible implications of this;
- c. Provided with accessible opportunities *to participate** in the development of the proposal, its amendment, and the decision(s) as to whether it proceeds or not, according to best available practice;
- d. Given clear undertakings on the use of their inputs, feedback on these, and transparency as to the extent of their influence on the decision-making in the process.

* *The Aarhus Convention specifically refers to public participation rather than consultation (Aarhus Convention, 1998).*

7.3 Assessment of Provisions for Public Participation/Active Involvement in the Development of the FRM Plan

The draft FRM Plan (pg. 38) states that:

‘... the public have ... been given the opportunity and encouraged to engage with the implementation of the ‘Floods’ Directive’.

However, when examined against the above criteria from the literature, including the need for ongoing dialogue and collaborative development of the Plan with stakeholders, it is clear that the OPW has not delivered opportunities for effective public participation in the development of the

⁵¹ Jeffery, N. (2009) *Stakeholder engagement: a road map to meaningful engagement*. No. 2 Doughty Centre series “How to do Corporate Responsibility.” Cranfield School of Management.

Rowley, T.J. & Moldoveanu, M. (2003) When will stakeholder groups act? An interest and identity-based model of stakeholder group mobilisation. *Academy of Management Review*, 28(2), 204-219.

FRM Plan. It has limited its engagement to information and consultation exercises and done almost nothing to encourage the involvement of stakeholders in the development of the Plan. There is no evidence of a genuine wish to develop a partnership approach with stakeholders, and there appears to be a clear democratic deficit partially due to a culture of traditional 'minimalist' consultation processes in the OPW, exacerbated by the fact that the new water governance structures are not yet fully in place, so that no mechanism exists by which to attempt to secure more stakeholder scrutiny and involvement.

In relation to provisions for basic consultation, it is SWAN's position that the public consultation on the Plans is wholly inadequate. The OPW has, by default, limited the ability of stakeholders to respond in a meaningful or significant way. The consultation on the first of these complex plans started in mid-July for a period of only ten weeks over the holiday period. This is far too short a period for stakeholders to review and assimilate the contents of the Plans and make a full response to them. There will be 29 plans in total published, with each plan containing separate measures for each AFA (300 in total). There are also 10 Plans open for consultation in first ten week consultation period, each with their own separate suites of measures for specific stakeholder response. SWAN requested a longer consultation period, which if the FRMPs had been aligned with the consultation on the second cycle WFD RBMPs (let it be noted that Article 7 (3) of the FD requires the coordination of the FD with the WFD when it comes to the '*active involvement of all interested parties*'), then both consultations should have occurred concurrently for a period of at least six months. It is regrettable that the request for a longer consultation period was denied due to political pressure to have the plans completed by the end of 2016.

It is therefore not possible for SWAN to provide a fully comprehensive and adequate response to all of these plans in the given time frame, as we would imagine is the case for many interested parties. It is difficult to envisage how it would be possible for an individual or for other stakeholders to adequately respond to ten draft plans in the time given.

7.4 Conclusion

Principle 10 of the 1992 Rio Declaration recognised the need for all individuals to have access to adequate information on, and the ability to participate in, the decision-making process in relation to environmental issues. This principle was further articulated in law by states (such as Ireland) that subsequently ratified the 1998 Aarhus Convention, and thereby enshrined access to information, participation in decision-making and access to justice in environmental matters. Article 6 of the Convention specifies what is necessary for public participation where "*decisions on proposed activities ... which may have a significant effect on the environment*" (Clause 1 (b)) are being considered".

In light of SWAN's ongoing, vociferous advocacy for meaningful public participation, we are moved to censure the dismissive treatment of knowledgeable stakeholders during this process as undemocratic. Consequently we make our submission with the explicit reproach that flawed processes such as these not only disenfranchise the very communities they're meant to serve, but are emblematic of problem-solving strategies fatally distanced from exactly those environmental

management approaches that will be most needed as manmade climate change threatens to push weather patterns in unpredictable directions beyond the palliative brink of mechanical ingenuity. The unfortunate and avoidable situations of trenchant public opposition in the cases of both domestic water charging and peat cutting demonstrate the exceptionally damaging consequences of failing to engage meaningfully with the public on water and wetland issues, and SWAN would urge the OPW in conjunction with the DHPCLG to develop and begin delivering a programme of public participation for the FRM Plan's development and implementation, in co-ordination with WFD implementation, as a matter of urgency.

Appendix I: SWAN Member Organisations & Board of Directors

SWAN National Groups		SWAN Regional & Local Groups	
1.	An Taisce	15.	Carra Mask Corrib Water Protection Group
2.	Bat Conservation Ireland		
3.	Birdwatch Ireland	16.	Cavan Leitrim Environmental Awareness Network
4.	Coastwatch Europe Network		
5.	Coomhola Salmon Trust Ltd.	17.	Celebrate Water
6.	Eco-UNESCO	18.	Cork Environmental Forum
7.	Friends of the Earth	19.	Cork Nature Network
8.	Friends of the Irish Environment	20.	Longford Environmental Alliance
9.	Irish Peatland Conservation Council	21.	Macroom District Environmental Group
10.	Irish Seal Sanctuary	22.	Save Our Lough Derg
11.	Irish Water and Fish Preservation Society	23.	Save Our Lough Ree
12.	Irish Whale and Dolphin Group	24.	Save The Swilly
13.	Irish Wildlife Trust	25.	Shannon Whale & Dolphin Foundation
14.	Voice Of Irish Concern for the Environment (VOICE)	26.	Slaney River Trust

SWAN Board of Directors:	
Mark Boyden, Chair	Coomhola Salmon Trust
Mindy O'Brien, Vice Chair & Company Secretary	Voice of Irish Concern for the Environment (VOICE)
Karin Dubsky, Director	Coastwatch Europe
David Healy, Director	Friends of the Irish Environment
David Lee, Director	Cork Environmental Forum
Elaine Nevin, Director	ecoUNESCO