

Overview of submissions for the public consultation of the Heavily Modified Waterbody designation review

Introduction

Heavily modified waterbodies (HMWB) are surface waterbodies that have had their physical characteristics, or hydromorphological conditions, modified by engineering works for the purposes of one or more specified uses. These uses include power generation, water supply, flood defences, arterial drainage, navigation, or urban environments. Heavily modified waterbodies are formally designated by the Minister for Housing, Local Government and Heritage as part of the river basin management plan making process.

The EPA conducted a technical review of the heavily modified waterbody designations to support the 3rd cycle river basin management plan. The review consists of three components: characterisation (to identify if a specified use(s) is causing a significant physical impact to a waterbody; ii) designation (to consider whether the modification prevents the objective from being achieved) and; iii) classification (setting and assigning good ecological potential). See Appendix 1 that outlines the process as set out in European guidance^{1,2}.

Public consultation on the process and outcomes of the review ran between the 8th of March to the 30th of April 2022. This was then extended to the 15th of May. Twenty submissions were received representing individuals, NGOs, community/angling groups, specified use owners and local authorities (Appendix 2).

Some public bodies, for example Irish Water and the OPW, were supportive of the process and its outcomes, recognising that it would result in more appropriate management for these waterbodies. Irish Water considered that additional waterbodies may also need to be designated when new information becomes available and that this can be considered as part of future reviews. Irish Water and OPW both requested further involvement in the process for establishing the mitigation measures required for Good Ecological Potential.

However, four key areas of concern were common throughout the submissions and are described below.

1. The designation tests

While it was deemed appropriate in the submissions that the EPA carried out the characterisation tests, given the technical nature of the process, there was a strong consensus that the designation tests should be carried out by DHLGH as it was a socio-political issue. One submission in particular highlighted that the following should be considered:

- *A thorough and transparent analysis of the justification for designation, underpinned by a cost-benefit analysis with clear identification of the necessary trade-offs;*
- *Such disproportionate cost analysis should include not just the impacts of restoration measures on specified uses, but also the wider environmental, recreational, heritage and other the benefits.*

¹ European Union Common Implementation Strategy (CIS) guidance (No. 4)

² European Union Common Implementation Strategy (CIS) guidance (No. 37)

- *Full policy analysis, run by the DHLGH, as set out above, with effective public engagement, which:*
 - o *fully considers all better environmental options*
 - o *is conducted taking an integrated catchment management approach to climate mitigation & adaptation and habitat restoration.*

It was also requested in the submissions that there should be wider public consultation before designations are finalised.

Eight submissions stated that rather than carrying out the designation tests for groups of waterbodies impacted by the same specified use, individual waterbody assessments should be carried out. They felt that the current methodology did not provide sufficient evidence to designate any individual waterbody as heavily modified. Furthermore, respondents noted that it was unsatisfactory that only specified use owner input was considered for these designation tests and one submission stated that *'to the average citizen this can be perceived as a corruption of process under the Aarhus Convention'*.

Many submissions also focused on individual specified uses. With regard to water storage and regulation, it was questioned whether the current hydroelectric power stations provide enough energy to warrant designation in the context of the ecological impacts they otherwise give rise to. The impacts of the impoundments on the River Lee on the alluvial forests of the Gearagh was provided as an example. There were strong views on the Arterial Drainage Act with many submissions demanding that such legislation be reviewed. In terms of alternative options for arterial drainage, flood protection and the urban environment, many felt that such a designation would inhibit the promotion of natural solutions to floodplain management and that incentives for rewetting are achievable given the latest green policies (see next section on consideration of other policy).

2. Consideration of other policy

Seven submissions highlighted that the designation tests lacked consideration of EU policy and legislation (e.g. conservation objectives of Natura 2000 sites under the EU Habitats Directive, EU Biodiversity Strategy, EU Green New Deal, Common Agricultural Policy (CAP)). It was viewed by respondents that HMWB designations are not compatible with many of these policies, particularly given the current climate and biodiversity crisis.

A number of submissions queried whether Appropriate Assessment (AA) or Strategic Environmental Assessment (SEA) on the HMWB designation candidates was required.

A significant number of submissions raised concern, in particular, about the 1945 Arterial Drainage Act. Eight submissions viewed the current drainage legislation as outdated, questioned how compliant channel maintenance operations are with environmental legislation, and called for the Act to be repealed and reformed. One particular submission took issue with the statement that OPW are legally obliged to continue the maintenance of channels and indicated that EU law takes precedence over national law.

A clear message came through the consultation process that respondents felt the designation of HMWBs should be halted until important structural and policy reforms are implemented. Irish Water however, expressed concern that without heavily modified waterbody designations and any required exemptions listed in the river basin management plan, it may not be possible to licence those water supply abstractions that are associated with impoundments.

3. Long term environmental objectives

Views on the HMWB designation included statements such as *reduce ambition, downgrade/reduce perceived value, serious reduction of standards, lower stakeholders' objectives/requirement to the improve water quality of local rivers and valid concern that the change in status would have the effect of seemingly improving figures for Ireland on an international stage while leading to an overall worsening of the quality of our environment and our drinking water*. Many felt that restoration of water should be prioritised, rather than focusing on HMWB designation.

While the technical document emphasised that the HMWB designation was not an exemption, a derogation or a lower objective, the designation was still not viewed in this way for some. For example, one submission stated *'with so many crises facing society, water, the most essential source of life, must be raised as a fundamental concern and in no means diminished in importance through terminology, classifications or loopholes made to ease the government's responsibility of meeting the WFD targets'*.

4. Measures

With regard to measures, many submissions questioned how mitigation measures were going to be identified and agreed. Some public bodies requested further involvement in their development. It was also recommended by some that a programme of measures must be prepared and implemented.

A concern was raised that implementing such mitigation measures would be challenging given the increasing population. For example, introducing an e-flow regime, to mitigate the effects of water storage/regulation, could be difficult with the demand for water supply. It was also considered in some submissions that designating HMWBs would affect future proposals for implementing nature-based solutions.

Clarifications

This section aims to clarify a number of statements made through the public consultation submissions.

Increasing pressures on HMWBs

Some respondents felt that that if a waterbody was designated as a HMWB, further pressure may be exerted on the water body (e.g. if designated for water storage/regulation, abstraction volumes could increase). This is not the case. Regardless of designation, if a new development or an expansion of a current development is proposed and likely to impact a natural or heavily modified waterbody achieving its environmental objective, this would require an assessment and if deemed appropriate an exemption under Article 4(7).

It was also suggested in one submission that rather than only considering current physical modification caused by specified uses, that the designation process should also look forward at proposed developments. This is not part of the HMWB designation process – such a scenario would warrant an Article 4(7) assessment.

Inclusion of other activities into the designation process

Part of the characterisation test considers whether a water body is substantially changed in character due to physical alterations by human activity. The term 'substantial' in this case refers to changes that are permanent, extensive and profound. Irish Water's submission requested that abstraction, in the absence of a physical structure to facilitate water storage, be considered. However, abstraction practices of this nature would not be considered permanent and therefore were not considered for designation. Peat extraction was also suggested for inclusion, but this activity does not fit under the specified use definition as outlined under Article 3(3)(a) of the WFD.

Exclusion of waterbodies

The OPW submission drew a conclusion that where a waterbody was impacted by a specified use (in this case flood protection and arterial drainage), but it was not identified as a candidate heavily modified waterbody, that that must mean that the activity had not caused a significant physical impact. However, in many cases, waterbodies impacted by the specified uses were not identified because of the limited spatial extent of the impact (i.e. the scale of impact relative to total length/area of the waterbody which was part of the criteria to determine whether the impact was widespread and profound). However, there may still be a local impact. In other cases, there may have been inadequate biological data to determine that there was an impact. Future monitoring and assessment may improve the understanding of the linkages between hydromorphological impacts associated with channel maintenance and ecological health, which can support future reviews.

Current ecological status

A number of submissions raised concern that certain water bodies were recommended for HMWB designation despite currently achieving GES. However, as explained in the technical document³, the current biological tools used for ecological classification are more sensitive to organic and nutrient pollution than to hydromorphological/physical impacts. The relationship between hydromorphological changes and the biological elements can be difficult to quantify or measure at the waterbody scale as part of the national monitoring programme. This is recognised in the EU guidance and is reflected in the flexibility to incorporate the mitigation measures into the classification process in the absence of strong biological-hydromorphological linkages. Future reviews can incorporate new learnings from such linkages and if available, newly developed biological metrics sensitive to physical impacts. Submissions also requested that a clearer explanation of Good Ecological Potential (GEP) is provided.

Conclusion

There was support for the designation process and outcomes by some public bodies noting that it would result in more appropriate management for these waterbodies. Irish Water indicated that there may also be a need to designate additional waterbodies that are used for drinking water abstraction as part of future reviews when further information becomes available. However, there were four areas of concern that emerged through the public consultation on the process and outcomes of the HMWB designation review:

1. Respondents felt the designation tests required detailed individual waterbody assessments and are best carried out by DHLGH, due to the socio-political nature of this component of the review. It was considered by some that these tests should include a detailed justification for the outcomes, along with robust cost benefit analysis, at the waterbody scale, and that they require wider consultation, not just input from specified use owners.
2. Respondents felt that other policy needs should also be considered, in particular how the designations can be justified in the context of the climate and biodiversity crises and the requirements of the Habitats Directive. Respondents felt strongly that the Arterial Drainage Act is not fit for purpose and there was a strong consensus that DHLGH needed to commit to reviewing and amending this act as its current state was not in compliance with EU environmental legislation. Submissions stated that this should take place before any HMWB designation is considered.

³ EPA 2022. Review of Ireland's Heavily Modified Water Body Designations for the Third Cycle River Basin Management Plan. Technical review.

3. Respondents expressed a desire to prioritise the long term environmental needs and objectives of these waterbodies., and to move towards an integrated catchment-based approach to deal with pressures such as flood protection and drainage and to focus on opportunities to implement nature based solutions, rather than relying on designation.
4. Respondents acknowledged the need for a robust programme of mitigation measures and some public bodies expressed an interest in being involved in their development.

Appendix 1: HMWB designation process

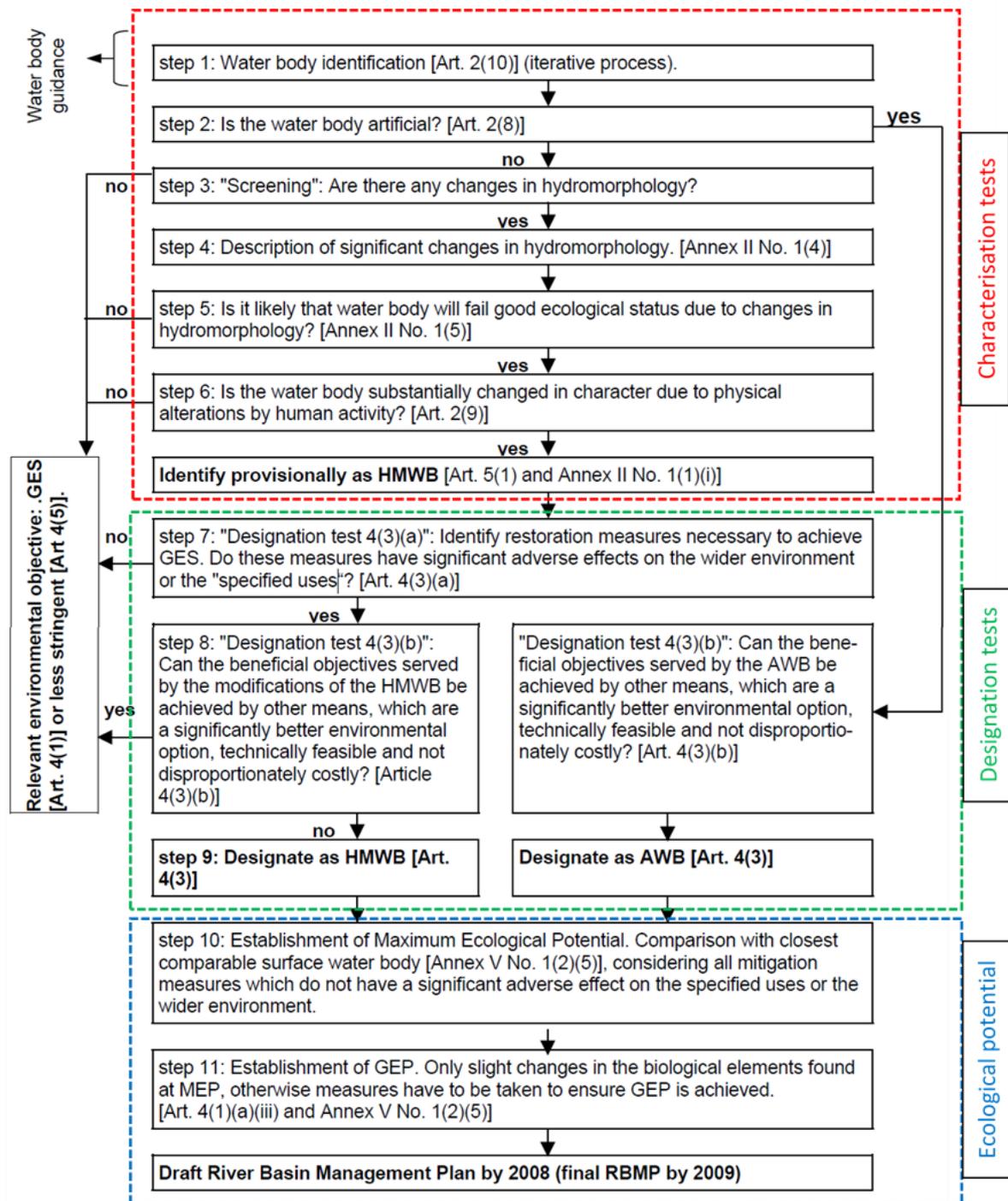


Figure A1: Explanation of the 11-step process which is carried out as part of the heavily modified waterbody designation process. The 11 steps can be broadly divided into three main parts: identification of provisional heavily modified waterbodies (pHMWB); application of a series of designation tests; and establishment of ecological potential. Adapted from CIS Guidance No. 4. Note although this flowchart was developed to support the first cycle river basin management planning cycle, the guidance indicated that it was envisaged that the same process would be followed for subsequent reviews (EPA, 2022).

Appendix 2: List of submissions

Leitrim County Council

Wicklow County Council

Irish Water

Inland Fisheries Ireland

Office of Public Works

An Taisce

The Sustainable Water Network

Irish Wildlife Trust

Maigne Rivers Trust

Boyne Rivers Trust

Cork Environmental Forum

Shannon Protection Alliance

Save Cork City

WiseWater

Ballymore Eustace Trout and Salmon Anglers Association

Five members of the public