

Environmental RTDI Programme 2000-2006

# **The Water Framework Directive, Assessment, Participation and Protected Areas: What are the Relationships? (WAPPA)**

## **FINAL REPORT**

Prepared for the Environmental Protection Agency  
by  
**Collingwood Environmental Planning (CEP), London, UK**  
in association with Imperial College London, UK



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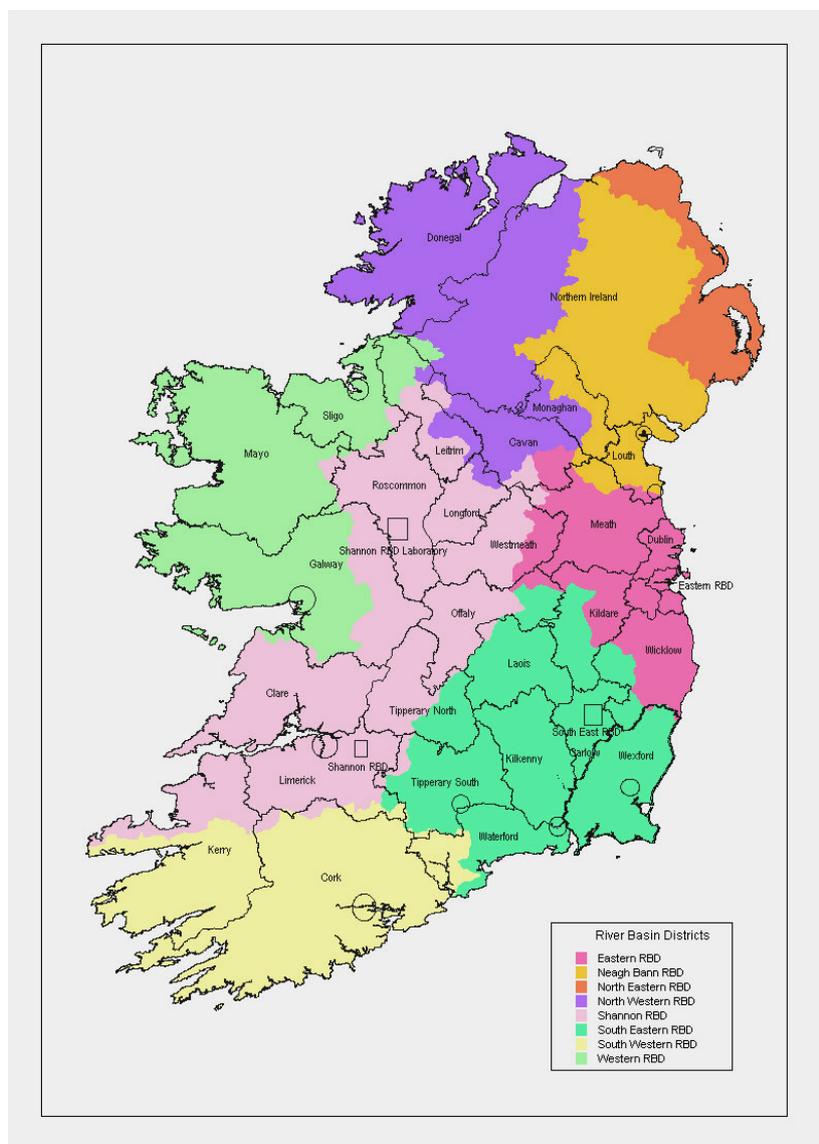
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**Location of River Basin Districts in Ireland, designated under the Water Framework Directive**  
(Source: EPA)

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## Glossary

AA – Appropriate Assessment  
AWB – artificial water body  
CDM – an engineering consultancy  
CDP – County Development Plan (s)  
DoEHLG – Department of Environment, Heritage and Local Government  
DoENI – Department of Environment Northern Ireland  
ECJ – European Court of Justice  
EDEN – Environmental Data Exchange Network  
EHSNI – Environment and Heritage Service Northern Ireland  
EIA – Environmental Impact Assessment  
EIS – Environmental Impact Statement  
ER – Environmental Report  
ERBD – Eastern River Basin District  
ENTEC – Environmental and engineering consultancy  
EU – European Union  
GIS – Geographical Information Systems  
HMWB – heavily modified water body  
IBA – Important Birds Area  
IRBD – International River Basin District  
IPPC – Integrated Pollution Prevention and Control  
IWC – Irish Wildbird Conservancy  
MS(s) – Member States  
NBIRBD – Neagh Bann International River Basin District  
NCG – National Co-ordination Group  
NGO – Non-Governmental Organisation  
NHA – Natural Heritage Area  
NPWS – National Parks and Wildlife Service  
NS-SHARE – North South Shared Aquatic Resource (INTERREG IIIA project)  
NTCG - National Technical Coordination Group  
NWIRBD – North Western International River Basin District  
POMS – Programme of Measures  
PP – Plans and Programmes  
pNHA – Proposed Natural Heritage Area  
RAs – Regional Authorities  
RBD(s) – River Basin District(s)  
RBMP(s) – River Basin Management Plan(s)  
RPG – Regional Planning Guidance  
SAC – Special Area of Conservation  
cSAC – Candidate Special Area of Conservation  
SEA – Strategic Environmental Assessment  
SPA – Special Protection Area  
SIRBD – Shannon International River Basin District  
SWAN – Sustainable Water Network  
WFD – Water Framework Directive  
WRBD – Western River Basin District

## Executive Summary

The Water Framework Directive (WFD) 2000/60/EC has significant interconnections and linkages with other EU legislation. The focus of this study was on the similarities and overlaps between the WFD and the Environmental Assessment Directives (Environmental Impact Assessment (EIA) - 85/337/EEC as amended by 97/11/EC and 2003/35/EC, and Strategic Environmental Assessment (SEA) – 2001/42/EC), Public Participation Directive (2003/35/EC), and the Birds (79/409/EEC) and Habitats (92/43/EC) Directives. The aim of the study was to examine the extent and nature of potential overlaps of the WFD with the Birds, Habitats, Public Participation, EIA and SEA Directives within River Basin Districts (RBDs) in Ireland. Specific objectives were to:-

- clarify the legal relationship between the six Directives;
- identify situations where overlaps are possible;
- describe in detail selected case studies of potential overlaps within River Basin Districts in Ireland; and
- make recommendations for resolving any problems which emerge.

The research was undertaken primarily from January to July 2006 and included an extensive literature review, a review of relevant case law, detailed textual and legal analysis of the Directives, an email survey of stakeholders and detailed analysis of three case studies. The WFD provided the focus for the textual analysis of the six Directives and its linkages with the other Directives. The key links between the WFD and the other Directives relate, for example, to their objectives to integrate the environment into decision-making, forms of assessment required, and public involvement in decision-making. Three case studies were selected (Greater Dublin Water Supply, Lough Corrib, and international RBDs with Northern Ireland, UK), each with the potential to highlight different sets of interactions between the WFD and the other Directives.

Most significant among the interactions identified was the potential for overlap in assessment between the WFD and SEA. All RBMPs and POMs will need to be screened for SEA, but *prima facie* both would appear to have the potential to meet the SEA Directive criteria. The view from this research is that both RBMPs and POMs should be subject to the SEA Directive, recognising that each will need to assess different issues at their respective levels. The consultation requirements on the RBMPs are quite demanding and consultation strategies need to be put in place well in advance of drafting the RBMPs/POMs. SEA can help facilitate this, for example through consultation on the Environmental Report at the same time as the draft RBMP/POMs. There is a need for consistent methods of involving ‘interested parties’ across the RBDs and for good coordination between authorities managing RBDs.

The potential interactions between RBMPs and county development plans (CDPs) are highly significant. The exact nature of the relationship will depend upon the types of developments that are likely to emerge out of the RBMP/POMs process that are of sufficient importance to influence CDPs; and those that are likely to arise through the development planning process and have significant influence upon the RBMP/POMs process. SEAs and EIAs may be triggered by RBMPs/POMs and CDPs, amendments to these plans and via significant infrastructure projects, creating the potential for overlaps, duplication and synergy between different levels of assessment.

The WFD has the potential to complement the Habitats and Birds Directives in improving the ecological status of aquatic Natura 2000 sites. However, both RBMPs and POMs will need to be screened for appropriate assessment (AA) under the Habitats Directive on a case by case basis as to whether they might have adverse effects on the integrity of a designated site. Guidance will also be needed on how AA should interact with SEA and EIA where these are undertaken for RBMPs, POMs and projects. From this research it is clear that data issues remain uppermost in terms of the challenges faced by RBDs and conservation bodies implementing the Birds and Habitats Directives. Baseline data from different processes, particularly in relation to conservation, need to be improved as a matter of urgency both in terms of quality of data gathered and its availability.

Finally, although not considered in detail in this research (given its draft status) the proposed EU Floods Directive provides a further example where potential overlap may occur with the WFD, and will warrant further study once it has been finalised.

## 1 Introduction

The Water Framework Directive (WFD) 2000/60/EC has significant interconnections and linkages with other EU legislation. The focus of this study was on the similarities and overlaps between the WFD and the Environmental Assessment Directives (EIA - 85/337/EEC as amended by 97/11/EC and 2003/35/EC, and SEA – 2001/42/EC), Public Participation Directive (2003/35/EC), and the Birds (79/409/EEC) and Habitats (92/43/EC) Directives.

The study involved a detailed examination of the legal texts of the above Directives to provide an initial theoretical analysis of areas of overlap. This was followed by an extensive literature review and an email-based questionnaire survey of key stakeholders in the seven River Basin Districts (RBDs) under the WFD in Ireland, to identify more specific issues of overlap for further detailed case study examination across the RBDs. Three case studies were selected to provide illustrative cases (rather than representative) of where the WFD is most likely to interact with the other key Directives in Ireland, and to provide the basis of recommendations for policy makers and stakeholders on how to address potential problem areas arising out of these overlaps.

### 1.1 Aim

The aim of the proposed study was to examine the extent and nature of potential overlaps of the WFD with the Birds, Habitats, Public Participation, EIA and SEA Directives within River Basin Districts in Ireland.

### 1.2 Objectives

The objectives were to:-

- Clarify the legal relationship between the six Directives (Task 1)
- Identify situations where overlaps are possible (Task 2)
- Describe in detail selected case studies of potential overlaps within River Basin Districts in Ireland (Task 3).
- Make recommendations for resolving any problems which emerge (Task 4).

### 1.3 Research approach and methodology

The project investigated the relationship, particularly the *similarities* and *overlaps*, between the WFD, the EIA, SEA, Public Participation, Birds, and Habitats Directives. The project's duration was six months, from January to July 2006. The EPA established a small Steering Group which

met at the start of the project and again at the Interim Report stage on 23 March 2006 and on the draft final report on 11 July 2006.

A detailed comparative analysis was undertaken of the texts of all six Directives, which helped to 'clarify the legal relationship between the Directives' (Task 1). Following this textual analysis a flow diagram was produced identifying the direct and indirect linkages between the Directives (see Chapter 3). Keeping the WFD as the focus of the study an additional analysis was made, which examined specific Articles identified in the flow diagram (see Appendix 1).

Following the textual analysis, a wide ranging detailed literature review was undertaken (focused by the initial analysis) which, along with findings from Task 1 helped to 'identify situations where overlaps are possible' (Task 2). The results of Task 1 and the Literature Review from Task 2 were referred to a lawyer for review (Mr Zen Makuch, Barrister and Reader in Law at the Centre for Environmental Policy, Imperial College London). Task 2 also involved contacting a number of stakeholders (59 in total) who are either directly/indirectly involved/interested in the WFD process in Ireland. These stakeholders included government officials, WFD practitioners and academics.

The e-mail survey proved to be very successful with over 21 responses. This was facilitated by a presentation on the project to members of the WFD National Technical Coordination Group (NTCG) at a meeting held on the 9<sup>th</sup> March 2006 in Dublin. The email survey enabled a short list of potential case studies to be identified and three case studies selected and approved by the Steering Group.

Further presentations on the research were made to the Ireland-UK branch of the International Association for Impact Assessment (IAIA) meeting in Dublin on 24 March 2006, and at the IAIA's annual conference in Stavanger, Norway on 22-26 May 2006.

### 1.4 Structure of the report

The report is structured according to the Tasks undertaken:-

Chapter 2 – compares the legal relationships and the texts of the different directives and reviews the available literature and relevant case law.

Chapter 3 – examines in detail the overlaps, similarities and linkages between the WFD and the other directives.

Chapter 4 – reports on the findings from the email survey of stakeholders in Ireland with respect to key issues identified, and the selection of the case studies.

Chapter 5 – presents the three case studies examined in detailed

Chapter 6 – discusses the finding of the case studies in the light of the other findings of the research.

Chapter 7 – draws conclusions and makes recommendations to policy- and decision-makers.

## 2 The legal relationship between the Directives

### 2.1. Introduction

This chapter combines an extensive literature review with detailed textual analysis examining and comparing the key elements of the following six Directives:-

- Water Framework Directive
- Environmental Impact Assessment Directive
- Strategic Environmental Assessment Directive
- Birds Directive
- Habitats Directive
- Public Participation Directive

Following the textual analysis and literature review the most relevant case law is also reviewed to provide the current legal context for further analysis and discussion in the context of the empirical evidence emerging from the case studies. The links between the WFD, the EIA and SEA Directives, the Public Participation Directive and the Birds and Habitats Directives<sup>1</sup> are superficially apparent, for example, in relation to their objectives to integrate the environment into decision-making, forms of assessment required, and public involvement in decision-making. Areas of wording are often very similar, although these also reflect the different paradigms prevalent over the 25 years during which these Directives have been agreed and transposed in Member States (MSs), e.g. the increasing importance of sustainable development in policy making. The effectiveness of all Directives may be maximised by a much clearer understanding of how they might operate together in complementary and potentially synergistic ways, particularly in the way in which they are transposed and implemented in individual MSs.

Many of the principles enshrined in these Directives have their origins in the debates in the 1970s and 1980s, which sought to integrate the environment into decision-making, reflected in the objectives of the early Environment Action Programmes of the European Community. While the context for these key environmental directives has changed over 30 years, from environmental protection to environmental integration to sustainable development, that contextual change has not necessarily been a linear, progressive one. Indeed, it might often be viewed more as ‘coming full circle’ in returning to the days when strong environmental protection measures were being challenged by

<sup>1</sup> Directives 2000/60/EC; 85/337/EEC as amended by 97/11/EC and 2003/35/EC; 2001/42/EC; 2003/35/EC; 79/409/EEC; and 92/43/EEC respectively.

demands for economic growth. These key Directives represent a significant achievement for environmental integration<sup>2</sup>, consistent with the ‘Cardiff process’<sup>3</sup>, but need to be seen against the backdrop of the economic and social agendas of the Lisbon process<sup>4</sup>, and the attempt to bring both processes together through the Gothenburg process<sup>5</sup>.

### 2.2 The Water Framework Directive

The overall aim of the WFD 2000/60/EC is the long-term protection of all surface water and groundwater in the EU. It sets out to:-

- Prevent further deterioration in, and to protect and enhance, the status of aquatic ecosystems;
- Promote sustainable water consumption based on the long-term protection of available water resources;
- Contribute to the provision of a supply of water in the qualities and quantities needed for its sustainable use.

The main objectives of the WFD are:

- Expanding the scope of water protection to all waters: surface waters and groundwater;
- Achieving “good status” for all waters by 2015;
- Water management based on river basins;
- “Combined approach” of emission limit values and quality standards, plus phasing out particularly hazardous substances;
- Involving the public more closely;
- Ensuring water pricing is correct; and
- Streamlining legislation.

To manage the water environment effectively the Directive recognises that the whole river basin is the logical management unit and therefore requires MSs to identify river basins and their surface and groundwaters. The Directive requires MSs to introduce River Basin Management Plans

<sup>2</sup> See also Sheate, W.R. (2003a, b).

<sup>3</sup> At the Heads of Government Cardiff Summit in June 1998 the EU committed itself to the integration of the environment into all EU policies (CEC, 1998).

<sup>4</sup> The ‘Lisbon process’ was agreed at the European Council held in Lisbon in 2000 and aims for the EU “to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable growth with more and better jobs and greater social cohesion” (Council of the European Union (2000)).

<sup>5</sup> The ‘Gothenburg process’ was agreed at the European Council in Gothenburg in June 2001, where Heads of Government agreed on a strategy for sustainable development and added an environmental dimension to the Lisbon process for employment, economic reform and social cohesion.

(RBMPs) (Art. 13) for each river basin district (RBDs). The concept of good water status is introduced by the Directive, and is central to achieving its environmental aims. Surface waters will be measured in terms of both ecological status and chemical status; groundwaters by quantitative and chemical status. To meet the objectives of good water status the Directive envisages a ‘programme of measures’ (POMs) being prepared and implemented as part of the RBMP process. The RBMP also forms the focus for extensive consultation processes as part of involving the public more closely in river basin management decision-making. Competent authorities will be expected to publish draft RBMPs for consultation and these plans will be updated and consulted on every six years. The production of management plans will create potential for coincidence with other management plans, e.g. as required for Natura 2000 sites under the Birds and Habitats Directives (Janssen, 2004). The WFD also requires the creation of a register of protected areas (Art. 6) in MSs within four years of the Directive entering into force. Protected areas are those which have been designated as requiring special protection under specific Community legislation for the protection of their surface water and groundwater or for the conservation of habitats and species directly depending on water.

### 2.2.1 Implementation in Ireland

Directive 2000/60/EC was transposed into Irish law through the *European Communities (Water Policy) Regulations 2003 (S. I. No. 722/2003)*. These regulations may require future amendments in order “to support the on-going, detailed implementation of the Directive” (DoEHLG, 2004a); for example amendment S.I. No. 413 of 2005, which sets out additional elements for the establishment of River Basin District Advisory Councils. Under the requirements of the Directive to identify River Basin Districts (RBDs) the Ireland and UK governments identified eight RBDs on the Island of Ireland; one situated wholly in Northern Ireland, four situated in Southern Ireland, and three situated ‘across-border’ and known as International River Basin Districts (IRBDs) (DoEHLG/DoENI, 2003). At the time of writing River Basin Management Projects were underway in all RBDs.

## 2.3 Brief Overview of the other Directives

### 2.3.1 EIA Directive

The EIA Directive 85/337/EEC is the controlling document, which lays down rules for environmental impact assessment in MSs. The Directive applies to the assessment of the

environmental effects of public and private projects that may have significant effects on the environment. There are two classes of projects for which EIA is required: projects for which EIA is mandatory (projects listed in Annex I); and projects for which EIA is discretionary (projects listed in Annex II). Directive 97/11/EC, known as the EIA amendment Directive, amends the 1985 Directive and was introduced primarily to improve the earlier Directive from knowledge gained through the application of the 85/337/EEC Directive. Features of the Amendment Directive include: inclusion of a ‘scoping opinion’ – where advice is provided from the local authority to the developer on the scope of EIA; inclusion of a ‘screening opinion’ – where the developer may approach the local authority for an opinion on screening; new common screening criteria; improved consideration of alternatives; provision for the implementation of transboundary consultations between MSs under the Espoo Convention (UNECE, 1991); and changes to Annex I (inclusion of more projects) and Annex II (revised and updated in line with new technology, including clarifications on categories of projects). The EIA Directive was also most recently amended by the Public Participation Directive (see below).

### 2.3.1.1 Implementation in Ireland

The framework for the application of EIA in Ireland was provided through the planning control procedures within the Local Government (Planning and Development) Acts, 1963 to 1983. The provision of EIA was implemented through the *European Communities (Environmental Impact Assessment) Regulations 1989 (S.I. No 349/1989)*. These EIA regulations excluded motorway schemes, the procedures for which were set out in the Local Government (Roads and Motorways) Act 1974 (now the Roads Act 1993). The *European Communities (Environmental Impact Assessment) (Motorways) Regulations, 1988 (S.I. No 221/1988)*, implemented EIA for proposed motorways. In 1997, however, a review of planning legislation took place and as a result it was decided that previous planning acts and the environmental impact assessment regulations would be consolidated into a new Planning and Development Act 2000. EIA requirements fall under *Part X of the Planning and Development Act 2000*. The regulations, which implement the provisions of the Planning and Development Act, are the Planning and Development Regulations 2001 (S.I. No. 600/2001). EIA comes under *Part 10 of the Planning and Development Regulations 2001* (Sheate *et al.*, 2005).

Amendments have recently been made to the Planning and Development Regulations 2001 as a result of the Planning and Development Regulations 2005 (S.I. No. 346/2005), mainly with regards peat abstraction. Large-scale peat abstraction projects involving areas greater than 10 hectares are no longer exempt from EIA. The 2005 regulations also make amendments to Schedule 5 of the 2001 regulations with regards *minor* changes to the lists of project categories.

On 16 February 2006 the Irish Government published The Planning and Development (Strategic Infrastructure) Bill 2006, which made amendments to the Planning and Development Act 2000 (enacted 16 July 2006<sup>6</sup>). The 2006 Act introduces a new consent process for major infrastructure of national and public importance (Finfacts Team, 2006), and could be considered a 'fast track' planning procedure for major infrastructure projects (A&L Goodbody, 2006). Certain infrastructure projects, which are listed in a new Schedule 7 to the 2000 Planning Act, will be required to apply directly to An Bord Pleanála (the Irish Planning Appeals Board), rather than the relevant local authority for approval.

### 2.3.2 SEA Directive

The main aim of Directive 2001/42/EC is to identify, describe and assess the likely significant environmental effects of certain plans and programmes, while they are being prepared and before they are adopted. The Directive states that all plans and programmes within certain sectors and those plans and programmes which set the framework for future development consent of projects which are listed in Annex I and Annex II of the EIA Directive 85/337/EEC, should be subject to environmental assessment.

#### 2.3.2.1 Implementation in Ireland

Prior to the SEA Directive there were no formal provisions for SEA in Ireland. However, under EU Structural Fund regulations an environmental assessment was required for national development plans and the government introduced 'pilot' Eco-Audits (environmental appraisals) in 1999, which was an objectives based appraisal and designed to be proactive in nature and to occur at the policy formation process. The Eco-Audit was piloted on the National Development Plan 2000 – 2006. Following the Eco-Audit it was hoped that a strategic environmental assessment system would be developed and applied to major sectoral plans and

programmes, and that the Eco-Audit would continue to be applied at Government policy level (Sheate *et al*, 2001).

Transposing the SEA Directive into Irish law was very much influenced by previous experiences of implementing EIA. A study which reviewed the Eco-Audit process recommended the upstream transfer of EIA philosophy, rather than methodology when transposing the SEA Directive (Scott *et al*, 2003). According to the Department of Environment, Heritage and Local Government (DoEHLG), the delays encountered previously, in relation to EIA implementation, were not to be repeated and Ireland implemented the provisions of the SEA Directive in full by 21 July 2004 ensuring that all substantive and procedural requirements of the Directive were met. Secondly, the importance of following the text of a Directive was highlighted when implementing the EIA Directive and this approach was taken when preparing the SEA Regulations.

The SEA Directive was transposed into Irish legislation through:

- The *European Communities (Environmental Assessment of Certain Plans and Programmes) Regulations 2004* (S.I. No 435/2004) which covers plans and programmes as listed in Article 3(2) of the SEA Directive *except* for land-use planning. These regulations make amendments to the *Planning and Development Act 2000*. This Act is the statutory basis for transposing SEA Directive into Irish legislation with regards land-use planning.
- The *Planning and Development (Strategic Environmental Assessment) Regulations 2004* (S.I. No 436/2004) which covers those plans and programmes in relation to land-use planning and amend the *Planning and Development Regulations 2001* (S.I. No. 600 of 2001), as amended and the *Planning and Development (Regional Planning Guidelines) Regulations 2003* (S.I. No. 175 of 2003).

In November 2004 the Minister for DoEHLG produced a guidance document to assist relevant authorities and development agencies in implementing the requirements of Directive 2001/42/EC in relation to land-use planning (DoEHLG, 2004b). As of 2005 there were no immediate plans for drawing up separate guidance in relation to SEA in other sectors, but because of the procedural nature of the current guidance document it is considered applicable to a broader range of sectors, not just land-use planning. The EPA published guidance on SEA methodology in 2003 (Scott and Marsden, 2003), which was piloted in 2005 for the Midlands Waste Management Plan Review.

<sup>6</sup> Planning and Development (Strategic Infrastructure) Act 2006 (27/2006). Available from <http://www.oireachtas.ie/documents/bills28/acts/2006/a2706.pdf> [Last accessed 24/11/06]

In January 2006 the European Commission published a proposed Directive on the assessment and management of floods (CEC, 2006a). It is thought that under this Directive Ireland would be required to make flood risk management plans statutory plans and as such subject to mandatory SEA i.e. it would make SEA a statutory requirement of flood management.

### 2.3.3 Public Participation Directive

The obligations arising under the Aarhus Convention (UNECE, 1998) are implemented through the Public Participation Directive 2003/35/EC. In particular the Directive provides for public participation with regard to the drawing up of certain plans and programmes relating to the environment (listed in Annex I) and makes amendments to the EIA Directive (85/337/EEC) and Integrated Pollution Prevention and Control (IPPC) Directive (96/61/EC) with regard to the improvement of public participation and the provision of access to justice. Some of the main changes to the EIA Directive as a result, include: requirement to inform the public earlier in the environmental decision-making process e.g. scoping; enable affected MSs to participate in the environmental decision-making procedures if a project is likely to have transboundary impacts; information on the public participation process will have to be provided by the competent authority; and ensuring that the public have access to a legal review procedure.

#### 2.3.3.1 Implementation in Ireland

Although Ireland signed up to the Aarhus Convention on 25 June 1998, it has yet to ratify (formally accept) the Convention as of the publication date of this report. The EU, however, has ratified the Aarhus Convention and places obligations on MSs through the Public Participation Directive. Amendments resulting from Directive 2003/35/EC, including amendments to the EIA and IPPC Directives were required to be implemented, by Member States, by 25 June 2005. As of 10 April 2005, the Irish authorities had not provided any indication as to how they proposed to implement the amendments (Ryall, 2005), and as of 14 February 2006 it would seem that these provisions have yet to be implemented, with a question in Dáil Éireann (the lower house of the Irish parliament) being put to the Minister for the Environment, Heritage and Local Government asking when he intends to implement Directive 2003/35/EC (Oireachtas, 2006). However, amendments made to Schedule 5 of the Planning and Development Regulations 2001 by the Planning and Development Regulations 2005 are said to transpose part of Directive 2003/35/EC (DoEHLG, 2005). It is envisaged that further

Regulations in relation to Access to Information on the Environment will be made in March 2007.

There are moves, however, to incorporate the provisions of the Aarhus Convention, particularly in relation to the provision on access to justice. The new Planning and Development (Strategic Infrastructure) Act 2006 enables non-governmental organisations (NGOs) to have extended access to judicial reviews (s.13) and help ensure that Ireland complies with the international obligations under the Aarhus Convention (Finfacts Team, 2006). Section 13 of the new Act replaces section 50 of the Planning and Development Act 2000 with regards judicial review of applications, appeals, referrals and other matters.

### 2.3.4 Birds Directive

This Directive (79/409/EC) relates to the conservation of all species of wild birds that occur naturally within the European MSs, with particular emphasis on their protection, management and control. Species listed in Annex I of the Directive are subject to special conservation measures with regards their habitats. Habitats/territories, which are most suitable for the conservation of these species, are required to be classified as Special Protection Areas (SPAs). Further SPA designations are required for species including hen harrier, and wetland/aquatic species golden plover, kingfisher and red-throated diver. The Birds Directive is directly linked to the Habitats Directive in that SPAs are included in the Natura 2000 network, which is a European ecological network of special areas of conservation.

#### 2.3.4.1 Implementation in Ireland

The Birds Directive requires, among other things, the designation of SPAs. These requirements were first transposed in Ireland through both primary and secondary legislation, with the first four SPAs in Ireland being designated under *The European Communities (Conservation of Wild Birds) Regulations 1985* (Linehan, 2005). Linehan (2005) also points out that the 1985 Regulations have been amended, through extension of its schedule over the years, to take account of the expanding number of SPAs. There are 142 SPAs in Ireland, 14 of which are transboundary with Northern Ireland (DoEHLG, 2005). Special protection areas are now controlled by the *EU (Natural Habitats) Regulations 1997 (S.I. No. 94/1997)*. SPAs are considered part of Natura 2000 and as such these controls are the same as those applied to Special Areas of Conservation (SACs) under the Habitats Directive, also part of Natura 2000.

### 2.3.5 Habitats Directive

The Habitats Directive (92/43/EC) is concerned with the conservation (restoration and maintenance) of natural habitats and wild species of fauna and flora. Sites which host the natural habitat types listed in Annex I, and wild species listed in Annex II of the Directive are required to be included in a European ecological network of special areas of conservation called Natura 2000. Conservation measures are applied for the maintenance or restoration of natural habitats and/or population of species that occur within designated SACs.

#### 2.3.5.1 Implementation in Ireland

Implementation of the Habitats Directive was problematic in Ireland, as in many other Member States. A number of reasons, including high levels of controversy over designations and opposition from landowners concerning restrictions on land use, led to delay in transposition and legal action by the European Commission. (ECJ Case C-67/99). According to Laffan (2004) a threat by the Commission to withdraw Cohesion Fund monies was used as a lever on the Irish domestic system to speed up the process. The Directive was transposed into Irish law in 1997 through the *EU (Natural Habitats) Regulations 1997 (S.I. No. 94/1997)*. Irish Habitats under these Regulations include: raised bogs, active blanket bogs, turloughs, sand dunes, machair, heaths, lakes, rivers, woodlands, estuaries and sea inlets (DoEHLG, 2004). The designations process is now almost complete: 358 candidate SACs have been transmitted to the Commission while a further 65 will be transmitted in mid-2007 (NPWS, 2006).

## 2.4 Understanding the issues and problems

The key elements of the WFD, outlined above, provide some immediate interaction points with other EU legislation, most notably the Birds and Habitats Directives (protected areas), the EIA and SEA Directives (land use planning) and the Public Participation Directive. However, while the most likely interactions between the Directives can be identified (e.g. ENTEC, 2003; Carter and Howe, 2005), the exact nature and extent of those interactions are more difficult to evaluate, and there are likely to be more subtle linkages that might exist that only become apparent on detailed examination of the relevant legal texts and exploration of practical implementation. This has certainly proved to be the case in a recent study for the European Commission into the relationship between the EIA and SEA Directives alone (Sheate *et al.*, 2005). The requirement to produce RBMPs brings the WFD immediately into an association with the

recently implemented SEA Directive 2001/42/EC, water management plans and programmes being one area the SEA Directive envisage likely to have significant environmental effects and to require SEA (Carter and Howe, 2005). Where plans and programmes affect protected areas under the Birds or Habitats Directives, SEA will also be required. SEA also provides a means of facilitating public participation on the RBMPs and programme of measures, and hopefully meeting the requirements of the Public Participation Directive (2003/35/EC) and the Aarhus Convention.

The extent to which sites have been identified and classified under the Birds and Habitats Directive by MSs will have a bearing also on the potential for interaction with the WFD. For example, with regard to environmental objectives (Art. 4 WFD) the Directive states that where there are multiple objectives relating to a given body of water, e.g. environmental objectives relating to surface waters, groundwater or protected areas, the most stringent shall apply. Exactly what this might mean in practice remains to be seen, but clearly if there are potential conflicts over designations<sup>7</sup>, this may have a bearing on the interpretation of “most stringent” objectives. An important research area to explore is the extent to which there is potential for conflict between what is required in law, i.e. through proper transposition and implementation of EU Directives, and what is desirable on the basis of theory and practice, e.g. in terms of biodiversity conservation, environmental assessment and public participation. This issue was particularly highlighted in the recent report (Sheate *et al.*, 2005), on the relationship between the EIA and SEA Directive. The SEA Directive screening criteria are quite exacting, and can result in certain plans and programmes that might be expected to be subject to SEA, not being subject to SEA because they do not meet the criteria, e.g. they are not formally required, or do not set the framework for subsequent development consent of projects, even if they are likely to have significant effects.

Through examination of the texts of the Directives and relevant literature, a number of areas have been identified where interactions may occur between Directives. These areas are discussed in detail below.

## 2.5 Textual analysis

The WFD provides the focus for the textual analysis of the six Directives and its linkages with the other directives. Multiple linkages among other Directives, but not including

<sup>7</sup> The European Commission has in the past taken action against MSs, Ireland included, for failing to classify or protect suitable areas for protection of certain species (e.g. C-117/00; C-481/04).

the WFD, are therefore not directly relevant to this study. The comparative analysis concentrates on the Directives (as the ‘parent’ legislation) and not the transposition of these Directives in Ireland. Transposition into Irish law is addressed more specifically in the context of the individual case studies (Chapter 4). Figure 2.1 illustrates the key linkages schematically and these linkages are further explored in the case studies. Brief explanations of the Article references are included in the tabulated index below (Table 2.1). Table 2.2 at the end of this chapter summarises the key overlaps and linkages identified across the six Directives. Appendix 1 provides further detail and supporting analysis in relation to each Directive and the linkages identified.

### 2.5.1. Preambles

All the Directives relate to the ‘environment’: ‘water environment’, ‘environmental assessment’, ‘public participation in environmental matters’, ‘conservation of birds’, and ‘biodiversity’. The WFD preamble is consistent with both the EIA and SEA Directives in that they all refer to “*integration*” into either policy areas or decision-making. “*Protection*” of the environment is a common thread between the WFD and SEA Directive (and the Birds Directive), as is the need for the WFD and SEA Directives to fulfil the obligations of relevant international agreements/legislative requirements. The Public Participation Directive is also required to fulfil the obligations arising under the Aarhus Convention.

Sustainability is an issue addressed by the WFD through the promotion of “*sustainable management*” and by the SEA and Habitats Directives through the “*promotion of sustainable development*” and “*contribution to sustainable development*”, respectively. Jones (2001) considers that if implemented correctly i.e. in a complete and timely manner, that the WFD “has the potential to be the European Union’s (EU’s) first ‘sustainable development’ Directive. This is made all the more likely given its close links to the SEA and Habitats Directives. A key aim of the SEA Directive, the WFD and European environmental policy is the achievement of sustainable development. Carter and Howe (2005) believe that reaching the goals of sustainable development can be assisted through “successful integration of the requirements of the WFD and the SEA Directive” and achievement of their objectives. In fact, the integration of land and water management is considered one of the key areas for the improvement of ‘sustainability’ (POST, 2006). However, the issue of ‘sustainability’ is particularly hard to measure (White and Howe, 2003).

Success of implementing the WFD is dependent upon the “need to inform, consult and involve the public”. By this the WFD would appear to be fulfilling the requirements of the Aarhus Convention (which requires public participation for plans and programmes relating to the environment) and the Public Participation Directive. However, it should be noted that the Public Participation Directive refers explicitly to ‘participation’ as opposed to the WFD, which instead uses the terms ‘consultation and involvement’ (this issue is addressed later).

### 2.5.2 Titles

In terms of Directive titles the WFD does not share any common elements with the other Directives i.e. it is ‘stand-alone’. The WFD title specifically mentions, “water policy”.

#### Key Issues:

- Interaction between the WFD, SEA and Habitats Directive in terms of strengthening the goals of sustainable development.

The EIA and SEA Directives both refer to the “assessment of effects”, and while one relates specifically to “public and private projects” (EIA), the other refers to “plans and programmes” (SEA). The Public Participation Directive is consistent with the SEA Directive in that it also refers specifically to “plans and programmes”. The Birds and Habitats Directives share two common elements: both refer to “conservation of...” and both make reference to ‘wild’ aspects. The Birds Directive refers to “wild birds” whereas the Habitats Directive refers to “wild fauna”.

### 2.5.3 Objectives

Only three Directives (EIA, SEA and Public Participation) refer specifically to the ‘objectives’ of each Directive. However, only the SEA and Public Participation Directives set out specific objectives. The WFD Directive sets out specific ‘environmental’ objectives in relation to the operation of the programme of measures (Art. 4). The EIA and Habitats Directives both have Articles, which refer to the “aims of this Directive” (Art. 2(2) and Art. 2(1) respectively), but again only the Habitats Directive explicitly sets these out. The WFD (Art. 1) and Birds Directive (Art. 1(1)) use terms such as “purpose of the Directive” and “this Directive relates to...” respectively, to describe what each Directive does.

The Public Participation Directive makes a direct link with the EIA Directive by amending it, for example by further specifying information to be provided to the public and the publication of reasons for consent decisions. The SEA and

the Public Participation Directives both refer to plans and programmes: SEA in the context of the “preparation and adoption of...” and Public Participation in the context of the “drawing up of...”. Protection of the environment is a common element between the WFD and SEA Directives, although wording used is not identical.

One area with which the WFD does share a direct common element is the EIA and SEA Directives in the context of ‘significant effects’. The WFD refers to “significant adverse effects on the wider environment...” (Art. 4(3)) – in relation to the fulfilment of environmental objectives (though only in the context of heavily modified water bodies (HMWBs) and artificial water bodies (AWBs)), while both the EIA and SEA Directives refer to “significant effects on the environment”.

#### 2.5.4 Definitions

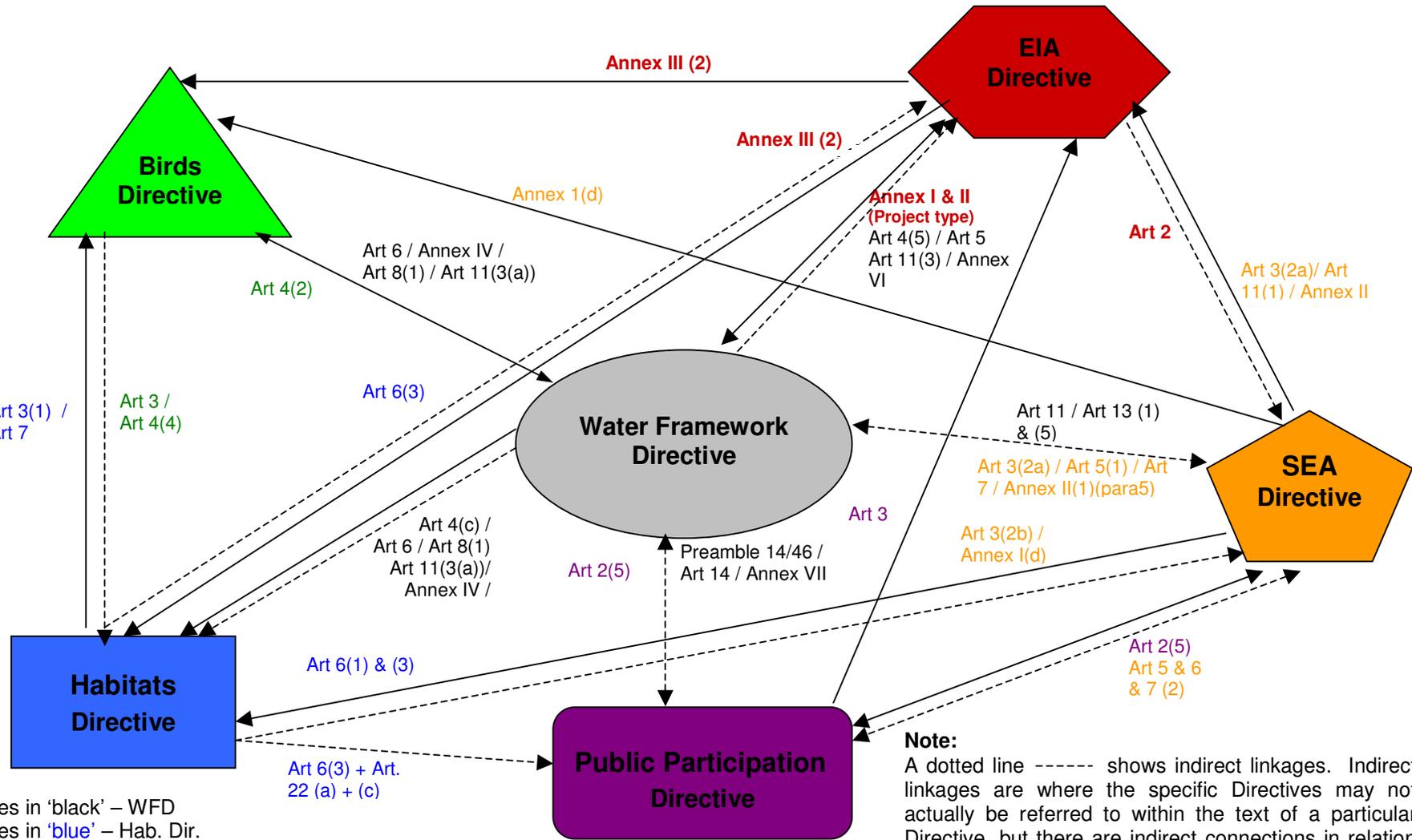
Despite the length of the WFD there are no similarities between its definitions and those provided in the other Directives (see Table 2.2). The definitions within the WFD concentrate mainly on all aspects of ‘water’ as it is the ‘object’ of the Directive. There is much emphasis in the Directive on the involvement of the public, yet, interestingly, there are no definitions provided for ‘the public’. The EIA, SEA and Public Participation Directives, on the other hand, all share a common definition for “the public”. The Birds Directive does not contain any definitions. The Habitats Directive’s list of definitions refers mainly to “conservation” and “habitat”, which again is the object of the Directive. It should be noted that under the WFD definitions, “competent authority” is listed, but like the SEA Directive it is left to MSs to interpret what this means and who exactly the ‘competent authority’ will be.

Plans and programmes are also mentioned within the WFD, but no definitions/explanations provided. Also, despite the obvious strong connections between the WFD and Habitats Directives definitions, which are common between these two areas, are not provided.

The EIA and SEA Directives both define their objects of assessment (“project” and “plans and programmes” respectively). However, the definition of “project” is relatively ‘simple’ or ‘stand-alone’ concentrating on establishing the activities which constitute a project. One of the requirements of the EIA Directive (introduced by the EIA amendment Directive 97/11/EC) is that a form of development consent must be put in place for projects requiring EIA. By contrast, the definition of “plans and programmes” (PPs) concentrates principally on the body

preparing the PP and its mandate for doing so, rather than the content of the PP. ‘Content’ issues are addressed, at least in part, in Art. 3 of the SEA Directive which deals with scope – but to reach consideration of Art. 3 a PP must already have satisfied the definition of “plans and programmes” in Art. 2) (Sheate *et al*, 2005)

Figure 2.1: Flow diagram showing direct and indirect linkages/interactions between Directives



Articles in 'black' – WFD  
 Articles in 'blue' – Hab. Dir.  
 Articles in 'green' – Birds. Dir.  
 Articles in 'red' – EIA Dir.  
 Article in 'orange' – SEA Dir.  
 Article in 'violet' – Pub. Part. Dir.

**Note:**  
 A dotted line ----- shows indirect linkages. Indirect linkages are where the specific Directives may not actually be referred to within the text of a particular Directive, but there are indirect connections in relation to subject matter and/or where the text implies that a particular Directive could be considered.  
 A solid line — indicates that a specific Directive has been mentioned within the text of a particular Directive.

**Table 2.1 - Index of Articles in Figure 2.1** (see Appendix 1 for full textual analysis of Articles)

Articles from the Water Framework Directive	Articles from the EIA Directive (as amended)	Articles from the SEA Directive	Articles from the Public Participation Directive	Articles from the Habitats Directive	Articles from the Birds Directive
<p><b>To EIA Directive:</b></p> <ul style="list-style-type: none"> <li>• Art. 4(5) – Environmental Objectives</li> <li>• Art. 5 – RBD Characterisation</li> <li>• Art. 11(3) – Programme of measures (POMs)</li> <li>• Annex VI – Measures to be included in POMs</li> </ul> <p><b>To SEA Directive:</b></p> <ul style="list-style-type: none"> <li>• Art. 11 – POMs</li> <li>• Art. 13(1) &amp; (5) – RBMPs</li> </ul> <p><b>To Public Participation Directive:</b></p> <ul style="list-style-type: none"> <li>• Art. 14 – Public information &amp; consultation</li> <li>• Annex VII – Contents of RBMPs</li> </ul> <p><b>To Habitats Directive:</b></p> <ul style="list-style-type: none"> <li>• Art. 4(c) – Environmental Objectives</li> <li>• Art. 6 – Register of protected areas</li> <li>• Art. 8(1) – Monitoring</li> <li>• Art. 11(3)(a) – POMs</li> <li>• Annex IV – Protected Areas: contents of register of protected areas (PAs)</li> </ul> <p><b>To Birds Directive:</b></p> <ul style="list-style-type: none"> <li>• Art. 6 – Register of protected areas</li> <li>• Art. 8(1) – Monitoring</li> <li>• Art. 11(3)(a) – POMs</li> <li>• Annex IV – Content of register of PAs</li> </ul>	<p><b>To WFD:</b></p> <ul style="list-style-type: none"> <li>• Annex I – Projects subject to mandatory EIA</li> <li>• Annex II – Projects which may require EIA</li> </ul> <p><b>To SEA Directive:</b></p> <ul style="list-style-type: none"> <li>• Art. 2 – Application of EIA and ‘another form of assessment’</li> </ul> <p><b>To Habitats Directive:</b></p> <ul style="list-style-type: none"> <li>• Annex III(2) – Screening: case by case examination selection criteria: location of projects</li> </ul> <p><b>To Birds Directive:</b></p> <ul style="list-style-type: none"> <li>• Annex III(2) - Screening: case by case examination selection criteria: location of projects</li> </ul>	<p><b>To WFD:</b></p> <ul style="list-style-type: none"> <li>• Art. 3(2)(a) – Scoping: plans &amp; programmes subject to mandatory SEA</li> <li>• Art. 5(1) – Environmental report</li> <li>• Art. 7 – Transboundary consultation</li> <li>• Annex II(1) – Criteria to determine significance of effects</li> </ul> <p><b>To EIA Directive:</b></p> <ul style="list-style-type: none"> <li>• Art. 3(2)(a) – Scoping: plans &amp; programmes which set the framework for future development consent of projects</li> <li>• Art. 11(1) – Relationship with other Community legislation</li> <li>• Annex II – Criteria to determine significance of effects</li> </ul> <p><b>To Public Participation Directive:</b></p> <ul style="list-style-type: none"> <li>• Art. 5 – Environmental report</li> <li>• Art. 6 – Consultations</li> <li>• Art. 7(2) – Transboundary consultations</li> </ul> <p><b>To Habitats Directive:</b></p> <ul style="list-style-type: none"> <li>• Art. 3(2)(b) – Scoping: effects of plan &amp; programmes on sites</li> <li>• Annex I(d) – Content of environmental report</li> </ul> <p><b>To Birds Directive:</b></p> <ul style="list-style-type: none"> <li>• Annex I(d) – As above</li> </ul>	<p><b>To WFD:</b></p> <ul style="list-style-type: none"> <li>• Art. 2(5) – Public participation concerning plans &amp; programmes</li> </ul> <p><b>To EIA Directive:</b></p> <ul style="list-style-type: none"> <li>• Art. 3 – Amendments to EIA Directive (85/337/EEC)</li> </ul> <p><b>To SEA Directive:</b></p> <ul style="list-style-type: none"> <li>• Art. 2(5) – Public participation concerning plans &amp; programmes</li> </ul>	<p><b>To EIA Directive:</b></p> <ul style="list-style-type: none"> <li>• Art. 6(3) – Plans or projects subject to appropriate assessment</li> </ul> <p><b>To SEA Directive:</b></p> <ul style="list-style-type: none"> <li>• Art. 6(1) – Establishing conservation measures and appropriate management plans</li> <li>• Art. 6(3) – Plans or projects subject to appropriate assessment</li> </ul> <p><b>To Public Participation Directive:</b></p> <ul style="list-style-type: none"> <li>• Art. 6(3) – Plans or projects subject to appropriate assessment: if appropriate obtain opinion of general public before agreeing to plan or project</li> <li>• Art. 22(a)&amp;(c) – Supplementary provisions: re-introduction of species and re-establishment of favourable conservation status after proper consultation with public &amp; promotion of education and general information</li> </ul> <p><b>To Birds Directive:</b></p> <ul style="list-style-type: none"> <li>• Art. 3(1) – Conservation of natural habitats and habitats of species: inclusion of special protection areas in Natura 2000 Network</li> <li>• Art. 7 – Amendments to Birds Directive: in relation to special conservation areas</li> </ul>	<p><b>To WFD:</b></p> <ul style="list-style-type: none"> <li>• Art. 4(2) – Protection of wetlands and wetlands of international importance</li> </ul> <p><b>To Habitats Directive:</b></p> <ul style="list-style-type: none"> <li>• Art. 3 – The preservation, maintenance and re-establishment of a sufficient diversity and area of habitats for all species of bird</li> <li>• Art. 4(4) – Avoidance of pollution or deterioration of habitats or any disturbances</li> </ul>

### 2.5.5 General obligations

All Directives explicitly set out the general obligations placed upon MSs. The WFD, EIA and SEA Directives all set out the obligations of MSs to ‘incorporate’/ ‘integrate’/ ‘apply’ the relevant requirements/rules of the Directives into: “their territory” (WFD, Art. 3(5)), and into “existing procedures” (EIA, Art. 2(2) & SEA, Art. 4(2)). The EIA, Birds and Habitats Directives all mention the ‘measures’, which MSs need to adopt/take. The Birds and Habitats Directives share a common obligation in relation to ‘habitats’.

Plans and programmes are also mentioned in the obligations of the SEA and Public Participation Directives, but the context in which they are used is different. In the SEA Directive there is a requirement for ‘environmental assessment’ to be carried out “during the preparation of a plan or programme” (Art. 4(1)), whereas under the Public Participation Directive there is a requirement for the public to be given opportunities to participate in the “preparation and modification or review of the plans and programmes” (Art. 2(2)).

### 2.5.6 Scope (objects requiring mandatory assessment)

The WFD requires that programmes of measures (which should be specified in River Basin Management Plans) be applied within river basin districts to “surface waters”, “groundwater”, and “protected areas”. This is specified in Article 4(1). Annex V lays out the provisions that need to be fulfilled when applying the programme of measures. It is mandatory (Art. 6) for MSs to develop and maintain a register of protected areas, including areas designated under the Birds and Habitats Directives (Annex IV).

The EIA and SEA Directives set out categories of ‘objects’ that must be subject to mandatory assessment: the EIA Directive in Article 4(1) and Annex I; the SEA Directive in Article 3(2). The categories of project requiring mandatory assessment under the EIA Directive, however, are much more specific (Annex I set out 21 categories of projects), whereas the SEA Directive instead describes criteria that must be met for mandatory SEA to be required. Consequently, there appears to be greater scope for uncertainty and/or interpretation as to what requires assessment under the SEA Directive. The onus is much more on MSs to interpret the criteria and determine which PPs should require SEA, rather than relying on a more detailed list (Annex 1, EIA Directive) (Sheate *et al*, 2005).

The SEA Directive Article 3(2) (b) requires mandatory SEA for PPs requiring assessment pursuant to the Habitats Directive (92/43/EC) (known as “Article 6 assessment” or “appropriate assessment”). There is no direct equivalent in the EIA Directive<sup>8</sup>, where mandatory EIA is linked to the type of project not the area that will be affected. (Sheate *et al*, 2005). The Birds Directive specifies which ‘species’ must be subject to mandatory implementation of “special conservation measures” (Art. 4(1) and Annex I). The Habitats Directive is also specific in that it sets out a mandatory requirement for MSs to produce “a list of sites which have specific native habitat types” (Annex I) including “species relating to those sites” (Annex II). These provisions are laid out in Article 4. The Article also requires the mandatory designation of sites as “special areas of conservation”.

### 2.5.7 Scope (objects that should be screened)

As with objects requiring mandatory assessment, the SEA Directive potentially leaves much greater uncertainty as to the objects which should be screened to identify if assessment is required. However, even with the more detailed list of projects, which require screening under the EIA Directive (Annex II), issues have arisen in relation to the definitions of some project types (Sheate *et al*, 2005).

The screening criteria in both the EIA and SEA Directives (EIA, Annex III; SEA Annex II) require consideration of the characteristics of the object of assessment, characteristics of the location/area likely to be affected and characteristics of potential impacts/effects (Sheate *et al*, 2005). The “criteria for selecting sites eligible for identification as sites of community importance and designation as special areas of conservation” are laid out in Annex III of the Habitats Directive, and also require consideration of the characteristics of the location/area of such sites, as well as the degree of conservation of the habitat, global assessment of the value of the site and the size and density of the population of species on the site. The criteria relating to impacts/effects are similar in both the EIA and SEA Directives. Most of the criteria are common to both Directives. The only differences are that:

- the EIA Directive refers to the “complexity” of impacts whereas the SEA Directive refers to “the cumulative nature of the effects”;

<sup>8</sup> Annex III of the EIA Directive does provide that areas designated under the Birds (79/409/EEC) and Habitats (92/43/EC) Directives are criteria that need to be considered when screening Annex II projects, but these do not provide a trigger for mandatory assessment.

- the SEA Directive refers to risks to human health or the environment as an “effect” characteristic whereas the EIA Directive refers to “the risk of accidents....” as a “project” characteristic<sup>9</sup>;
- in general the location/area criteria in the EIA Directive are much more specific; and
- since the SEA Directive is more recent, the EIA Directive criteria do not acknowledge the SEA Directive criteria.

### 2.5.8 Measures to be adopted

All the Directives (with the exception of the Public Participation Directive) have requirements for ‘measures’ to be adopted/undertaken. In most Directives the specific type or number of measures to be undertaken would appear to be left to the discretion of the MS, with terms such as the adoption of “measures necessary” (WFD Art. 4 (1) and EIA Directive Art. 2(1)), establishment or implementation of “the necessary...measures” (WFD Art. 4 (1) and Habitats Directive Art. 12(1) and Art. 6(2)), undertaking “requisite measures” (Birds and Habitats Directives), and those [measures] “envisaged” (SEA Directive), being used.

Under the WFD MSs are specifically required to establish and implement a whole range of measures in relation to the protection of water. Not only do the environmental objectives (Article 4) of the WFD include implementation of a range of measures (to prevent deterioration, reducing pollution, prevent or limit input of pollutants, reverse any significant upward trend in the concentration of any pollutant...), but Article 11 sets out the requirement for specific “programmes of measures” which need to be complied with. The WFD shares some common elements with both the EIA and SEA Directives, in terms of measures that relate to the mitigation of adverse effects/impacts. All three Directives refer to measures that “prevent or reduce” impacts/adverse effects. Measures to be adopted under the Birds and Habitats Directives focus on the conservation and protection of species, while the Birds Directive also includes measures relating to the maintenance/preservation of habitats (Article 3).

<sup>9</sup> The five-year EIA report (CEC, 2003a) notes, “*Risk is dealt with in a wide variety of ways and at very different levels across the EU, partly in response to the variety of geographical, geological, climate and other conditions. Risk is a screening criterion in Annex III and risk assessments appear in many EIS, and yet for most Member States risk is seen as separate from the EIA process as it is often handled by control regimes to which the EIA Directive is not applied*” (para 10, Summary of findings)

### 2.5.9 Exemptions

[see also ‘Less stringent environmental objectives’ below]

The WFD does not explicitly state that certain “bodies of water” are exempt or excluded from its requirements, although it does refer to ‘situations’ where a MS would not be in “breach of the requirements” (Art. 4(6)), namely “natural causes” or “*force majeure*” (however, this is only for temporary deterioration of status). Also, under Article 4(4) the deadline by which MSs are expected to achieve the objectives of the WFD i.e. 15 years after the Directive has entered into force, can be extended to allow for the “phased achievement of the objectives for bodies of water, provided no further deterioration occurs in the status of the affected body of water...”. Certain conditions are required to be met before such an extension can take place. Under Article 4(5) MSs can also choose to achieve “less stringent environmental objectives” for particular bodies of water when “so affected by human activity...or their natural condition is such that the achievement of these objectives would be infeasible or disproportionately expensive...”. Again, certain conditions must be met before this is allowed to happen.

The WFD would appear to have indirect links with the Public Participation Directive in that Art. 2(5) of the Public Participation Directive states that the Article does “*not apply to plans and programmes set out in Annex I* [which includes Art. 5(1) of Council Directive 91/676/EEC concerning the protection of waters against pollution by nitrates from agricultural sources – protection of water being the main focus of the WFD] *for which a public participation procedure is carried out under...Directive 2000/60/EC*” (i.e. the WFD). This would imply that the WFD is exempt from the provisions laid out in Art. 2 of the Public Participation Directive, because the key requirements are already met. The SEA Directive is also addressed, within Art. 2 of the Public Participation Directive, in the same way, which already incorporates the key elements of the Aarhus Convention (UNECE, 1998) and therefore of the Public Participation Directive.

The EIA, SEA and Public Participation Directives all specify that projects, plans or programmes serving “*national defence purposes*” are exempt/not covered by the Directives. However, amendments made to Article 1(4) of the EIA Directive, by Article 3 of the Public Participation Directive indicate that MSs can decide whether or not to exclude cases relating to national defence, on a case-by-case basis. The SEA and Public Participation Directives also include “*cases*”

*of civil emergencies*” in their exemptions. The EIA Directive also exempts projects which are “*adopted by a specific act of national legislation*” (Art. 1(5)), whereas the SEA Directive puts a financial slant on things and exempts financial and budget plans and programmes, and those that are co-financed (Art. 3(8)&(9)). The only exemption the Birds Directive makes is its non-application to Greenland. Article 16 of the Habitats Directive specifies the circumstances in which a MS may “derogate” from a number of provisions relating to the protection of species if there are no satisfactory alternatives and provided that derogations are not “detrimental to the maintenance of the populations of the species concerned at a favourable conservation status...”

Under the SEA Directive indirect ‘exemptions’ may arise as a result of different mandatory requirements for SEA applying in adjacent MSs, since the application of the Directive depends upon the nature of plans and programmes produced. This could cause problems if the UK and Ireland apply SEA differently in Northern Ireland and the Republic of Ireland.

#### **2.5.10 Assessment and types of effects to be considered**

The WFD, EIA, and the SEA Directives all refer to “*significant effects*” and “*effects on the environment*”, although in the case of the WFD they are referred to as “*significant adverse effects*” (Art. 4(3)). However, it should be noted that “*significant adverse effects*” in the case of the WFD only relate to the designation by a MS of a body of surface water as artificial (AWB) or heavily modified (HMWB). In this context the WFD refers to significant adverse effects on a number of areas including the “*wider environment*”, “*navigation*”, “*port facilities*”, or “*recreation*” etc, which are areas that may experience such effects. Aside from the provisions of Article 4(3) the WFD is concerned with all effects that result in water bodies not achieving “*good status*” by 2015. The RBD characterisation process (as outlined in Article 5) requires the collection and maintenance of “*information on the type and magnitude of the significant anthropogenic pressures to which the surface water bodies in each river basin district are liable to be subject...*” (Annex II, Section 1.4) and an “*assessment of the susceptibility of the surface water status of bodies to the pressures identified...*” (Annex II, Section 1.5). The Birds Directive only mentions “*effects*” in the context of the effects of marketing on the biological status of species listed (Art. 6 (4)).

Both the EIA and SEA Directives provide an explanation of the type of significant effects and also require effects on the environment to be identified and described. The EIA Directive requires these to be assessed and the SEA Directive evaluated. The SEA Directive explicitly refers to synergistic effects, which are generally seen as a particular category of cumulative effects. Presumably the explicit reference to synergistic effects (but not other forms of cumulative effects) is for the avoidance of doubt. The EIA Directive explicitly refers to direct and any indirect effects whereas the SEA Directive is silent on this issue (Sheate *et al*, 2005).

The Public Participation Directive does not cover assessment and types of effects. The Habitats Directive refers only to “*appropriate assessment*” and “*likely... significant effects*” on designated sites of other plans or projects not directly connected with the site. The appropriate assessment is of “*the implications for the site in view of the site's conservation objectives*” (see below for further discussion).

One of the main issues to arise, therefore, from the textual analysis and the review of literature is the issue of applying environmental assessment, particularly SEA, to plans and programmes and even to projects (EIA), which are likely to occur under the WFD, Habitats and Birds Directives, and the possible overlaps that may result. Looking specifically at the WFD, both plans and programmes are required to be produced: Article 11 requiring the establishment of a “*programme of measures*” (POMs) and Article 13 requiring the production of a “*river basin management plan*” (RBMP). In addition to this, Article 13(5) states that RBMP can be supplemented by “*more detailed programmes and management plans for sub-basins, sector, issue or water type*”. The question then arises as to whether such plans and programmes would be subject to the requirements of the SEA Directive? The SEA Directive (Article 3(2)) requires that environmental assessments be carried out on certain plans and programmes, which are likely to have significant environmental effects. This includes those plans and programmes prepared in relation to water management. This would suggest that the provisions of the SEA Directive would in fact apply to plans and programmes under the WFD. Also under the SEA Directive, plans and programmes which are not listed under Article 3(2) but which set the framework for future development consent should be assessed by MSs to see if they have significant environmental effects, to which SEA should/should not be applied. The SEA Directive provides certain criteria (Annex II) to help in this process, which includes the “*relevance of*

*the plan or programme for the implementation of Community legislation on the environment*”, for example, plans and programmes linked to water protection. This would appear to imply that both RBMPs and POMs, which are both directly relevant to water protection, would, if they were likely to have significant environmental effects, be subject to SEA. Alternatively, Article 3(2) could be used as a way of avoiding SEA for plans and programmes relating to water protection if the MS decided that the plan or programme had no significant effect<sup>10</sup>.

It is evident that both plans and programmes under the WFD *could* be subject to the requirements of the SEA Directive. However, there appears to be some confusion in this regard. In its guidance document on SEA (CEC, 2003b), the European Commission points out that it is not possible to “*state categorically whether or not the RBMP and the POM are within the scope of the SEA Directive*” and that such assessments would have to be done on a case-by-case basis. ENTEC (2003), suggest that RBMPs might not be regarded as plans or programmes under the SEA Directive as they will not be particularly detailed, but that POMs will require SEAs. As stated above, plans and programmes which are not specified under Article 3(2) of the Directive could still require SEA if they set the framework for future development consent. Therefore, deciding whether RBMP and POMs set the framework for the future development consent of projects is another issue to consider (CEC, 2003c; Scott & Marsden, 2003). In some cases, it is assumed that SEA *will be* required for RBMP (Carter & Howe, 2005; Crawford, 2005), but also that RBMPs *may be* subject to SEA (Fry *et al*, 2002). However, consultation is required “*in particular*” on draft RBMPs (Art. 14) and when updated, suggesting there is a clear ‘planning’ dimension to RBMPs which will influence POMs that come forward under them, i.e. set the framework for. It would seem very odd for RBMPs not to be subject to SEA when consultation is required by the WFD. Importantly, SEA would provide a process through which RBMP consultation could be facilitated.

Assuming that either RBMPs or POMs, or both, will have to be subject to SEA in some form or another<sup>11</sup>, the question

<sup>10</sup> While Article 3 (2) is ambiguous it is generally considered that all plans listed probably do require SEA, i.e. are always likely to have significant effects on the environment (see further discussions in Sheate and Leinster, 2005; Tromans and Fuller (2003)

<sup>11</sup> The UK Government, in August 2006 (as this research was concluding) published guidance for England and Wales on the RBMP process, including the requirement for SEA of RBMPs (Defra/WAG, 2006)

then arises as to whether the ‘additional’ more detailed programmes and management plans, which may accompany the RBMP (Article 13(5) of WFD), would also be subject to SEA, in addition to the SEA already being carried out on the RBMP and/or POMs? If multiple SEAs were to be carried out under the WFD, there are likely to be numerous areas of overlap. The SEA Directive does, however, refer to the need to avoid duplication of assessments (Preamble Para. 15, & Articles 4, 5, & 11 – SEA Directive) (Fry *et al*, 2002). ENTEC (2003) suggests that the SEA Directive “recognises that where plans and programmes form part of a hierarchy it is acceptable to undertake the SEA at a single level in order to avoid duplication”. However, legally this interpretation is rather questionable. While the Directive seeks to avoid duplication of assessment, it does not refer to a single assessment. Legally, if a plan and a related programme each meet the SEA Directive criteria then both should be subject to SEA; to do otherwise potentially would be in breach of the Directive, unless a ‘joint procedure’ is established (meeting fully the requirements of the SEA Directive in each case). The key consideration is that the appropriate issues should be dealt with at the most appropriate level. Therefore strategic alternatives should be considered at the highest level first, for example, and that assessment can then inform a lower level assessment. Consequently, multiple assessments may still be needed, but they will be assessing different aspects, so that the elements and the nature of the assessment should not be duplicated.

Opportunities for overlap also exist where the ‘object’ being assessed falls both within the definition of a ‘project’ under the EIA Directive and the definition of ‘plans and programmes’ under the SEA Directive (Sheate *et al*, 2005). This could have potential implications for both the WFD and Habitats Directive. As discussed above Article 6(3) of the Habitats Directive refers to *plans or projects* not directly connected with the site, but which may have significant effect, either individually or in combination with other plans or projects. There may be some confusion in terms of deciding whether an EIA or SEA would be required. EIA is required for ‘projects’, but some projects may be considered ‘plans’, and may therefore be subject to SEA and/or EIA if they meet the criteria for both Directives (Sheate *et al*, 2005).

Another issue involves the provisions of Article 2(3(a)) of the EIA Directive. This Article allows MSs to exempt (in exceptional circumstances) specific projects from the provisions of the Directive. However, should this happen MSs are required to consider “another form of assessment” that may be appropriate. This would suggest that another

form of assessment, other than EIA, could be carried out for a particular project, although the ‘other’ form of assessment is not specified within the Directive. Under these circumstances it is potentially conceivable that an SEA could be carried out instead, particularly if the project was deemed to be rather large and would therefore be considered a programme or plan. The European Commission (CEC, 2006b) provides some clarification in relation to the application of Article 2(3); MSs can only allow exemption of specific projects from the provisions of the Directive if it has transposed Article 2(3) into national legislation (MSs are not obliged to implement Article 2(3)). If not transposed, then no such provisions apply. If transposed, projects which would be exempt under this Article would only be those that if they did not proceed would be likely to cause a serious threat to either “life, health or human welfare”, “the environment (e.g. contamination of water)”, “political, administrative, or economic stability”, or “security”. In terms of the alternative forms of assessment, the Commission (CEC, 2006b) only makes a couple of suggestions: firstly, that a “part-stage” EIA might be carried out where a project consists of several stages. It is suggested that although the project may be exempt from the provisions of the EIA Directive, that EIA may be feasible for subsequent/ later stages of the project. Secondly, a ‘partial EIA’ could be carried out where only some of the elements of Annex IV (information required to be produced by the developer) would need to be included. An example is provided where “*only some of the data required to identify and assess the likely main effects of the development on the environment could be produced from the outset e.g. where surveys to establish the possible presence of protected species would be needed over at least a 1-year period but the urgency of the project requires work to be commenced within a shorter period*” (Commission, 2006b). There is, however, no suggestion in the Commission guidance that SEA could be seen as an alternative form of EIA.

bearing on the potential for interaction with the WFD. Article 4(2) of the WFD states that where there are multiple objectives relating to a given body of water e.g. environmental objectives relating to surface waters, groundwater or protected areas, the most stringent shall apply. If there are potential conflicts over designations, it may have a bearing on what exactly is meant by “most stringent” (the issue of ‘less stringent requirements’ is dealt with in more detail later). If particular uses (under the WFD) require more stringent requirements, some authors suggest “protected zones” should be established with higher objectives set within them, and that such zones should include those areas already protected by Community legislation e.g. sensitive designated areas and areas designated for the protection of habitats or species, including Natura 2000 sites (Kallis and Butler, 2001; Barreira and Kallis, 2003).

Article 6 of the WFD requires the establishment of a register of protected areas, which includes sites under the umbrella of Natura 2000 (in relation to the Birds and Habitats Directives). The SEA Directive on the other hand requires environmental protection measures (international, Community and MS level) to be identified and other plans and programmes to be considered. According to Griffiths (2002) the WFD allows for, but does not require, the designation of other areas for the protection of habitats and species. However, ENTEC (2003) suggests that MS sites should include “*sites of national importance such as Sites of Special Scientific Interest (SSSIs) [in the UK], which would not have to be identified as protected areas for the purposes of the WFD*”. There is potential, therefore, for the WFD to also include such sites of national importance. According to BirdWatch Ireland (2002a) enhancing and restoring wetlands is considered key to the achievement of environmental objectives of the WFD, and emphasises that *all* protected wetland sites need to be included in the register of protected areas. This includes sites registered under the 1971 Ramsar Convention, wetland areas designated as Natural Heritage Areas (NHAs) (of which Ireland has approximately 1200 (Teagasc, undated)), as well as Natura 2000 sites.

#### Key Issues

- The extent to which SEA applies to RBMPs or to POMs or both.
- Possible overlaps between SEA carried out on various plans/programmes e.g. SEA of local development plans and SEA of RBMP or SEA carried out under WFD and SEA of management plans under the Habitats Directive.

#### 2.5.11.1 Appropriate assessment

Under the Habitats Directive (Articles 6(3) and 6(4)) plans or projects affecting a designated site may be subject to “appropriate assessment” (AA). The Directive is not explicit on the ‘type’ or ‘form’ that this AA should take. Although not specifically referred to within Article 6(3) it is possible that an assessment in the form of either an EIA or SEA may be applied (as both ‘projects’ and ‘plans’ are mentioned

within the Article). However, this is far from clear, although the European Court of Justice (ECJ) is beginning to establish case law in this area (see 5.3.1 below). While SEA looks at the broader aspects of the environment including biodiversity, flora, fauna etc. and their interrelationships, AA under the Habitats Directive focuses on the integrity of designated sites (South West Ecological Surveys *et al*, 2004). However, South West Ecological Surveys *et al* (2004) also point out that “provisions for plans under the Habitats Directive overlap with the biodiversity analysis required by the SEA Directive, and that both need to feed into appropriate assessment for projects”. It is also suggested that AA could be based on the methodology used for project EIA.

Fry *et al* (2002) consider that AA would “focus on nature conservation interests of a site or groups of sites”, but also go on to suggest that “where plans are subject to both the SEA and Habitats Directives” that the AA, in this case, “may form part of the SEA”. There are therefore, potentially strong links between the Habitats, SEA and EIA Directives. Possibilities exist for carrying out an integrated form of SEA and AA resulting in a combined procedure. European Commission guidance on SEA, also quoted in South West Ecological Surveys *et al* (2004), states that “a combined procedure may be carried out provided it fulfils both the requirements of the SEA Directive and the Habitats Directive. In this case, the procedure has to include the procedural steps required by the SEA Directive, and the substantive test regarding the effect on protected sites required by the Habitats Directive”. This is self-evidently the case – if both Directives apply, the requirements of both Directives must be met. Consequently, Scott Wilson *et al* (2006) suggest that in practice it may be better to view the AA process as somewhat separate from the SEA process. Further analysis of this issue is provided in 5.3 below.

There are also potential benefits to carrying out appropriate assessment of plans under the Habitats Directive, whether in the form of full or partial SEA, particularly in relation to subsequent project-level assessment e.g. EIA. Such assessment under the Habitats Directive may “identify site allocations or types of project that should not proceed, and remove them from that plan”. This would have the effect of reducing/obviating “the need for project-level appropriate assessment for those sites or projects” (South West Ecological Surveys *et al*, 2004).

Potential for overlap exists between SEA carried out under the WFD and those carried out, either in full or partially, for

management plans under the Habitats Directive, and whether appropriate assessment is more rigorous with respect to conservation aspects than full SEA (it is assumed that it probably is since AA is site specific). Would SEA be sufficient for RBMP/POMs, for example, if it incorporated AA, or would a separate AA be required? If an area had been identified as a candidate SAC, would AA (and/or SEA) be needed of RBMP/POMs, even if already implemented? A key issue here is the potential for differences between standards, i.e. the requirement for “good ecological status” (under WFD) and for “favourable conservation status” and the integrity of the conservation site (under HD). This certainly raises the potential for conflict between these two standards. Hypothetically, an example might be where additional nutrients from low level pollution might be good for water fowl and the reason for SPA/SAC designation, but this might fail “good ecological status” under the WFD (most stringent), with the POM promoting pollution controls, which would have an adverse effect on the conservation status and integrity of the site (and which would normally mean a veto on that activity).

#### 2.5.12 Elements of the environment to be considered

The WFD specifies specific areas/activities, in the context of artificial or heavily modified (AWB/HMWB) water bodies, which may be adversely affected as a result of change to the hydro-morphological characteristics of a body of surface water, for example the “wider environment” (which could be left open to interpretation as to what exactly this relates to), “port facilities”, “water storage activities”, “water regulation, flood protection, land drainage” etc. However, the WFD is concerned with all effects that result in water bodies not achieving “good status” by 2015.

The EIA Directive requires consideration of effects on the factors listed in Art. 3, whereas the SEA Directive requires consideration of “effects on the environment” including the factors listed which, it might be argued, is a wider construction. However, the EIA Directive does have a comparable requirement in paragraph 3 of Annex IV which provides that the environmental information should include “A description of the aspects of the environment likely to be significantly affected by the proposed project, including, in particular, population.....” (Sheate *et al*, 2005).

Comparing the lists of factors, although these are broadly the same – both referring to fauna and flora, soil, water, air, landscape, material assets and cultural heritage - there are several differences:

- The EIA Directive refers to “human beings” the SEA Directive to “population” and “human health”, which might appear to be a narrower subset of impacts on human beings, but may encourage more in depth assessment of human health effects than has been the case with EIA<sup>12</sup>. However, any more general impacts could be construed as falling within the catch-all reference to “environment, including...”
- In addition to the reference to fauna and flora the SEA Directive also refers to biodiversity.
- The EIA Directive refers to “climate” whereas the SEA Directive refers to “climatic factors”
- The SEA explicitly states that “cultural heritage” should include “architectural and archaeological heritage” (this was presumably added as a clarification, although this issue is not explicitly discussed in the EU SEA Guidance) (Sheate *et al*, 2005).

The Birds Directive refers only to birds, their eggs, nests and habitats, which could broadly be compared to the area of biodiversity in the SEA Directive and fauna and flora in both the EIA and SEA Directives.

### 2.5.13 Consideration of options/reasonable alternatives

Either options or alternatives are included in the WFD, EIA, SEA and Habitats Directives. Under the WFD options are provided in terms of choosing the measures applicable to the RBD (Article 11) and choosing the most cost effective measures (Annex III (b)). The EIA Directive (as amended by 97/11/EC) requires information to be provided about the main alternatives studied including the consideration of environmental effects (Article 5, Annex IV (2)). Under the SEA Directive, Article 5(1) explicitly states that an environmental report includes “reasonable alternatives taking into account the objectives and geographic scope of the plan or programme”. These alternatives need to be identified, described and evaluated. Some options, however, may have been foreclosed by higher level plans (which also may not have undergone SEA).

<sup>12</sup> The five year EIA report (CEC, 2003a) states “*The assessment of health impacts is not a particularly strong feature of current practice. There is considerable variation in coverage from a narrow to a broad interpretation of health effects. There is evidence to suggest that health impacts are considered to be less relevant to EIA, and/or to a certain extent covered by other legislation. There is some evidence to suggest that health impacts are considered under other headings such as pollution or risk.*” (para 11, Summary of findings)

The Habitats Directive mentions alternatives firstly in relation to the “absence of alternative solutions” (Article 6(4)) and secondly, in relation to species that are subject to derogations (Article 16(3(a))). The report on derogations, which is submitted to the Commission every two years, requires the inclusion of species subject to derogations and “if appropriate” reference should be made to any alternatives that were rejected.

There is relatively little mentioned within literature regarding the consideration of options or reasonable alternatives within the Directives. However, it is recognised that there is potential for overlap between the assessment of options as part of the river basin planning process, which includes wider environmental and socio-economic factors, and the requirement to appraise reasonable alternatives within the SEA Directive (ENTEC, 2003). Carter and Howe (2005) also highlight the similarities between ‘option screening’ during the preparation of RBMP and inclusion of ‘reasonable alternatives’ under the SEA Directive. They go on to suggest that the “the assessment of different RBMP options during a SEA would ensure compliance with this requirement of the WFD”. The SEA process would help establish whether options achieved the objectives of the WFD and help identify and reject those that did not (Carter and Howe, 2005).

South West Ecological Surveys *et al* (2004) outline the steps involved in implementing Article 6 of the Habitats Directive, the third of which involves examining “alternative ways of achieving the objectives of the project or plan that avoid adverse impacts on the integrity of the Natura 2000 site”. This raises the possibility of overlap between the options of appropriate measures under the WFD, and alternatives in terms of carrying out the objectives under the Habitats Directive. In their discussion on water resources management, Kallis and Butler (2001) address the issue of drinking water and hydropower projects, which they say will clearly be “sustainable human activities of overriding public interest”. As this is the case they then raise the question as to how “options will be compared and in what detail future ‘adverse impacts’ (on status) can be determined”. This raises another issue regarding the WFD and whether it will be able to “open up the decision-making and evaluation process to water conservation and demand-orientated alternatives”, which could provide for “better socio-economic and environmental options” (Kallis & Butler, 2001).

**Key Issues:**

- Overlap between assessment of options under WFD and appraisal of reasonable alternatives under the SEA Directive.
- Possibility of overlap between the options of appropriate measures under the WFD, and alternatives in terms of carrying out the objectives under the Habitats Directive.

**2.5.14 Environmental information/report****2.5.14.1. Nature of the provision of information**

It is interesting to note that all of the Directives (with the exception of the Public Participation Directive, which contains no information in this regard) describe the nature of the provision of information in different ways: The WFD refers to the production of a ‘river basin management plan’ (referred to in this report as RBMP) which is required to contain specific information (Article 15 of the WFD lists all MS reporting requirements including the RBMP); the EIA Directive requires developers to supply specific information “in an appropriate form”; the SEA Directive specifies that an “environmental report” needs to be prepared; the Birds Directive requires a “report on the implementation of national provisions”; and the Habitats Directive requires a) “a list of sites including information on each site” b) “a report on the derogations”, and c) “a report on the implementation of measures taken”.

Each of the Directives is specific in the information that needs to be provided in the various forms of report, with detailed information requirements being placed in Annexes of the WFD, EIA and SEA Directives (Annex VII, Annex IV and Annex I respectively). The EIA Directive also prescribes, within the main text of the Directive (Art. 5(3)), a minimum amount of information that must be included. The Habitats Directive information requirements are laid out within the Directive’s text.

Information pertaining to the RBMP, detailed in Annex VI, places a lot of emphasis on the provision of ‘maps’ and ‘summaries’ of much of the information that is required to be produced within the Directive. Some elements are similar to those required by the SEA Directive, such as a “list of the environmental objectives” (WFD-Annex VII (5)) – the SEA Directive also requires an “outline of the...main objectives of the plan or programme...” (SEA –Annex I (a)) and “the environmental protection objectives...which are relevant to the plan or programme” (Annex I (e)).

**2.5.14.2 Baseline information/data collection**

Data collection is required in some form or other by all the Directives (with the exception of the Public Participation Directive): the WFD requires the gathering of data/baseline information as part of the characterisation process of the River Basin Districts (RBD) (Art. 5); the EIA and SEA Directives require the gathering of data as part of the ‘scoping’ process, where a developer is required to describe aspects of the environment likely to be significantly affected by a proposed project, plan or programme (Art. 5, Annex IV, EIA & Art. 3, Annex II(2), SEA); the Birds Directive would probably require the gathering of data in order to help classify SPAs (Art. 4); and the Habitats Directive requires the gathering of information (specified in Annex III), including the use of relevant scientific information, to help towards the selection of SACs (Art. 4).

The importance of baseline information in EIA, for example, is highlighted by Wood (2003) who emphasises the need for a systematic and careful description of the initial or baseline environmental conditions in order “to present an accurate and convincing picture of the likely effects that a development will have on its environment”. The accuracy, plausibility and overall quality of environmental assessment reports (for both EIA and SEA) are dependent on effective information collection (Wood, 2003 and Jones *et al*, 2005). Indeed, the collection of environmental data is also considered “central to the process of assessment of the status of waters in the WFD” (Barreira & Kallis, 2003). Also, Carter and Howe (2005) highlight that the success of implementing the requirements of both the WFD and SEA Directive is reliant on considerable data collection. With the collection of so much environmental information across the different Directives, it is inevitable that overlaps in the amount and type of information will occur. In this case such data collection will need to be accurate, timely and co-ordinated in manner. The increase in the amount of information to be collected is recognised (Howe & White, 2002; White & Howe, 2003; ENTEC, 2003), as is the need for such collection to be co-ordinated (ENTECC, 2003).

There is a strong argument for the sharing of data/information, and that information that is used to inform one process, should help inform another. This issue is highlighted by Crawford (2005) who provides an example, stating that the “databases that inform regional spatial strategies and local development frameworks should be informing RBMPs”. There are also possible opportunities for the sharing of information between data collected during the RBD characterisation process and environmental

assessment processes. Through the WFD information on the environmental impacts of different types of land use within each RBD will be collected (White & Howe, 2003), which would indicate a direct sharing of information with either EIA or SEA. Carter and Howe (2005) point out that baseline information could be used during land-use plan preparation and the implementation of RBMP in terms of monitoring. However, an important issue to be taken into consideration is the level and quantity of information that is collected for each of the Directives. Such data collection is likely to be undertaken at different levels of detail. ENTEC (2003) addresses this issue. For example, information collected during an SEA covers a broad range of factors, but although the information collected for the WFD may not be as broad, it is studied at a much greater level of detail. Such information could be too detailed for use in an SEA, but ENTEC (2003) suggests that the ‘headline information’ could be useful. It is suggested that for information (collected for the WFD) to be used appropriately within SEA it should be presented at a ‘macro’ level (ENTEC, 2003). There may also be possibilities for the use of information collected during an EIA to be fed back into the RBD characterisation process. A review of the impacts of human activity (Art. 5, WFD) on, for example, wetlands, could result in the identification of a number of key factors causing wetland loss and degradation (Jones, 2001) (this issue is dealt with in more detail later). These could include transport (with possible impacts from road and railway construction projects), energy (with possible impacts from electricity lines, power stations, and dams), or urban and industrial development (with possible impacts from land-drainage projects, or waste disposal). Baseline information collected for EIAs carried out on any proposed projects within these sectors could in theory be used as baseline during RBD characterisation.

It is not just baseline information that could be useful, Carter and Howe (2005) point out that data collected during monitoring procedures within the WFD, on water quality and quantity, could be used to ensure that the requirements of the WFD are met during the development of other plans, programmes and projects e.g. transport plans and biodiversity strategies.

There is obvious scope for the sharing of information across the directives, and there may be considerable advantages to the planning system. For example, information may help relevant bodies/authorities understand the links between different areas, particularly with regards human impacts/activities (Howe & White, 2002). Also, human

activities and associated impacts may be given a greater level of importance across the whole “planning sphere” and not just to water issues (White & Howe, 2003). The gathering, use and sharing of baseline information/data would, however, depend greatly on co-ordination between the various bodies and ensuring that both the public and scientific community are involved. These issues are dealt with later. However, Barreira and Kallis (2002) emphasis that the degree of accountability and level to which decisions are made open to the public will determine the extent to which information is used properly and issues of uncertainty addressed.

#### Key Issues

- Possible overlaps between baseline information/data collected under the different processes.
- Opportunities exist for the sharing of data, and its use in informing various processes e.g. information from RBD characterisation inform environmental assessment processes and vice versa.
- Data collected at different levels of detail may cause problems.

#### 2.5.14.3 Consultation

The issue of ‘consultation’ is an area for which the WFD, EIA and SEA Directives all have provisions in terms of reporting. The WFD makes specific provision for a “summary of public information and consultation measures taken, their results and the changes to the plan made as a consequence” (Annex VII (9)) to be included in the RBMP. In fact the WFD is the only Directive to explicitly require information on public consultation to be included (as part of the report requirements).

The EIA and SEA Directives have provisions relating to consultation on the scope of the environmental information, though neither mentions consultation of the public. However, under the SEA Directive this is a mandatory consultation requirement: the environmental authorities “shall be consulted when deciding on the scope and level of detail of the information which must be included in the environmental report” (Art. 5 (4)). Whereas under the EIA Directive scoping is discretionary i.e. as a minimum MSs must implement a procedure whereby developers can ask competent authorities for an opinion on the information required (a scoping opinion), in which case the competent authority must consult the developer and the environmental authorities before giving its opinion (Art. 5(2)). However this article does go on to provide that MSs can make scoping mandatory. The EIA Directive also states explicitly that the

fact that an authority has given an opinion does not preclude it from subsequently requiring more information (Art. 5(2)). The SEA Directive does not have a comparable provision (it might be construed that the same principle applies, although this issue is not discussed in the EU SEA Guidance (CEC, 2003b)) (Sheate *et al*, 2005). However, Article 6 of the SEA Directive makes provision for public consultation on the environmental report alongside the draft plan or programme.

### 2.5.15 Public/authority involvement

The WFD places much emphasis on consultation and public participation, particularly in relation to RBMPs. This is laid out in Article 14 of the WFD:-

*“1. Member States shall encourage the active involvement of all interested parties in ...the production, review and updating of the river basin management plans. Member States shall ensure that, for each river basin district, they publish and make available for comment to the public, including users:*

- (a) a timetable and work programme for the production of the plan, including a statement of the consultation measures to be taken, at least three years before the beginning of the period to which the plan refers;*
- (b) an interim overview of the significant water management issues identified in the river basin, at least two years before the beginning of the period to which the plan refers;*
- (c) draft copies of the river basin management plan, at least one year before the beginning of the period to which the plan refers.*

*On request, access shall be given to background documents and information used for the development of the draft river basin management plan.*

*2. Member States shall allow at least six months to comment in writing on those documents in order to allow active involvement and consultation.”*

(Emphasis added)

The involvement of stakeholders during the preparation of the RBMP would suggest that the provisions of the Aarhus Convention were being taken into consideration. There are possibilities that duplication of public participation procedures could exist between the Directives, especially between the WFD and SEA. Article 2(2) of Directive 2003/35/EC does ensure participation in the preparation and modification or review of plans and programmes, but restricts the application of these provisions to specific plans and programmes laid out in Annex I (in which the WFD is not included). Any likelihood of duplication between public participation procedures within the WFD and SEA Directive

could possibly have been avoided if the WFD had appeared within Annex I (of Directive 2003/35/EC). Article 2(5) of Directive 2003/35/EC exempts plans and programmes from the provisions of Article 2(2) if public participation procedures are already being carried out under the SEA Directive. However, if the consultation and public participation procedures within the different Directives, namely WFD and SEA, can be integrated in any way, social, environmental and economic issues are more likely to be addressed, which will in turn “form the basis of sustainable water management procedures” (Carter & Howe, 2005). A co-ordinated response to the public consultation requirements of both the WFD and SEA Directive is considered possible (ENTEC, 2003) and, indeed, would seem to be desirable.

#### 2.5.15.1 Who to involve

All of the Directives (with the exception of the Birds Directive) make provision in some form or other for public/authority input. Persons/bodies to be involved are either identified as the ‘public’ and/or ‘authorities’, with some variation between Directives. The WFD refers to “*all interested parties*” and the “*public*” (Art. 14(1)) although it is not specific on who exactly the interested parties are and what constitutes the public. This is despite the fact that the WFD dedicates a whole Article (Article 2) to definitions (Barreira and Kallis, 2003). It also specifies “*Member States shall ensure...the identification of the appropriate competent authority*” (Art. 3(2)). The European Commission guidance document on public participation in the WFD (CEC, 2003c) mentions both ‘stakeholders’ i.e. interested parties to be involved in active involvement, and the ‘public’ who should be involved in consultation. It also suggests that a stakeholder analysis be undertaken to help determine which stakeholders “have something at stake” in the process and whether they should be involved. There is a danger of ‘consultation fatigue’ with overwhelming amounts of information being provided to stakeholders, although this danger would be reduced through the intelligent targeting of interest groups (Jones, 2001) and through ‘integrated approaches’ (Carter & Howe, 2005). However, it is usually well-funded and experienced groups who hold a ‘structural’ advantage in participatory mechanisms (Kaika, 2003). The Habitats Directive also refers to ‘the public’, only in the context of the “*public concerned*” (Art. 22), but again not explaining who the public are. The EIA, SEA and Public Participation Directives refer to the ‘public’ but definitions are provided. The Public Participation Directive goes further to suggest that the public includes “*relevant non-governmental organisations*” (Art. 2(3)), and leaves the

identification of the public up to the individual MSs. ‘Authorities’ are also mentioned in the EIA (Art. 6(1)), and SEA (Art. 6(3)) Directives, but again it is left to MSs to “designate” those to be involved. It is thought that the same ‘stakeholders’ are likely to be consulted for the same purposes of both the WFD and SEA Directive, although consultations will probably be about different things. There is, therefore, scope for a co-ordinated requirement for consultation (ENTEC, 2003).

### 2.5.15.2 Type of input

The WFD promotes ‘involvement and consultation’, particularly “*active involvement*” (Art. 14(1)). The fact that active public involvement is called for does not guarantee a “fully and inclusive participatory process” (Kaika, 2003). Also, by using the term ‘consultation’ it implies the provision of information and the receiving of comments or objections on that information (O’Sullivan *et al*, 1999). Indeed interested parties are invited to “*comment in writing*” on particular documents, namely, the RBMP. There are no separate requirements to involve the public with regards POMs summarised in the management plans (Janssen, 2004). Barreira and Kallis (2003) highlight the importance of public participation in improving decision-making, and the European Commission, in its on-line introduction to the WFD (CEC, 2005), considers the role of citizens and citizen groups “crucial”. The term ‘participation’ in relation to the provisions of the WFD is often used within literature (CEC, 2005; CEC, 2003b; CEC 2003c; Peijs, 1998; Carter & Howe, 2005). However, as mentioned above there are differences between ‘participation’ and ‘consultation’. Jones (2001) points out that the terms ‘information’, ‘consultation’ and ‘participation’ are fundamentally different and should not be used interchangeably. However, information supply, consultation and active involvement are all considered different forms of public participation within the WFD (CEC, 2003c). In 1998 a workshop was held on the implication and challenges that the WFD would have for the environment. In this workshop, Peijs (1998) points out that the “elements of public participation” are not formally dealt with in the WFD and that only access to information is provided. Some six years later, and despite attempts to clarify the meaning of ‘public participation’ within the WFD (CEC, 2003c), it would appear that information provision is the stronger element with consultation and active involvement poorly used at RBD level (De Stephano, 2004). BirdWatch Ireland (2002b) emphasise the importance of direct ‘active involvement’ during the selection and implementation of POMs, and highlight the crucial role of stakeholders during this time. Public participation is also

considered ‘indispensable’ during the development and amendment of RBMPs (Blöch, 2001), and indeed is required by Article 14.

The EIA Directive also refers to the provision of “*information and consultation*” (Art. 6(3)) with opportunities provided for the public to “*express comments and opinion*” on information provided by the developer. Emphasis is placed on “*early and effective opportunities to participate*” in “*environmental decision-making procedures*” (Art. 6(4)). The SEA Directive has similar requirements with authorities and the public able to “*express their opinion*” on draft plans and programmes. Again, emphasis is placed on ‘early and effective’ opportunities for involvement. When compared with the WFD, the SEA provisions for public participation are more general in nature as they apply to a broader range and diverse type of plans and programmes (CEC, 2003b). However, by meeting the requirements of both the WFD and SEA Directive it is possible that “simultaneous and integrated consultation and public participation procedures during the preparation and assessment of RBMP” will occur (Carter & Howe, 2005).

The Public Participation Directive focuses on “*informing the public*” (Art. 2(2) (a) and (d)), but also emphasises the need for “*early and effective*” opportunities to participate (Art. 2(2)), namely when plans and programmes are being prepared or modified. Note that this Directive uses the term ‘participate’ rather than ‘consult’ which implies a more interactive process with more direct involvement of the public in decision-making processes, resulting in a ‘two-way’ flow of information (O’Sullivan, *et al*, 1999). Within this Directive the public are provided with opportunities to submit “*comments or questions*” (Art. 2(2a)) on proposals and “*express comments and opinions*” (Art. 2(2b)) on various options. Also, arrangements are required to be made to enable the public to “*prepare and participate effectively*” (Art. 2(3)).

The Habitats Directive only mentions ‘consultation’ twice, firstly in relation to the comparing of scientific data between MSs and the Commission, which is referred to in the Directive as “*bilateral consultation*” (Art. 5(1)); secondly, “*proper consultation*” (Art. 22(a)) of the public is required when species re-introduction is being considered. There is also a requirement for the report on implementation of measures to be made “*accessible to the public*” (Art. 17(1)), although there is no mention as to whether the public can submit comments etc. The continued use of the word ‘effective’ (between the Directives) would suggest a very

subjective process – what exactly is ‘effective’ participation and how can such effectiveness be measured?

### 2.5.15.3 Timescale for feedback

The WFD is quite specific in terms of the amount of time allocated for the receipt of comments from the public. Article 14 (2) explicitly states that “*at least six months*” be allocated for the receipt of written comments. The Habitats Directive specifies a similar timeframe with regards consultation between MSs and the Commission on the comparing of scientific data, though here the consultation period should “*not exceed six months*” (Art. 5(2)). The EIA and Public Participation Directives are particularly vague in this regard, stating only that “*reasonable time-frames*” be provided, leaving much discretion to individual MSs. The SEA Directive does not mention any timeframes.

### 2.5.15.4 Involvement in a transboundary context

Consultation in a transboundary context is only considered in any detail within the EIA and SEA Directives, although the WFD does require that appropriate arrangements be made where river basins cover the territory of more than one MS and where IRBDs are set up as a result (Art. 3). However, there is no specific mention of ‘consultation’ in this regard, but where RBDs extend into the territory of a non-EU MS, then “appropriate co-ordination” is required to be established (Art. 3(5)). In this regard, therefore, the WFD appears to apply also to non-MSs whereas the EIA and SEA Directives apply only to MSs.

The EIA and SEA Directives are explicit in that where a project, or implementation of a plan or programme is likely to have significant effects on the environment in another MS then arrangements need to be made to involve the affected State. The EIA Directive requires specific information e.g. description of the project and information on possible transboundary impacts and information on the nature of the decision which may be taken, to be sent to the affected MS. Also, ‘a reasonable time’ for that State to indicate whether it wants to participate (Art. 7(1)), needs to be provided. If participation is requested then further detailed information is sent to them. Again, opportunities are made for authorities and the public within the affected MS to “forward their opinion” on the information supplied (Art. 7(3a)). Consultations on transboundary effects are required to take place (Art. 7(4)), although there is no indication of the consultation method. Much discretion is left to MSs on detailed arrangements for consultation in a transboundary context. The SEA Directive requires that a copy of the draft plan and programme, and relevant environmental reports be

sent to affected MSs (Art. 7(1)). If the MS indicates its wish to enter into consultation, then detailed arrangements for consultation must be agreed between States, so that the public is informed and provided with an opportunity to “forward their opinion” (Art. 7(2)). As the WFD is generally silent on the issue of public participation in the scope of international river basin districts (Barreira & Kallis, 2003), the provisions for transboundary consultation under the SEA Directive could be used to strengthen such provisions in respect of the WFD, therefore creating a “collaborative and integrated approach to water management” (Carter & Howe, 2005).

#### Key Issues

- Effectiveness of public participation/consultation between different processes.
- Deciding ‘who’ to involve at each level e.g. WFD, SEA, EIA etc, without causing ‘consultation’ fatigue will be an important issue to consider.
- Opportunities to integrate consultation and public participation procedures between WFD and SEA Directive, in order to avoid duplication.
- Using provisions for involvement in transboundary context within EIA and SEA to strengthen transboundary consultation within the WFD.

### 2.5.16 Role of competent authorities

Article 3 of the WFD outlines the provisions for the ‘co-ordination of administrative arrangements within river basin districts’. Article 3(4) specifically calls for the co-ordination of the POMs for each RBD, while Article 3(5) specifies requirements for the “establishment of appropriate co-ordination” with respect to IRBDs. There is much emphasis, therefore, within the WFD on co-ordination between competent authorities. Existing public authorities have been identified as ‘competent authorities’ for the purposes of the WFD in Ireland (in line with Article 3(6)) and under the Irish Water Policy Regulations (S.I. No. 722/2003). These authorities are obliged to consult, co-ordinate and liaise with other public authorities, North and South, to support and facilitate co-ordinated implementation (DoEHLG, 2004a). The EIA and SEA Directives require MSs to identify competent authorities.

Between the Directives there are likely to be overlaps between the roles played by the different ‘designated’ authorities. It is thought that successful implementation of the WFD will be determined by the type of interaction that will take place between “institutions, actors and norms created by the WFD” and “existing ones at the local level” (Kaika, 2003). In fact, because of the fragmentation of roles,

responsibilities and interests, better overall co-ordination at river basin level is considered essential for effective implementation (Jones, 2001). In order for RBMPs to work it is thought that “all agencies and catchment users whose decision-making affects the quality and ecology of rivers, lakes, coastal waters and groundwaters” need to be involved (Crawford, 2005). BirdWatch Ireland (2002b) suggests that a “shared duty to implement the WFD” should be introduced amongst all relevant authorities. Jones (2001) also highlights several areas for better integration including: between bodies involved directly with water management; and between water managers and other sectors e.g. land-use planning. Deciding who should organise active involvement is also another important factor in relation to International River Basin Districts (IRBDs) (Barreira & Kallis, 2003).

With RBDs likely to extend across several counties, as is the case in Ireland, there are possibilities for overlap between the various competent authorities within different sectors e.g. water management, land-use planning etc. Crawford (2005) highlights the need to recognise the role of those involved in [spatial] planning both at local and regional level in the co-ordination and involvement of all sectors. However, there may be a lack of synergy between different bodies across counties/borders etc. (ENTEC, 2003). Janssen (2004) highlights the need for “far-reaching co-ordination between all the parties involved” and a “willingness to co-operate beyond regional and national boundaries”. The Shannon river basin, in Ireland, for example, includes 18 local authorities (Kilroy *et al*, 2005) and it is reported that competent authorities for RBDs within Ireland also have competence for agriculture, industrial pollution, land use planning, navigation, energy, fisheries, drainage, flooding and more (WWF, 2005). Overlaps or a lack of synergy between these areas would seem inevitable. However, Kilroy *et al* (2005) do emphasise the essential need for cooperation between neighbouring river basins in order to “ensure that interconnected water bodies and associated ecosystems are adequately protected”. To help reduce possible overlaps in terms of responsibility it may be possible to combine the roles of various authorities. For example, Scott and Marsden (2003) suggest that the authority responsible for the implementation of the WFD could also ensure that the requirements of the SEA Directive are met. This is a view shared by the European Commission (CEC, 2003b). Also, authorities and policy makers need to recognise the importance of the interface between Natura 2000 (under the Birds and Habitats Directives) and the WFD and improve their co-operation in terms of implementing these Directives (Köhler, 2005). It is recognised that the

workload of the competent authorities responsible for the implementation of the various Directives is likely to increase; therefore the efficient use of resources is essential (Carter & Howe, 2005). Also, Howarth (2006) highlights the technically complex nature of assessing the ecological status of surface water, in terms of applying Annex V of the WFD. This, according to Howarth (2006) will require the involvement of scientific expertise, which will need to be highly co-ordinated.

As well as designated ‘competent authorities’ i.e. river basin authorities in Ireland, the implementation of the WFD and subsequent requirements under the Water Policy Regulations, is supported by “an extensive network of expert working groups” as well as a “river basin district advisory council” for each RBD (DoEHLG, 2004a). With so many bodies involved, co-ordination would appear to be essential. Coordination does, however, exist in Ireland through the National Coordination Group (NCG) and on the Island of Ireland through the North South WFD Coordination Group.

#### Key Issues

- Overlap between authorities and responsibilities, including lack of synergy.
- Possibility of combining the role of different authorities.

#### 2.5.17 Decision-making

Decision-making provisions are not specified within the WFD, although there is a requirement to ensure that “appropriate administrative arrangements” are put in place (Art. 3(2)). (Art 3(3) relates this to IRBDs only)

The main difference between the decision-making provisions of the EIA and SEA Directives is that the EIA Directive requires the information, the consultation and transboundary consultation opinions to be “taken into account in the development consent procedure”. The SEA Directive, on the other hand, requires the comparable information to be “taken into account during the preparation of the plan or programme and before its adoption or submission”. In theory this difference suggests that the information/consultation opinions should be taken into account at an earlier stage in the SEA process compared to the EIA process. The EU SEA Guidance (CEC, 2003b) states that “the obligations in Article 8 of the Directive reflect the iterative nature of the process of environmental assessment as applied to plans and programmes” (para 7.30). However, as the SEA Directive Articles 6 and 7 consultations are consultations on the draft PP and ER then in practice these opinions will not be available until after consultation on the draft PP/ER, i.e. at a

comparable stage to the consultation opinions available in the EIA process (Sheate, *et al*, 2005).

### 2.5.18 Information on decision

Only the EIA and SEA Directives provide detail on the type of information taken into account in reaching a decision on whether to grant or refuse development consent (for EIA) and when adopting a plan or programme (SEA). Once a decision has been made under the EIA Directive there is a requirement for local authorities to “inform the public” of the decision and make certain information available to them (Art. 9(1)), including the main reasons for the decision and information on mitigation measures. This information must also be forwarded to MSs affected (Art. 9(2)) if there are transboundary issues. Art. 9 (1) and (2) measures were the result of amendment of the EIA Directive by the Public Participation Directive. Both Directives require information resulting from public input e.g. “concerns and opinions expressed by the public” (EIA Directive Art. 9(1)) and “the opinions expressed” (SEA Art. 9(1b)) as a result of consultations, including transboundary consultations, to be taken into account.

In summary the information includes (for the EIA Directive): the decision, information on public opinion and participation process adopted and mitigation measures. Once a plan or programme (under the SEA Directive) has been adopted MSs are required to provide information to those informed (authorities, the public and affected MSs in cases of transboundary issues). Information required can be summarised as: the adopted plan or programme, information on integration of environmental considerations into the plan or programme, public consultation result and reasons for plan or programme adopted and alternatives, and monitoring measures.

### 2.5.19 Access to judicial review procedure (EIA Directive only)

The Public Participation Directive introduces a new provision to the EIA Directive on access to judicial review which has no equivalent in the SEA Directive. Although the practical differences between the two Directives on this issue will presumably depend on MSs’ existing review procedures. Current existing procedures, which may apply to SEA legislation implementing the SEA Directive, may satisfy Aarhus requirements.

The five-year EIA report states “Although the current EIA Directive does not contain provisions on access to justice, the majority of MSs provide for such in their national systems.

Access to justice for EIA is largely confined to members of the public having legislative rights to challenge decisions through the courts. In most cases such challenges can only be made once project authorisation is granted, few MS provided for challenges at the earlier stages of EIA.” (para 12, Summary of findings) (Sheate *et al*, 2005).

### 2.5.20 Monitoring

The WFD, SEA and Habitats Directives all make provisions for monitoring, and possibilities for duplication exist, although Article 10(2) of the SEA Directive goes some way to avoiding this situation (see below). The WFD is quite specific in its requirements for monitoring (Art. 8) and requires a “map of the monitoring networks...and a presentation in map form of the results of the monitoring programmes” (Annex VII (4)). Art. 8(1) requires a specific “programme for the monitoring of water status” (Art. 8(1)) to be established. There may be more than one programme, as a separate programme is required for surface water, groundwater and protected areas. Such programmes are established so that a “coherent and comprehensive overview of water status within each river basin district” is provided. It also requires “details...of the actual monitoring data gathered” (Annex VII (11)). Detailed requirements and the type of information to be monitored are explicitly laid out in Annex V.

Unlike the EIA Directive, the SEA Directive also makes explicit the need for monitoring of the “significant environmental effects of the implementations of plans and programmes” (Art. 10(1)) and the environmental report is required to include a “description of measures envisaged concerning monitoring” (Annex I (i)). Although no detailed information is provided on how such monitoring will take place, it is seen as necessary for the identification of “unforeseen adverse effects” and for the purpose of mitigation (“remediation”). Interestingly, Article 10(2) does mention the use of “existing monitoring arrangements” if appropriate, in order to avoid duplication. The Habitats Directive does not specify that ‘monitoring’ is required; instead it uses the term “surveillance”. Article 11 requires “surveillance of the conservation status of the natural habitats and species”. Again, no detail is provided on how exactly the surveillance should be carried out. There is also a requirement to “establish a system to monitor the incidental capture and killing of the animal species” (Art. 12). Monitoring and evaluation in relation to management plans under the requirements of the Habitats Directive are considered important nonetheless, particularly in helping to determine whether a plan is successful (Janssen, 2004).

Carter and Howe (2005) point out that as Article 10(2) of the SEA Directive allows for the use of existing monitoring arrangements in order to avoid duplication, monitoring is likely to be more comprehensive in nature and that development of monitoring with the WFD is likely to increase the consideration of water resources issues during SEAs. Opportunities for a co-ordinated monitoring procedure are recognised (ENTEC, 2003), despite the fact that monitoring in SEA is likely to cover a broader range of effects/impact types. One possible solution put forward by ENTEC (2003) is for the “scope of monitoring associated with the WFD to be cast in such a way that the requirements of the SEA Directive are also met”.

A key difference between the provisions/requirements in the WFD and SEA Directives would appear to be that the WFD requires detailed information on monitoring that has already taken place, whereas the SEA Directive requires only that the measures to undertake monitoring be described (indicating that monitoring has yet to take place).

#### Key Issues

- Possible overlap of monitoring requirements, but opportunities to co-ordinate monitoring procedures.
- Extent to which new monitoring would need to be carried out.

#### 2.5.21 Environmental quality standards

Only the WFD and SEA Directive specifically mention environmental quality standards. The WFD is explicit in its requirements for environmental quality standards to be set in relation to pollution prevention and control (Preamble 40) and for certain pollutants (Preamble 42) [in relation to the pollution of water]. If the objectives of the WFD, as laid out in Article 4, are unlikely to be met (as established through monitoring) MSs are required, “as appropriate”, to establish stricter environmental quality standards. Under the SEA Directive, ‘exceeded’ environmental quality standards may be referred to when establishing whether a plan or programme is likely to have significant environmental effects (Annex II (2)).

#### 2.5.22 ‘Less stringent environmental objectives’

Under the provisions of Article 4 of the WFD there are a number of exceptions with regards the requirement to meet overall environmental objectives. This includes exception from the need to achieve “good status” and the time frame to be applied (Jones, 2001; Grimeaud, 2004; Fairley *et al*, 2002). In fact the deadline for meeting environmental objectives can be extended by up to 12 years, which is

considerable and may have significant consequences regarding the state of specific bodies of water over this time frame.

Less stringent environmental objectives may be set for specific bodies of water depending on a number of conditions: either it is not feasible to achieve “good status” or costs are disproportionately expensive due to the effects of ‘human activity or natural conditions’; or there is temporary deterioration in status, that is not in breach of the Directive but certain conditions are not being met (Jones, 2001; Foundation for Water Research, 2005; Kallis & Butler, 2001). Grimeaud (2004) also provides an insight into the following areas of limited and conditional grounds for exemptions: delaying the realization of good status due to technical unfeasibility, disproportionate costs or natural conditions or due to human activities or natural conditions; temporary deterioration of a surface or groundwater body due to *force majeure* or unforeseeable circumstances; and not achieving good ecological status etc. as a result of ‘new modifications to the physical characteristics’ of a surface water, or of ‘alterations to the level of a groundwater’; and being able to lower the status of surface water or alterations to groundwater from ‘high’ to ‘good’ should ‘new sustainable human development activities’ take place.

Less stringent environmental objectives can also be set for artificial and heavily modified bodies of water (Fairley *et al*, 2002). Grimeaud (2004) states that where MSs have bodies of water that are artificial or heavily modified, they are only required to achieve “ecological potential” as opposed to “good status”, which would imply “a lesser target”. A potential loophole exists with regards this clause, which could potentially reduce the scope and effectiveness of the WFD. White and Howe (2003) point out that under the WFD it is unclear as to what extent MS governments can designate water as being ‘heavily modified’, and also highlight that up to 90% of waters within the European Union (EU) could be defined as such. Also, Kallis and Butler (2001) highlight the “ambiguity of terms” in relation to exemptions under the WFD, providing examples such as “sustainable human development activities” and “disproportionate costs”. Such ambiguity provides MSs with the option of avoiding “tackling these very waters which the Directive is supposed to target”, and MSs either “not willing or not able to achieve the status objectives have enough room to avoid legal implications” (Kallis & Butler, 2001).

**Key Issues:**

- Extent to which waters are designated as 'heavily modified' and degree to which the objectives relating to ecological evaluation are applied. Less stringent objectives are not restricted to AWB and HMWBs

**2.5.23 Pollution prevention and control**

The WFD is specific in its requirements to reduce and eliminate pollution of groundwater and surface waters. Strategies relating directly to the prevention and control of pollution are laid out in Articles 16 and 17 of the Directive. The Birds Directive is the only other Directive to mention 'pollution'. The last sentence of Article 4 requires MSs to "strive to avoid pollution or deterioration of habitats". Article 2 (a) of the EIA Directive allows for MSs to provide a single procedure to fulfil the requirements of the EIA Directive and Directive 96/61/EC on IPPC.

**2.5.24 'Human activity'**

An interesting area within the text of the WFD (Article 5(1)) is the issue of 'human activity' and possible impacts on all water bodies in a RBD. Annex II Section 1.4 lists potential significant anthropogenic pressures that should be assessed in each RBD. What actually constitutes a 'human activity' is not clearly defined within the Directive, although Grimeaud (2004) suggests that such activities relate to those "that exercise pressures on water bodies as identified by Member States...and which include, for instance, installations causing point and diffuse source pollution, and that are regulated under EC law". The review of the impact of human activities on surface waters within the WFD is also highlighted by Grimeaud (2004), who points out that MSs will need to "identify the adverse anthropogenic pressures in terms of, among other things...significant water abstractions...". Since such significant water abstraction projects are likely to fall within the requirements of the EIA Directive, this poses the question as to whether the review of such human activities under the WFD would coincide with EIA being undertaken for this particular activity, resulting in an overlap. Another possible area of interaction may result where information obtained for an EIA on, for example, the possible impacts from a proposed sewerage treatment works, could be fed into the river basin characterisation process in terms of analysis of human impacts.

According to Howarth (2006) the "levels of distortion on biological elements, resulting from human activity" will determine the extent to which ecological valuation under the WFD is measured, and that "good ecological status will be

established only where biological elements deviate from undisturbed conditions". Howarth (2006) goes on to explain that MSs are legally obliged to "maintain minimal anthropogenic impact". Where MSs find areas of water that are of 'high status', this status must be maintained and that any actions [human activities?] "likely to cause the naturalness of these waters to be compromised may only be authorised under stringent conditions". This could have possible implications for certain proposed activities under EIA, particularly those that are likely to have adverse impacts on bodies of water.

With the likely increase in baseline data as a result of implementing the WFD, information on the environmental impacts of different types of land-use within each RBD is also likely to be more readily available, which, in turn, will provide a basis for effective monitoring (Howe & White, 2002). The requirement under the WFD for the establishment of standard criteria and monitoring methods, should, according to Howe and White (2002) enable impacts from human behaviour/activities to be "monitored and spatially compared over time". This ability to measure and monitor human land-use impacts could provide planning systems with the ability to "effectively weight environmental considerations" which may result in "measurable and clearly defined material considerations with which to refuse potential developments" (Howe & White, 2002). This would appear to imply that the consideration of human activities within the WFD could further strengthen planning processes, particularly in relation to EIA or SEA. Indeed, White and Howe (2003) highlight that those in the planning profession will now (as a result of the WFD) "have a specific remit to protect the environment from the impact of human activities". It is also suggested that such planning professionals may perhaps "take the blame if water bodies deteriorate or fail to come up to standard". It is also pointed out, by Carter and Howe (2005), that with increased baseline data, planning authorities should be in a better position to "refuse development or attach more stringent conditions" to developments that are likely to "compromise the achievement of the WFD's objectives".

**Key Issues:**

- Whether the review of such human activities under the WFD would coincide with EIA being undertaken for a particular activity e.g. significant water abstraction projects, resulting in an overlap.
- Possibility that information obtained for an EIA on e.g. the possible impacts from a proposed sewerage treatment works could be fed into the river basin characterisation process in terms of analysis of human impacts.
- Consideration of human activities within the WFD could further strengthen planning processes, particularly in relation to EIA or SEA.

### 2.5.25 Relationship with other Community legislation<sup>13</sup>

There are a number of provisions made within the WFD with regards its relationship with other Community legislation, the most obvious being the Habitats and Birds Directives. Article 6 (1) explicitly states that a register(s) is required by MSs “of all areas lying within each river basin district which have been designated as requiring special protection under specific Community legislation...”. This specific legislation is listed in Annex IV, with Part 1(v) referring directly to Directives 92/43/EEC and 79/409/EEC. The Birds and Habitats Directives are mentioned again, along with the EIA Directive, in relation to the ‘programme of measures’. Article 11(3(a)) sets out the requirements for ‘basic measures’ which are “*required to implement Community legislation for the protection of water, including measures required under the legislation...in part A of Annex VI*”: Part A(ii) for the Birds Directive; Part A(v) for the EIA Directive; and Part A(x) for the Habitats Directive. ‘Other Community legislation’ is also mentioned in Article 4(8) and (9) in the context of applying the provisions laid out in Article 4 on ‘environmental objectives’ and ensuring that achievement of such objectives is “consistent with the implementation of other Community environmental legislation” and that provisions guarantee “at least the same level of protection as the existing Community legislation”.

The provisions in the SEA Directive on the relationship with other Community legislation are broader than those in the EIA Directive (Sheate *et al*, 2005). Art 11(1) of the SEA Directive provides that SEAs under the Directive are without prejudice (i.e. do not replace) EIA or other assessments required by EC legislation. Art. 11(2) provides that MSs can establish coordinated or joint procedures for SEA and

assessments arising from any other Community legislation (Art. 11(2)). Art. 11(3) provides that for Plans and Programmes co-financed by the EC SEA must be carried out in conformity with the specific provisions in Community legislation – i.e. explicitly states one of the possible instances of dual obligations for assessment covered generally in Arts. 11(1) and (2). Section 9 of the EU SEA Guidance discusses the relationship of the SEA Directive with other Community legislation in more detail. In contrast the EIA Directive only explicitly mentions establishing a single procedure for EIA and one other particular form of assessment arising from EC legislation (IPPC). The 5 year EIA report states: “Relationships between EIA and national environmental control regimes are complex and there appears to be little real co-ordination between the EIA Directive and other Directives such as IPPC and the Habitats Directive. Few MSs have taken the opportunity offered by Directive 97/11/EC to provide for the greater consistency and reductions in repetitious documentation and assessments, provided by closer co-ordination of EIA and IPPC. In some MSs a link is said to exist but this link may simply consist of a recommendation that EIA and other relevant procedures should be dealt with simultaneously.” (para 10, Summary of findings) (Sheate *et al*, 2005).

The Public Participation Directive makes direct reference to the Aarhus Convention, but with regard to its relationship with other Community legislation, the Directive explicitly mentions the EIA Directive (Art. 1(b)) with regards its (Public Participation Directive) objectives to improve public participation and provision of access to justice within EIA. Article 3 of the Directive is dedicated to various amendments to the EIA Directive. The WFD and SEA Directives are also mentioned within the Directive (Art. 2(5)) in the context of exempting Article 2 (regarding public participation concerning plans and programmes) for “plans and programmes set out in Annex I for which a public participation procedure is carried out under Directive 2001/42/EC...or under Directive 2000/60/EC...”.

### 2.5.26 Information, reporting and review

The WFD has quite an extensive requirement on information exchange, requiring a Commission report on progress in implementing the Directive (the report is also required to include other specific information other than progress) at least twelve years after the Directive’s date of entry into force, and another such report every six years after that (Art. 18(1)). Another report, “on progress in implementation based on the summary reports” submitted by MSs, is also required to be produced by the Commission at least every

<sup>13</sup> Note: only legislation specific to this study is considered here

two years after “dates referred to in Articles 5 and 8” (Art. 18(3)). Once this report has been published the Commission is also required (within three years) to publish an interim report “describing progress in implementation” based on interim reports submitted by MSs. In addition to the Commission’s reporting requirements MSs are also required to report to the Commission. Article 15(1) requires MSs to send copies of RBMPs and any updates to the Commission and any other MS concerned within three months of their publication. Also, MSs are required to submit “summary reports” (Article 15(2)) of RBD characterisation and monitoring programmes. An interim report “describing progress in the implementation of the planning programme of measures” is also required to be submitted to the Commission within three years of the publication of the RBMP (Article 15(3)).

Both the EIA and SEA Directives require a Commission report on the effectiveness of the Directive five years after implementation and for the Commission to make proposals (Art. 11(4), EIA Directive and 12(3), SEA Directive). The Birds Directive requires the Commission to prepare a composite report, every three years, on the implementation of national provisions based on similar reports submitted by MSs to the Commission (Art. 12). Article 17 of the Habitats Directive requires a similar composite report from the Commission every six years. In addition, Article 16 of the Habitats Directive requires MSs to forward to the Commission every two years a report on derogations made to specific protection measures.

## 2.6 Relevant case law

A brief overview of the most relevant case law is provided below. Linehan (2005) identifies a number of relevant cases particularly in relation to the application of environmental assessment under the Habitats and Birds Directives, some of which are drawn upon below. Others are summarised from the ECJ judgements directly, especially the most recent. The purpose of this review was to provide context for further analysis and discussion in light of the case studies. It was not intended to cover all key cases for all Directives.

### 2.6.1 ECJ Cases

#### 2.6.1.1 *Case C-57/89 R – Commission v Federal Republic of Germany*

This case (also known as the Leybucht Dykes case) relates to the Birds Directive (79/409/EEC). In this case the Commission sought the temporary suspension of a coastal protection project, which involved construction works (for

which planning permission had been granted), in the area of the Leybucht (a bay in the Wattenmeer in East Friesland, to the north of Emden). The Leybucht is a special protection area (SPA) under Article 4(1) of the Birds Directive. The Commission claimed that the project was causing damage to the habitat of protected birds within the SPA, particularly the avocet, white fronted goose and two species of tern (the project would reduce the size of the SPA). Planning permission for the dyke construction works was granted on the 25<sup>th</sup> September 1985, but the Leybucht was not placed under special protection until 21<sup>st</sup> December 1985. The Commission was informed of the SPA in September 1988. The Commission put forward the point that under Article 4(1) MSs are obliged to ensure the active protection of species of birds which are particularly endangered, within areas/regions that they themselves have designated as SPAs. The German Government disputed this interpretation of Article 4(1) and claimed that the measures required to protect the coastline took priority over the protection of birds, even within SPAs.

Linehan (2005) points out that the central question in relation to this case was “whether a MS was entitled to reduce an SPA in size and, if so, for what reasons”. It was the opinion of the ECJ that any discretion afforded to MSs under Article 4(1) in terms of reducing the size of an SPA was very limited, and that any reduction in size could only be justified on exceptional grounds. Linehan (2005) explains “for such exceptional grounds to exist there had to be a public interest superior to the Birds Directive’s ecological objectives”. Linehan (2005) states that “on the facts in the Leybucht Dykes case the ECJ held that such exceptional grounds did exist (on the basis of the need to prevent potentially catastrophic flooding and endangerment of human life) though critically it held that economics and recreational interests could not be taken into account. The Court’s overall interpretation was that once an SPA was designated or classified it could not be interfered with or reduced in size or set aside wherever commercial or economic considerations dictated”. As a result of this case and with the introduction of the Habitats Directive (92/43/EEC), both the Birds and Habitats Directives make provisions, which allow, in certain circumstances, for the interference with SACs and SPAs on the grounds of exceptional public interest, including economic and social grounds (Linehan, 2005).

#### 2.6.1.2 *Case C-355/90 – Commission v Kingdom of Spain*

This case (also known as the Santona Marshes case) concerns the Birds Directive (79/409/EEC). In this Case the

Commission took Spain to court for failing to fulfil its obligations under Articles 3 and 4 of the Birds Directive. It claimed that Spain had failed to undertake ‘upkeep’ and management measures or measures to re-establish biotopes which had been destroyed in the Santona marshes and that Spain had also failed to classify these marshes as special protection areas (SPAs) and had not taken appropriate steps to avoid pollution or deterioration of habitats in that area (by permitting a number of damaging activities such as clam farming, industrial zones, land reclamation etc). The court ruled in favour of the Commission.

Linehan (2005) points out that a case such as this shows that “Member States cannot avoid their Article 4 obligations of control through failure or delay in classifying an area as an SPA”. According to Linehan (2005) this particular case clearly illustrates that “the obligation on Member States to avoid deterioration of the habitats of birds species protected by the Birds Directive did not depend on the habitat having first been designated as an SPA” and that the “ECJ reasoning was that the objectives of the Directive would be completely undermined if the conservation obligations only operated from whenever an area was formally designated”.

#### **2.6.1.3 Case C-67/99 – Commission v Ireland**

This case relates to the Habitats Directive (92/43/EEC) and Ireland’s failure to fulfil its obligations under Article 4(1) of the Directive. It was first observed by the Commission in 1996 that Ireland had failed to submit a full list of sites designated as SACs and relevant information relating to these sites. One year later (April 1997) Ireland sent the Commission a list of 207 *proposed* sites. The Commission again requested a full list of sites, to which Ireland responded by saying that the list would be prepared in three phases: sites hosting priority habitat sites, sites hosting non-priority natural habitats and species, and sites consisting of marine sites. The Commission gave Ireland two months in which to comply with obligations under the Habitats Directive (December 1997). In February 1998 Ireland stated to the Commission that failure to produce the required list were the result of delays with the public consultation process in Ireland, but that a list would be submitted by mid-1998. By the end of 1998 Ireland had submitted two partial definitive lists of sites and relevant information, the first containing 39 sites and the second list containing 9 sites. It was still felt by the Commission that Ireland had failed to produce a full list of sites. The ECJ ruled, “by failing to transmit to the Commission, within the prescribed period, the list of sites mentioned in the first subparagraph of Article 4(1) of the [Habitats] directive, Ireland had failed to fulfil its obligations under that directive”.

#### **2.6.1.4 Case C-117/00 – Commission v Ireland**

This case involves both the Birds (79/409/EEC) and Habitats (92/43/EEC) Directives, and Ireland’s failure to fulfil its obligations under Article 3 of the Birds Directive and Article 6(2) of the Habitats Directive. In this Case Ireland was taken to court by the Commission for failing to provide the necessary measures to ensure the protection of a particular species of naturally occurring wild bird (species naturally occurring in a wild state), namely the Red Grouse, and also for failing to ensure the conservation of a special protection area (SPA), namely the Owenduff-Nephin Beg Complex. The Owenduff-Nephin Beg Complex is Ireland’s largest SPA. In its first communication with Ireland (October 1997) the Commission stated its concerns regarding overgrazing on this particular SPA and the adverse effects this was having on the habitats of the Red Grouse. Irish authorities had not responded by April 1998 and the Commission requested that they comply with the obligations [of Article 3 of the Birds Directive and 6(2) of the Habitats Directive] within two months. By September 1998 Irish authorities provided information on new measures to control overgrazing. The Commission did not feel that the relevant obligations had been complied with, which resulted in this particular court case. The ECJ ruled, “by failing to take the measures necessary to safeguard a sufficient diversity and area of habitats for the Red Grouse and by failing to take appropriate steps to avoid, in the Owenduff-Nephin Beg Complex special protection area, the deterioration of the habitats of the species for which the special protection area was designated, Ireland had failed to fulfil its obligations under Article 3 of Council Directive 79/409/EEC...and Article 6(2) of Council Directive 92/43/EEC...”.

A report which played a significant role in the final decision of this case, was the 1993 Report of what was then the Irish Wildbird Conservancy (IWC), which highlighted that the Red Grouse was a “seriously endangered species” (Linehan, 2005). In his paper Linehan (2005) also highlights the legal interest of this case in relation to “the ECJ response to one of the Irish Government’s arguments (disputing the Commission’s view that the Red Grouse was under threat), which was that the obligations on MSs under Article 3 (to maintain a sufficient diversity of habitats for wild birds) exists before any reduction is observed in the number of birds and before any risk has materialised of a protected species becoming extinct”.

#### **2.6.1.5 Case C-374/98 – Commission v France**

This case involves both the Birds (79/409/EEC) and Habitats (92/43/EEC) Directives, and mainly concerns classification

(or failure of) of special protection areas (SPAs). The Commission stated that France had failed to classify the Basses Corbières site as a special protection area for the conservation of certain species of birds listed in Annex I of the Birds Directive (79/409/EEC), namely the Bonelli's eagle, including certain migratory species, and that they had also failed to adopt special conservation measures concerning their habitat (failure of obligations under Article 4(1) and (2) of the Birds Directive). The Commission also argued that France had failed to take appropriate steps within the same site to avoid disturbance of protected species and deterioration of their habitat as a result of quarry works (failure of obligations under Article 6(2) to (4) of the Habitats Directive). The Court found in favour of the Commission's argument that France had failed to adopt specific conservation measures, but rejected the Commission's case over the application of the Habitats Directive Article 6 (2) and 6 (4).

In this case Linehan (2005) highlights two important issues, firstly in relation to the importance that is placed on the Important Bird Areas (IBA) Inventory in the EC, and secondly in relation to the extension of the Birds Directive as a result of Article 7 of the Habitats Directive with regards 'overriding public interest'. Although MSs are not legally bound by the IBA Inventory, Linehan (2005) points out that earlier decisions by the ECJ held that the IBA Inventory "contains scientific evidence making it possible to assess whether a Member State has complied with its obligations to classify as SPAs the most suitable territories in number and size for the conservation of protected species of bird". The IBA Inventory is, therefore, "an important weapon and reference point in the hands of interest groups". Secondly, Linehan (2005) states that "the decision [in this Case] is also important for highlighting the point that the extension of Article 7 of the Habitats Directive, to the Birds Directive regime, of the possibility of overriding public interest exceptions (including economic and social reasons) only applies, on a strict reading of Article 7, to areas *formally* classified as SPAs. In other words MSs cannot avail of the overriding public interest exceptions to justify projects in areas not *formally* classified as SPAs. In that way MSs have an incentive to go ahead and make the SPA designations where the ornithological criteria are satisfied".

#### **2.6.1.6 Case C-202/01 – Commission v France**

This case concerns the Birds Directive (79/409/EEC). In this case the Commission took the French Government to court on two grounds. Firstly, for failing adequately to designate special protection areas (SPA), and secondly, for failing to

classify the Plaine des Maures as an SPA. The first action concerned the incorrect implementation of Article 4 of the Birds Directive. The Commission claimed that French authorities had not classified territories of SPAs in sufficient measure, particularly in relation to size, variety or representation. The second action (failure to comply with Articles 3 and 4), involved the Plaine des Maures, which is recognised by the French Government as being included in the national inventory of sites of importance for the conservation of birds in France. The Commission claimed that because of its ornithological importance the site should have been designated as an SPA. It was also recognised by the Commission that a portion of the site was threatened by pollution and deterioration resulting from several development projects. The ECJ ruled in favour of the Commission.

#### **2.6.1.7 Case C-143/02 – Commission v Italy**

This case relates to the Habitats Directive (92/43/EEC) and concerns the issue of the requirement for an assessment of plans and projects not directly connected with or necessary to the management of SACs, but which are likely to have a significant effect, under the Habitats Directive (Article 6). The Commission took action against the Italian Government for failure to properly implement the Habitats Directive. The Italian Government's measure transposing the Habitats Directive excluded projects other than those listed in the Italian legislation implementing the EIA Directives. The court ruled "the range of plans or projects potentially requiring assessment under Article 6(3) of the Habitats Directive is not circumscribed by reference to those plans or projects listed in the Schedules to the EIA Directives" (Linehan, 2005).

#### **2.6.1.8 Case C-127/02 Landelijke Vereniging tot Behoud van de Waddenzee, Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij, interveners: Coöperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij UA,**

This is perhaps one of the most significant ECJ rulings with respect to the application of appropriate assessment (AA) under the Habitats Directive. The case was referred to the ECJ from the Netherlands national court and concerned the licensing of cockle fishing. The ECJ considered cockle fishing to come within the definition of project under the EIA Directive (85/337/EEC) and so an activity covered by Art. 6 (3) of the Habitats Directive. Significantly, the court ruled that a requirement for AA is

conditional on there being a probability or risk that there will be a significant effect. The text of the judgement is instructive:-

Para 71 (3) (a) *“The first sentence of Article 6(3) of Directive 92/43 must be interpreted as meaning that any plan or project not directly connected with or necessary to the management of the site is to be subject to an appropriate assessment of its implications for the site in view of the site’s conservation objectives if it cannot be excluded, on the basis of objective information, that it will have a significant effect on that site, either individually or in combination with other plans or projects.”*

*(b) Pursuant to the first sentence of Article 6(3) of Directive 92/43, where a plan or project not directly connected with or necessary to the management of a site is likely to undermine the site’s conservation objectives, it must be considered likely to have a significant effect on that site. The assessment of that risk must be made in the light inter alia of the characteristics and specific environmental conditions of the site concerned by such a plan or project.”*

(Emphasis added)

In the judgement the court also states (at para. 43):-

*“It follows that the first sentence of Article 6(3) of the Habitats Directive subordinates the requirement for an appropriate assessment of the implications of a plan or project to the condition that there be a probability or a risk that the latter will have significant effects on the site concerned.”*

and at para. 47:-

*“So, where such a plan or project has an effect on that site but is not likely to undermine its conservation objectives, it cannot be considered likely to have a significant effect on the site concerned.”*

The implication of this judgement is not that AA will be required for all plans that might however indirectly affect a site, but that for a plan to be required to undergo AA, the probability or risk of a significant effect on the site needs to be determined. That probability is likely to decline the further up the decision-making hierarchy the plan is located. Furthermore, the judgement is clear that a likely significant effect (the trigger for AA) is considered to be where the site’s conservation objectives are likely to be undermined, in other words where there are negative effects, and not where there might be positive effects that might support the site’s conservation objectives. Positive effects and the absence of likely adverse effects of a plan or project would therefore appear to allow the requirement

for AA to be screened out (see para. 47 quoted above). This would be consistent with the spirit of the Directive in ensuring the integrity of the site concerned; the assessment after all is to ensure developments do not proceed if they are likely to have *adverse* effects.

### **2.6.1.9 Case C-06/04 – Commission v United Kingdom**

This case relates to the Habitats Directive (92/43/EEC) and the failure of the UK to transpose correctly certain Articles (Articles 6, 11, 12, 13, 14, 15, 16) of the Directive into national legislation (the court ruled in favour of the Commission). One of the complaints relates in particular to Article 6(3) and (4) in relation to measures necessary in order to protect SACs. More specifically, the complaint relates to the incomplete transposition of this Article in relation to water abstraction plans and projects and also to land-use plans. With reference to water abstraction projects/activities the Commission claimed that UK domestic law does not make provisions (in Northern Ireland or Gibraltar) for the significant effects, which water abstractions may have on sites forming part of a SAC. Under Article 6(3) an appropriate assessment must be undertaken for any plan or project not directly connected with or necessary to the management of the site, but which is likely to have significant effects to that site. Under UK legislation water abstraction plans and projects, which fall within the provisions of Article 6(3) are “deemed in advance to be potentially damaging for the site concerned”. The Commission claimed that while such “advanced assessment of potential risks can be based on concrete facts with regard to the site, that is not the case with regard to the projects themselves”, which is contrary to the provisions of Article 6(3) for which an appropriate assessment is required on a project’s implications for the site. Therefore, by simply defining potentially damaging operations i.e. plans and projects, for each particular site, there is a risk that “certain projects which on the basis of their specific characteristics are likely to have an effect on the site are not covered”.

With reference to land-use plans the Commission claimed that UK domestic laws did not require land-use plans to be subject to appropriate assessment in relation to their implications for SACs. The Commission states that while land-use plans do not authorise development as such they have “great influence on development decisions” and as a result must be subject to appropriate assessment. The UK argued that while land-use plans can be considered ‘plans and projects’ for the purposes of the Article, they would not have significant effects on protected sites. Also, such plans

“do not in themselves authorise a particular programme to be carried out” and as a consequence “only a subsequent consent can adversely affect such sites”. The ECJ had already ruled (in Case C-127/02) that the requirement for an appropriate assessment of the implications of a plan or project is “conditional on there being a probability or a risk that it [the plan or project] will have a significant effect on the site concerned...and that such a risk exists if it cannot be excluded on the basis of objective information that the plan or project will have a significant effect on the site concerned”. The Commission pointed out that under UK legislation the requirement for “applications for planning permission to be determined in the light of the relevant land-use plans” means that such plans may considerably influence decisions relating to development and on sites concerned, i.e. consent is unlikely to be withheld if consistent with the plan (or would be challengeable).

#### **2.6.1.10 Case C-290/03 – Ms Diane Barker v London Borough of Bromley; Case C-508/03 – Commission v UK**

Both these cases relate to the application of EIA of major projects during two stage planning procedures. The first case specifically relates to the interpretation of Articles 1(2), 2(1) and 4(2) of the EIA Directive (85/337/EEC) and concerns the grant of planning permission for the development of a leisure complex without an EIA having been carried out. In this case ‘outline planning permission’ was requested and granted, without the requirement for an EIA, but with certain matters reserved (‘reserved matters’) for subsequent approval before development should commence. Under UK legislation ‘outline planning permission’ constitutes ‘planning permission’, but decisions which approve reserved matters do not. As a result EIA can only be carried out at the initial outline planning permission stage and not at the later stage of approval of the reserved matters. In this case when it came to decisions being made on approval of reserved matters there was a request that an EIA be carried out, but this was rejected on the grounds that such an assessment could only be carried out at the initial outline planning stage. Through an appeal by Ms Barker the House of Lords referred a number of questions to the ECJ concerning the “compatibility with Community law of the [UK] national rules according to which an EIA can be carried out only at the outline planning permission stage and not when the reserved matters are subsequently approved”. A number of questions posed by the national court related to Articles 2(1) and 4(2) of the Directive and whether these Articles “are to be interpreted as requiring an EIA to be carried out if, following the grant of outline planning

permission, it appears at the time of approval of the reserved matters that the project is likely to have significant effects on the environment by virtue *inter alia* of its nature, size or location. The ECJ ruled that where the granting of planning consent comprises more than a one stage planning procedure and where during the second stage it appears that a particular project is likely to have significant environmental effects on the environment by virtue of its nature, size and location, then an EIA will be required.

Similarly, the second case also concerns interpretation of Articles 2(1) and 4(2) of the EIA Directive and makes reference to another retail and leisure development, for which outline planning permission was granted with reserved matters for subsequent approval. The case also includes the development project mentioned above (for which the planning permission expired without the project being carried out). In relation to these cases the Commission took action against the UK on a number of issues one of which was that the UK had infringed Articles 2(1) and 4(2) of the [EIA] Directive in that neither local planning authority carried out an EIA of the two development projects. The ECJ ruled that UK had indeed failed to properly transpose the two Articles into domestic law.

In essence these two cases highlight that “English planning law incorrectly allows for EIAs only before principal planning decisions and not subsequent implementing decisions” (ENDS, 2006).

#### **2.6.2 Examples of Irish cases**

The examples of Irish cases discussed below highlight a difference in interpretation between the Irish courts, in relation to EIA and designated areas, and the ECJ. The Irish cases below show a tendency towards supporting executive or developer discretion, e.g. in *Waddington v An Bord Pleanála and Minister for the Arts etc v Kennedy and others* respectively. In contrast, the ECJ cases above emphasise the purposive construction applied by the ECJ, which have, at the EU level, superseded these decisions of the Irish courts.

##### **2.6.2.1 *Berra Inshore Fishermans Cooperative Society Limited v Minister for the Marine and Others [unreported] (28 February 2001)***

This case involved the granting of trial licences for aquaculture without consideration that the licenses were granted for use within an area of river that was a proposed SAC. The application failed because the area in question was only formally proposed as a SAC shortly *after* the

decision to grant the aquaculture trial licenses. The technical timing of designations or proposed designations (under the Habitats Directive) in relation to applications for consent that may affect such designated sites can, therefore, be seen to be critical (Linehan, 2005).

#### **2.6.2.2 *McBride v Galway Corporation, [1998] IR 485 (24 Mar 1998)***

This case relates to both the EIA Directive (85/337/EEC) and the Habitats Directive (92/43/EEC). The case concerned the construction of a sewage drainage scheme near Galway, which included a new pumping station and treatment works at Mutton Island (in Galway Bay) and a causeway to enable access to the new pumping station from the mainland to the island, together with an outfall pipe for disposal of the sewage. Tenders for the construction of the pumping station were invited in 1983. Galway Corporation argued that it already held a licence in respect of sewage outfall, and was seeking to extend this licence in order to provide for the causeway (this would involve use of the foreshore). In 1989 an Environmental Impact Statement (EIS) was produced for the proposed scheme/development, and by 1990 an interim and informal license was granted to Galway Corporation. In 1991 it was decided, by the Department of the Environment, that the EIS produced in 1989 was inadequate and a new EIS was requested. The new EIS was submitted in 1992. A lease was granted for a term of thirty-five years from the 1<sup>st</sup> February 1996. In May 1996 the applicant, McBride, sought relief by way of judicial review against Galway Corporation on the grounds that essential steps required by law had not been followed and necessary legal requirements had not been fulfilled. In 1994 the inner Galway Bay area was designated as a special protection area (SPA) under the Birds Directive (79/409/EEC). The land area of Mutton Island was excluded from the SPA, but the entire inter tidal area between Salthill and Mutton Island was included in the SPA.

The applicant in this case claimed that the Galway Corporation had failed to comply with the provisions of Section 13A of the Foreshore Act 1933 which was inserted into the Irish EIA Regulations 1989 requiring that an application for the lease of the foreshore should be accompanied by an EIS. McBride claimed that once the 1989 EIA Regulations came into force on 1<sup>st</sup> February 1990, Galway Corporation made a ‘relevant application’ for the lease of the foreshore, but that this application was not accompanied by an EIS, and that the grant for the lease and activity were unlawful having regard to the direct application of the EIA Directive (85/337/EEC). It was also claimed that Galway Corporation had failed to comply with the

obligations of the Habitats Directive (92/43/EEC).

With regards the claim relating to EIA the court ruled that it did not believe that the 1989 EIA Regulations had a retrospective effect and did not accept the contention of McBride that if the 1985 EIA Directive had direct effect within Ireland between July 1988 and February 1990 (which in the judge’s opinion was not the case) then the precise terms and provisions of the 1989 EIA Regulations should be imputed or implied as having effect. The court also ruled that, as the Habitats Directive was not implemented in Ireland until 26<sup>th</sup> February 1997 (through the 1997 Habitat Regulations), the provisions of the Regulations were not applicable with regards the Galway Corporation sewage scheme. The court’s decisions would not appear to be consistent with ECJ rulings (above) on the Habitats Directive or on the direct effect of the EIA Directive (e.g. *C-72/95 Kraaijeveld*) (not discussed here).

#### **2.6.2.3 *Waddington v An Bord Pleanála - [2000] IEHC 100 (21<sup>st</sup> Dec. 2000)***

This case relates to the Irish Habitats Regulations 1997 (which implement the provisions of the Habitats Directive (92/43/EEC)), in particular Article 27 of the Regulations (which implement Article 6(3) and (4) of the Habitats Directive). Under this Article there is a requirement for planning authorities to carry out an assessment of the effects on any “European Site” (including SPAs and SACs) of a development that is “likely to have a significant effect”. In this particular case An Bord Pleanála had granted planning permission for the development of a 60-metre riverside quay extension. The main quay and proposed extension would be located on the boundary of the Boyne Estuary SPA. The applicant, Waddington, was seeking to quash the planning decision of An Bord Pleanála. According to Linehan (2005) there was no specific assessment as part of the planning application for the quay extension, but that an EIS had originally be submitted in 1996 along with the original planning application to enable the main quay to be built. This EIS was taken into consideration in this case. The court ruled in favour of An Bord Pleanála claiming that “the question of whether a development was likely to have a significant effect on the SPA was a matter for the Bord, and that only if the planning authority/Bord considered that there would be significant effects on the European Site was an assessment called for” (Linehan, 2005).

**2.6.2.4 *Minister for Arts, Heritage, the Gaeltacht and the Islands v Kennedy and others – [2001] IEHC 180 (20<sup>th</sup> Dec. 2001)***

This case also relates to the 1997 Habitats Regulations (which implement the Habitats Directive 92/43/EEC). In particular it relates to Article 17 of the Regulations - this enables Government Ministers to “take proceedings to halt operations or activities on European Sites (including SACs and SPAs), which are not connected with the management of such sites but are likely to have a significant effect” (Linehan, 2005). In this case the Minister sought “to halt the development of a golf course on a SAC and, while he [the Minister] relied on an assessment carried out by Duchas [the Heritage Service for Ireland], the exact wording of Article 17 speaks of an assessment being carried out “in view of the site’s conservation objectives”. No conservation objectives had been formulated for the site at that stage, nor had any Management Plan been prepared for the site (Linehan, 2005). The Judge in this case ruled in favour of Kennedy and others.

**Table 2.2: Comparison of the texts of the six Directives**

<b>Issue</b>	<b>Water Framework Directive</b>	<b>EIA Directive<sup>14</sup></b>	<b>SEA Directive<sup>15</sup></b>	<b>Public Participation Directive</b>	<b>Birds Directive</b>	<b>Habitats Directive</b>
<b>Title</b>	Directive...establishing a framework for Community action in the field of water policy	Directive...on the assessment of the effects of certain public and private projects on the environment	Directive...on the assessment of the effects of certain plans and programmes on the environment	Directive...providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment...	Directive...on the conservation of wild birds	Directive...on the conservation of natural habitats and of wild fauna and flora
<b>Objectives</b>	Art. 1 – specifies “purpose” of the Directive [Art. 1(e) mentions “achieving the objectives of relevant international agreements”]  Art. 4 – details ‘environmental objectives’ in relation to the operation of the programme of measures	Although Art. 1(5) refers to “the objectives of this Directive” these are not explicitly set out	Statement of objectives (first part Art. 1)	Statement of objectives – Art. 1	No specific statement of objectives, although Art. 1 outlines what the Directive relates to	No specific statement of objectives, although Art. 2(1) refers to the “aim” of the Directive
<b>Definitions</b>	Art. 2: - “surface water” - “groundwater” - “inland water” - “river” - “lake” - “transitional waters” - “coastal water” - “artificial water body” - “heavily modified water body” - “aquifer” - “body of groundwater” - “river basin” - “sub-basin” Contd. on next page...	Art. 1(2): - “project” - “developer” - “development consent” - “ <i>the public</i> ” - “ <i>the public concerned</i> ”	Art. 2: - “plans and programmes” - “environmental assessment” - “environmental report” - “the public”	Art. 2(1): - “public”	No definitions provided	Art. 1: - “conservation” - “natural habitats” - “natural habitat types of Community interest” - “priority natural habitat types” - “conservation status of a natural habitat” - “habitat of a species” - “species of Community interest” Contd. on next page...

<sup>14</sup> The text in these two columns is taken from a comparison between the EIA and SEA Directive in the following study:  
Sheate, W., Byron, H., Dagg, S., and Cooper, L. (2005) The Relationship between the EIA and SEA Directives – Final Report to the European Commission, Imperial College London Consultants, August 2005.

\* Text in italics show amendments introduced by the ‘Public Participation Directive’

Issue	Water Framework Directive	EIA Directive	SEA Directive	Public Participation Directive	Birds Directive	Habitats Directive
<b>Definitions contd.</b>	<ul style="list-style-type: none"> <li>- “river basin district”</li> <li>- “competent authority”</li> <li>- “surface water status”</li> <li>- “good surface water status”</li> <li>- “groundwater status”</li> <li>- “good groundwater status”</li> <li>- “ecological status”</li> <li>- “good ecological status”</li> <li>- “good ecological potential”</li> <li>- “good surface water chemical status”</li> <li>- “good groundwater chemical status”</li> <li>- “quantitative status”</li> <li>- “available groundwater resource”</li> <li>- “good quantitative status”</li> <li>- “hazardous substances”</li> <li>- “priority substances”</li> <li>- “pollutant”</li> <li>- “direct discharge to groundwater”</li> <li>- “pollution”</li> <li>- “environmental objectives”</li> <li>- “environmental quality standard”</li> <li>- “combined approach”</li> <li>- “water intended for human consumption”</li> <li>- “water services”</li> <li>- “water use”</li> <li>- “emission limit values”</li> <li>- “emission controls”</li> </ul>					<ul style="list-style-type: none"> <li>- “priority species”</li> <li>- “conservation status of a species”</li> <li>- “site”</li> <li>- “site of Community importance”</li> <li>- “special area of conservation”</li> <li>- “specimen”</li> <li>- “the committee”</li> </ul>
<b>Scope</b>	Art. 3(1) & Art. 4(1)	Art. 4	Art. 3	Arts. 2(2), 2(3), 2(4) & 2(5)	Art. 4	Art. 4

<b>Issue</b>	<b>Water Framework Directive</b>	<b>EIA Directive</b>	<b>SEA Directive</b>	<b>Public Participation Directive</b>	<b>Birds Directive</b>	<b>Habitats Directive</b>
<b>Measures to be adopted</b>	Art. 4(1), Art. 11, Annex VI & Annex VIII	Art. 2(1), Art. 5(1) & 5(2), Art. 6 & Annex IV	Art. 7(2) & Annex I		Art. 2, Art. 3(1), Art. 4(1) & 4(2) & Art. 5	Art. 6(1), Art. 8(4), Art. 12(1), Art. 13(1), Art. 14 (1) & 14(2)
<b>Exemptions</b>	Art. 4(6) – mentions “temporary deterioration in the status of bodies of water” not being a breach of the requirements of the Directive if “this is the result of circumstances of natural cause or force majeure...”	Arts. 1(4), 1(5) & 2(3) <i>Arts. 1(4) &amp; 2(3)</i>	Arts. 3(8) & 3(9)	Arts. 2(4) & 2(5)	Art. 1(3),	No exemptions specified
<b>The assessment of the types of effects to be considered</b>	Art. 1(e) refers to “mitigating the effects of floods and droughts”  Art. 4(3)(a) when a body of surface water is designated as artificial or heavily modified and where changes to the hydro-morphological characteristics would have “significant adverse effects on...”  Art. 4(6)(d)&(e) “effects of the circumstances”  Art. 9(1) when recovering the costs of water services regard should be given to “the social, environmental and economic effects”	Art. 3 the EIA “shall identify, describe and assess...the direct and indirect effects of a project...”  Annex IV – types of effects	Art. 5(1) in the environmental report “the likely significant effects on the environment...should be identified, described and evaluated.”  Annex I – types of effects	In the context of amendments to Directive 85/337/EEC:  Art. 3(5)(a), 3(6)(a)	Only mention of ‘effects’ in the context of the “effects of marketing on such status” Art. 6(4) [i.e. biological status]  Art. 1(1)	Art. 6 (3) refers to an ‘appropriate assessment’ of the likely significant effects of plans or projects not directly connected with the site, in view of the site’s conservation objectives. The integrity of the site should not be adversely affected.
<b>Elements of environment to be considered</b>	4(3)(a) refers to analysis of characteristics for each river basin district	Art. 3	Annex I (f)		Art. 1(2)	
<b>Alternatives/ Options</b>	Art. 11 & Annex III	Art. 5(3) & Annex IV	Art. 5(1), Art. 9(1)(b) & Annex I			Art. 6(4) & Art. 16(3)
<b>Environmental Information / report</b>	Art. 13 requires the production of a “river basin management plan” for each	Art. 5 – refers to the information, which must be provided, the	Art. 5 contains provisions to the environmental report.		Art. 12 – only mentions reporting in the context of	Art. 4(1) requires Member States to produce a “list of

<b>Issue</b>	<b>Water Framework Directive</b>	<b>EIA Directive</b>	<b>SEA Directive</b>	<b>Public Participation Directive</b>	<b>Birds Directive</b>	<b>Habitats Directive</b>
	river basin district  Annex VII contains a list of information to be included in the RBMP	phrase “environmental report” is not used.  Annex IV contains a list of information. Art. 5(3) the minimum information needed	Annex I contains a list of information		Member States submitting “a report on the implementation of national provisions...” to the Commission	sites” based on criteria set out in Annex III (Stage 1)  Art. 16(2) & 16(3) – report on derogations  Art. 17(1) requires Member States to “draw up a report on the implementation of measures...”
<b>Public/ Authority Input</b>	Art. 3(2)  Art. 14 makes provision for “public information and consultation” – encourages “active involvement of all interested parties”	Art. 6 splits consulting authorities and public input into separate provisions  <i>Art. 6 amended by ‘public participation Directive’</i>	Art. 6 deals with consultation of authorities and the public in the same provisions	Arts. 2(2) & 2(3)	No mention of consultation	Art. 5 refers to a “bilateral consultation procedure”  Art. 17(1)  Art. 22(a) makes specific reference to “proper consultation of the public concerned” in the context of re-introducing species
<b>Transboundary consultation</b>	Arts. 3(3), 3(4) – refers to “international river basin districts” where a river basin covers the territory of more than one Member State	Art. 7  <i>Art. 7 amended by ‘public participation Directive’</i>	Art. 7	Art. 3(5)(a) – In the context of amendments to Directive 85/337/EEC		
<b>Decision-making</b>	Art. 3 – refers to the identification of appropriate competent authorities	Art. 8	Art. 8			
<b>Information on decision</b>		Art. 9  <i>Art. 9 amended by ‘public participation Directive’</i>	Art. 9	Art. 3(6) – In the context of amendments to Directive 85/337/EEC		
<b>Commercial confidentiality</b>		Art. 10				

<b>Issue</b>	<b>Water Framework Directive</b>	<b>EIA Directive</b>	<b>SEA Directive</b>	<b>Public Participation Directive</b>	<b>Birds Directive</b>	<b>Habitats Directive</b>
<b>Access to review procedure</b>		<i>New Art. 10(a) introduced by 'public participation Directive'</i>				
<b>Monitoring</b>	Art. 8 – requirement to establish a 'programme for the monitoring of water status'  Annex V (1.3)		Art. 10			Art. 11 – refers to surveillance of...natural habitats and species  Art. 12(4) – monitoring incidental capture and killing of an animal species
<b>Environmental quality standards</b>	Preamble (40) & (42), Art. 7(2), Art. 11(5), Art. 16		Art. 3(5) & Annex II			
<b>Pollution prevention and control</b>	Preamble (40), Art. 1, Art. 4(1), Art. 11(3), Art. 16 & Art. 17				Art. 4(4)	
<b>Relationship with other Community legislation</b>	Art. 4(8) & 4(9)  Art. 11 (3a)	Art. 2(2a)	Art. 11	Art. 1(b)		
<b>Information, reporting and review</b>	Art. 15 – requirements of Member States to report to the Commission Art. 18 – Commission reporting requirements	Art. 11	Art. 12		Art. 12(1)	
<b>Implementation</b>	Art. 24	Art. 12	Art. 13	Art. 6	Art. 18	Art. 23
<b>Entry into force</b>	Art. 25	Art. 13	Art. 14	Art. 7		
<b>Addressees</b>	Art. 26	Art. 14	Art. 15	Art. 8	Art. 19	Art. 24
<b>Objects requiring mandatory assessment</b>	Annex V – provisions to be fulfilled for the operational programme of measures in relation to surface waters  Art.(6) & Annex IV – requires mandatory register of protected areas; including those covered by the 'Birds Directive', 'EIA	Annex I  <i>Amended by 'public participation Directive'</i>	Art. 3(2)		Art. 4(1) – species subject to special conservation measures	Art. 4

Issue	Water Framework Directive	EIA Directive	SEA Directive	Public Participation Directive	Birds Directive	Habitats Directive
	Directive', and 'Habitats Directive'					
<b>Objects requiring screening</b>		Annex II <i>Amended by 'public participation Directive'</i>	Art. 3(3) & 3(4)			Annex I & II
<b>Screening criteria</b>		Annex III	Annex II			Annex III
<b>Information / ER contents</b>	Annex VII	Annex IV	Annex I			Art. 16(3) – reports on derogations
<b>Key transposing legislation in Ireland</b>	European Communities (Water Policy) Regulations 2003 (S.I. No 722/2003)	European Communities (Environmental Impact Assessment) Regulations 1989 (S.I. No. 349/1989); European Communities (Environmental Impact Assessment) (Motorways) Regulations 1988 (S.I. No. 221/1988); Planning and Development Regulations 2001 (S.I. No. 600/2001); Planning and Development Regulations 2005 (S.I. No. 346/2005)	European Communities (Environmental Assessment of Certain and Programmes) Regulations 2004 (S.I. No. 435/2004); Planning and Development (Strategic assessment) regulations 2004 (S.I. No. 436/2004).	Planning and Development Regulations 2005 (S.I. No 346/2005) Planning and Development (Strategic Infrastructure) Act 2006 (s.13).	European Communities (Conservation of Wild Birds) Regulations (S.I. No. 291/1985, plus individual regulations implementing SPA designations.	EU (Natural Habitats) Regulations 1997 (S.I. No. 94/1997)

### 3 Stakeholder survey and selection of case studies

#### 3.1 Survey approach

Task 2 involved contacting a number of stakeholders (59 in total) who are either directly/indirectly involved/interested in the WFD process in Ireland. These stakeholders included government officials, WFD practitioners and academics.

Initial contact was made via a short e-mail survey designed to gather further information on key issues of concern about overlaps and linkages among the Directives, and to help in identifying potential case studies for further detailed investigation. The survey included three simple questions:

- Any *issues of concern* regarding the relationship of the WFD with areas such as the application of environmental assessment (EIA and/or SEA), public involvement, or protected areas?
- Any *examples of overlaps* between these Directives, as applied within River Basin Districts, which are considered to be important?
- Any *case study examples*, which illustrate potential overlaps within individual River Basin Districts?

The e-mail survey was successful with 21 direct responses to the email survey, plus an additional five respondents who provided further information. The results of the survey largely supported the findings from the textual analysis and

the literature review, but began to provide some real examples of where the overlaps and any potential problems might arise. Table 3.1 below summarises the key issues identified from the survey respondents. Table 3.2 lists the organisations contacted through this survey (note: only those who responded to the survey are listed) and in connection with the case studies (Task 3).

Also, from the survey, a number of potential case studies were identified and drawn up into a short list for selection in discussion with the Steering Group. Given the stage of implementation of the WFD, and the complicated interactions between the Directives, three case studies were selected, each with the potential to highlight different sets of interactions between the WFD and the other Directives. This ensured that even within the limited scope of a six month research project the most important issues were examined in more depth through the case studies, and without undue duplication of effort in each. Table 3.3 lists the initial short list of case studies and highlights the top three chosen for further investigation (Greater Dublin Water Supply, Loch Corrib, and International RBDs). These are discussed in detail in Chapter 4 below.

**Table 3.1 - Key issues identified by stakeholder survey**

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<ul style="list-style-type: none"> <li>• Confusion of the public over the different consultation processes likely to occur;</li> <li>• Availability of resources for better public consultation;</li> <li>• Difficulty of engaging the public;</li> <li>• Sectoral interests likely to succeed in generating a negative image for WFD implementation;</li> <li>• Need for 'review' of the RBMP process following adoption;</li> <li>• Confusion over hierarchy of plans and programmes of measures;</li> <li>• Integration of other plans e.g. development plans with the RBMP;</li> <li>• Consideration of alternatives or lack of;</li> <li>• How SEA will work within the WFD process;</li> <li>• Possibility that preparation of RBMPs will mirror quite closely the SEA process in preparing an environmental report – cutting out duplicity and waste of resources;</li> <li>• Restriction of protected areas list to European designated sites – sites of regional/local interests could be ignored as a result;</li> </ul>	<ul style="list-style-type: none"> <li>• Possible use of same consultants in both the WFD and SEA processes in terms of preparation of environmental reports;</li> <li>• Still evolving SEA process;</li> <li>• Considerable sharing of resources between Directives;</li> <li>• Majority of existing legislation relates to human health, while WFD is largely focused on environmental issues – this could lead to misconception and result in more stringent standards than currently exist and debate during public participation;</li> <li>• Lack of sites specifically designated to waterway birds;</li> <li>• Lack of appropriate long-term administrative structures for comprehensive management of water resources i.e. beyond the life of current RBD management projects;</li> <li>• All the requirements flowing from different Directives, resulting in bulky documents and duplication of information. Especially in relation to environmental impact statements with lack of clarity and public unable to interpret information.</li> </ul>
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**Table 3.2 - Survey respondents and case study contacts**

<b>TASK 2: SURVEY RESPONSES</b>		<b>TASK 3: CASE STUDY CONTACTS</b>	
<b>Colin Byrne</b>	Water Inspectorate, DoEHLG	<b>Colin Byrne</b>	<b>Case Study 1</b>
<b>Enda Thompson</b>	Project Co-ordinator, Shannon RBD Project	<b>David Ryan</b>	Water Inspectorate, DoEHLG Dublin City Council
<b>Aine O'Connor</b>	NPWS, DoEHLG	<b>Enda Thompson</b>	Shannon RBD Co-ordinator
<b>Olivia Crowe</b>	BirdWatch Ireland	<b>Yvonne Scannell</b>	Trinity College Dublin
<b>Maire NiChionna</b>	Environment Section, Galway County Council	<b>Tadhg O'Mahony</b>	EPA
<b>Beatrice Kelly</b>	Heritage Council	<b>Ray Earle</b>	ERBD Co-ordinator
<b>Garrett Kilroy</b>	EPA	<b>Crona Sheehan</b>	RPS Group
<b>Ray Earle</b>	Project Co-ordinator, ERBD		
<b>Sinead O'Brien</b>	SWAN	<b>Jim Ryan</b>	<b>Case Study 2</b>
<b>Martin McGarrigle</b>	EPA	<b>Áine O'Connor</b>	DoEHLG
<b>Geoff Wright</b>	GSI	<b>Rebecca Jeffrey</b>	National Parks & Wildlife Service, DoEHLG
<b>Matthew Craig</b>	EPA	<b>Dr Deirdre Lynn</b>	National Parks & Wildlife Service, DoEHLG
<b>Tom Tarpey</b>	Environment Section, Limerick County Council	<b>Olivia Crowe</b>	BirdWatch Ireland
<b>Elizabeth Sides</b>	NPWS, DoEHLG	<b>Maire NiChionna</b>	Galway County Council
<b>Sean O Breasail</b>	Project Co-ordinator, SWRBD		
<b>PJ Shaw</b>	Department of Communications, Marine and Natural Resources (DCMNR)	<b>Tony McNally</b>	<b>Case Study 3</b>
<b>Cliona Ni Eidhin</b>	SERBD		NS-Share Project Co-ordinator
<b>Tim O'Hanrahan</b>	Environment Section, Monaghan County Council		
<b>Gearoid O Riain</b>	Compass Informatics	<b>Paul Johnston</b>	<b>Others</b>
<b>Lisa Sheil s</b>	Project Co-ordinator, SERBD	<b>Lisa Sheils</b>	Trinity College Dublin
<b>Paul Scott</b>	Scott Cawley Consultants	<b>Crona Sheehan</b>	SERBD Project Co-ordinator RPS Group Ltd
<b>Others</b>			
<b>Aine Ryall</b>	University College Cork		
<b>Donal Daly</b>	GSI		
<b>Helen Boland</b>	BirdWatch Ireland		
<b>John Mulholland</b>	Carlow County Council		
<b>Keiron Phillips</b>	CDM		
<b>Patricia Power</b>	Cork County Council		

**Table 3.3 - Short list of potential case studies (\* not selected)**

Rank	Case Study	Brief Summary
1	<b>Greater Dublin Water Supply Strategic (Proposed strategic water supply source for Dublin) – Abstraction of Water from the Shannon to Dublin</b>	<p>This water abstraction project would involve two river basin districts – Shannon RBD and the Eastern RBD. The case study could help illustrate possible overlaps between the WFD (RBMPs and POMs) and the EIA and SEA Directives. Several issues could be examined in this case:</p> <ul style="list-style-type: none"> <li>• The application of Environmental Assessment to this plan/project (an SEA is currently being undertaken by RPS Consultants),</li> <li>• The possible overlap between SEA being carried out on the GDWSS and on the RBMPs/POMs for each RBD,</li> <li>• Co-ordination/administration of bodies involved e.g. relevant authorities within each RBD.</li> </ul>
2	<b>Lough Corrib, Galway</b>	<p>Loch Corrib is designated as a Special Area of Conservation (SAC) under the Habitats Directive. The Loch also supplies water to East Galway and Galway city, as well as being an important area for tourism and angling. The Loch is within the Western RBD. Galway County Council is the coordinating authority for some local authority responsibilities in this RBD. Most of Loch Corrib falls within the administrative area of Galway County Council, with some in Mayo County Council and a small area within Galway City Council. The case study could help illustrate possible overlaps between the WFD (RBMPs and POMs) and the Birds and Habitats Directives. Several issues could be examined in this case:</p> <ul style="list-style-type: none"> <li>• The possible overlap between SEA carried out for RBMP and/or POMs under the WFD and ‘appropriate assessment’ carried out under requirements of the Habitats Directive,</li> <li>• Linkages between the achievement of ‘favourable conservation status’ (Habitats Directive) and ‘good ecological status’ (WFD),</li> <li>• Issue of ‘human activity’ under the WFD and its impact on Loch Corrib</li> <li>• Co-ordination/administration of bodies involved.</li> </ul>
3	<b>North Western International RBD or Neagh Bann International RBD</b>	<p>Either of these River Basin Districts could be used to help illustrate possible issues in relation to:</p> <ul style="list-style-type: none"> <li>• Consultation in transboundary context (use of SEA to strengthen WFD in this regard or vice versa)</li> <li>• Administration/co-ordination between bodies</li> <li>• Baseline data co-ordination of</li> </ul> <p>If overlaps between the WFD and the Habitats Directive were considered for this particular case study the North Western IRBD would be most relevant as it has the greatest number of protected areas under the Habitats Directive (77 SACs and 27 SPAs, 7 river water bodies, and 1 lake water body).</p>
4*	<b>Road Construction Projects e.g. M7 Kildare by-pass</b>	<p>A project that has already taken place but could be used to illustrate the possible overlaps between the WFD, EIA and the Birds and Habitats Directive, should a similar project occur in the future. This project involved the construction of the M7 Kildare by-pass, which resulted in changes in the sand and gravel aquifer that feeds Pollardstown Fen [A Fen is a wetland with a permanently high water level at or just below the surface] (The Pollardstown Fen is a national Nature Reserve of 220 hectares and is an area of international importance - the Fen system is now rare in Ireland and Western Europe). Drying of the Fen margins has occurred (through monitoring) as a result, and this has affected populations of species (<i>Vertigo geyeri</i>) listed under the Birds and Habitats Directives (Annex II species). The Pollardstown Fen is located within the South Eastern RBD. Several issues could be examined in this case:</p> <ul style="list-style-type: none"> <li>• The possible overlap between the WFD and EIA (particularly in terms of baseline data)</li> <li>• Overlap between WFD and Birds and Habitats Directives (protected areas)</li> </ul>
5*	<b>SERBD – River Nore</b>	<p>The <i>Margaritifera</i> species is found within several RBDs (SERBD, WRDB, Shannon RBD, SWRBD, and NWRBD). There are two <i>Margaritifera</i> species recognised in Ireland under the Habitats Directive: the more widespread <i>Margaritifera margaritifera</i>, and the endemic <i>Margaritifera durrovensis</i>. The <i>Margaritifera durrovensis</i> is only found on the River Nore, Co. Kilkenny (within the SERBD). It is in serious decline, mainly due to eutrophication and siltation. Concentrating on <i>Margaritifera durrovensis</i>, the SERBD project could be used as a case study to help illustrate:</p> <ul style="list-style-type: none"> <li>• Possible overlaps between the WFD and the Habitats Directive, particularly the issue of favourable conservation status under the Habitats Directive (currently no Irish population has this status) and good ecological status under the WFD.</li> <li>• Investigate possible issues relating to POMs and the setting of ‘stringent’ thresholds for this species.</li> </ul>

## 4 Case Studies of interaction between the WFD and other Directives

### 4.1 Introduction

Through detailed review of the texts of each of the Directives, relevant literature and the stakeholder survey (Table 3.1 above) a number of key areas of interaction between the Directives were identified (summarised in Table 4.1). With reference to these key areas of overlap and issues of concern a number of case studies were identified which could provide illustrative (rather than representative) cases of where the WFD is most likely to interact with other key Directives in Ireland. An initial list of five potential Case Studies was chosen. However, due to a number of constraints, particularly in relation to time, availability of appropriate resources and responsiveness of stakeholders, it was decided that three studies would be investigated.

Rather than cover all areas of overlaps within each case study, it was decided that a number of specific issues would be dealt with within each particular study area. For example, Case Study 1 addressed issues in relation to the WFD and Environmental Assessment Directives; Case Study 2 addressed issues in relation to the WFD and the Birds and Habitats Directives, while Case Study 3 addressed specific issues in relation to transboundary consultations, particularly between the WFD and SEA Directive.

For the purposes of this study a number of assumptions were made:

- River Basin Management Plans will be subject to Strategic Environmental Assessment.
- The lead authority, within a river basin district, responsible for co-ordinating the production of the RBMP will also be responsible for carrying out SEA of the plan.
- The WFD is being implemented as scheduled in Irish legislation - European Communities (Water Policy) Regulations 2003 (S.I. No. 722/2003)
- POMs and RBMPs will be produced initially as one document.

It should be noted that, where relevant, two aspects are presented for each case study:

1. An example of possible interactions/overlaps between directives during current timescales of implementing the WFD [i.e. a current scenario].
2. A generic example of possible interaction/overlap between directives, making the assumption that the WFD has been implemented and RBMPs produced [i.e. a future scenario].

**Table 4.1 – Main areas of interaction between Directives**

<ul style="list-style-type: none"> <li>• Baseline information / data collection</li> <li>• Application of environmental assessment</li> <li>• Public / authority involvement</li> <li>• Role of competent authorities</li> <li>• Monitoring provisions</li> <li>• Protected areas</li> <li>• Appropriate assessment</li> </ul>	<ul style="list-style-type: none"> <li>• Consideration of options / Reasonable alternatives</li> <li>• Derogations /exemptions</li> <li>• Promotion of sustainability</li> <li>• Less stringent environmental objectives</li> <li>• Human activity</li> </ul>
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## 4.2 Case Study 1: Dublin Region Water Supply Major Source Development Project

### 4.2.1 Background

A study entitled the 'Greater Dublin Water Supply Strategic Study', commissioned in 1995 by the Department of the Environment (now the Department of Environment, Heritage and Local Government (DoEHLG)) and completed in 1996, looked at the demand for and supply of water in the greater Dublin region (Enfo, undated (a)). The objective of the study was to establish a water supply Master Plan for the greater Dublin region over a 20-year period. The study not only examined the potential to further develop existing main sources of water, but also the potential for development of new sources, including the river Shannon. It was recognised that sources furthest away from Dublin would incur high costs and involve various environmental issues (Kildare County Council, undated). The development of sustainable water resources, particularly in the Dublin Region, is recognised as presenting an enormous challenge, in which the Government is investing €1 billion (Institution of Engineers of Ireland, 2005). The Dublin Region Water Supply Major Source Development Project aims to provide an additional 300 million litres of water per day to the Greater Dublin Water Supply Area within approximately 10 years (Ryan, Pers. Comm., 2006). In 2005 the DoEHLG requested Dublin City Council to procure the services of a Service Provider (in this case a consultancy – referred to from this point as 'the Consultancy') to carry out a Feasibility Study and Preliminary Report for the Dublin Region Water Supply Major Source Development Project, with three possible options for new sources of water: River Shannon with abstractions from Lough Ree; River Barrow/Slaney in a conjunctive use with the Poulaphouca Reservoir (later dropped as unfeasible); and Desalination in the Irish Sea (Dublin City Council, undated). The Feasibility Study (which includes the development strategy) aims to identify and assess these source options, which will be followed by a Preliminary Report (due to be submitted to the DoEHLG by end of November 2007), which will in turn recommend a major new water source (Ryan, Pers. Comm., 2006).

It was determined that the development of a major new water source for Dublin i.e. the development strategy, could be considered a Strategic Water Management Plan or Programme under the requirements of the SEA

Directive and Regulations, so it was decided that an SEA would be carried out on the draft feasibility study (of the two remaining options). The SEA process started in January 2006 and was due to be completed in July 2006. The environmental report (ER) was published in May 2006 (close to the end of this research). It is likely that the most feasible option would also require an EIA. The River Shannon abstraction project, for example, would entail water being abstracted from Lough Ree on the River Shannon and brought across via a pipeline to the Greater Dublin Water Supply Area, and include the development of a water storage reservoir, pumping stations and 80 miles of transmission infrastructure. However, a solution is unlikely to be completed until 2016.

For the purposes of this case study it was decided that the option of abstracting water from the River Shannon would be used to help illustrate the various overlaps that may occur between the relevant Directives. It is likely that this water abstraction project would affect several counties in Ireland and fall within the boundaries of both the Shannon and the Eastern River Basin Districts. This, therefore, presents various potential links between the environmental assessments carried out for this project and the requirements under the WFD. These issues and others are explored in more detail below.

For the proposed project, water would be abstracted from Lough Ree on the River Shannon and brought across via a pipeline to the Greater Dublin Water Supply Area (this area consists of county councils for Dublin City, Dunlaoghaire-Rathdown, Fingal, South Dublin, East and West Wicklow, Mid and North Kildare, and South Eastern Meath). In addition it is likely that the project would affect counties Westmeath (which borders Lough Ree) and Offaly. As already mentioned, the proposed project is also likely to fall within two River Basin Districts (RBDs): Shannon River Basin District and the Eastern River Basin District. These two RBDs are outlined in Figure 4.1:-

*Shannon River Basin District (SRBD)* – This is the largest RBD in Ireland covering over 18,000 km<sup>2</sup>, and consists of 18 local authorities, with the lead authority, responsible for coordinating the River Basin Management Plan (RBMP) process, being Limerick County Council. Three County Councils (Limerick, Clare and Roscommon) act as lead authorities on behalf of the 18 local authorities. The

SRBD has 884 river water bodies<sup>15</sup>, 113 lake water bodies (Lough Ree being one of the principal lakes along the Shannon River), 242 groundwater bodies, 20 transitional water bodies and 11 coastal water bodies (SIRBD, 2005). It is worth noting that Lough Ree is the third largest lake in Ireland, and the second of the great lakes on the River Shannon. It is designated as a Special Area of Conservation (SAC) and Special Protection Area (SPA), due to its high ornithological importance for wintering and breeding birds.

*Eastern River Basin District (ERBD)* – This RBD covers an area of land 6,263km<sup>2</sup> and consists of 13 territorial (city, county and borough) authorities including Dublin City (CDM, 2004). The authority responsible for managing the RBMP process is Dublin City Council. Three other County Councils (Kildare, Meath, and Wicklow) act at lead authorities on behalf of the 13 local authorities. The ERBD contains a total of 478 water bodies, which includes 356 river water bodies, 26 lake water bodies, 75 groundwater bodies, 13 transitional water bodies and 8 coastal water bodies (CDM, 2005).

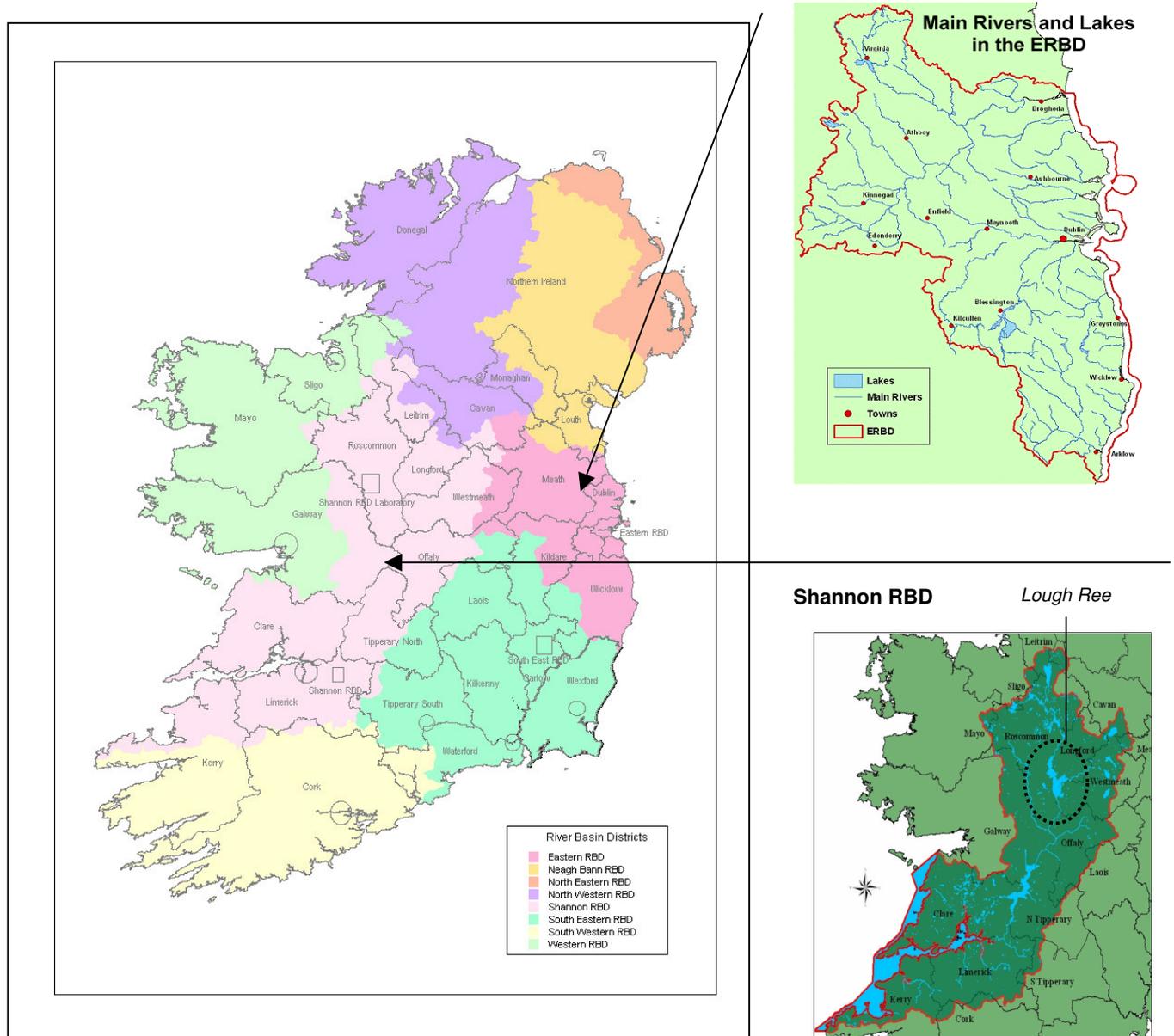
The possible effects of the development strategy and the WFD implementation process, on relevant counties and regions in Ireland are explained in more detail later. To provide clarity the following figures illustrate the location of the relevant counties (Figure 4.1), and regional (Figure 4.2) and local (Figure 4.3) authorities for this particular Case Study.

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<sup>15</sup> The implementation of the WFD requires all water bodies to be assigned to a category, e.g. river, lake, transitional, coastal or ground waters.

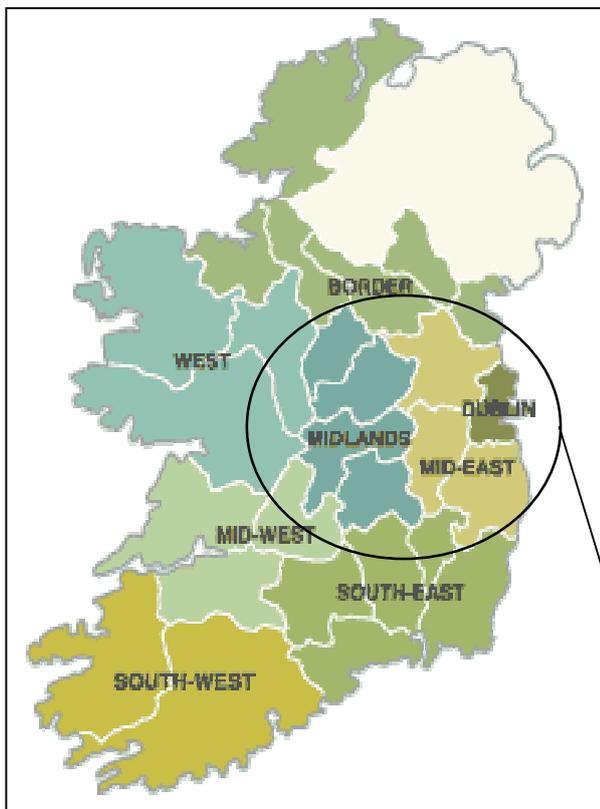
### 4.2.2 Geographical context

Figure 4.1 – Location of River Shannon, Lough Ree & relevant River Basin Districts



Sources: WFD Ireland ([www.wfdireland.ie](http://www.wfdireland.ie)); ERBD ([www.erbd.ie](http://www.erbd.ie)); Shannon RBD ([www.shannonrbd.com](http://www.shannonrbd.com))

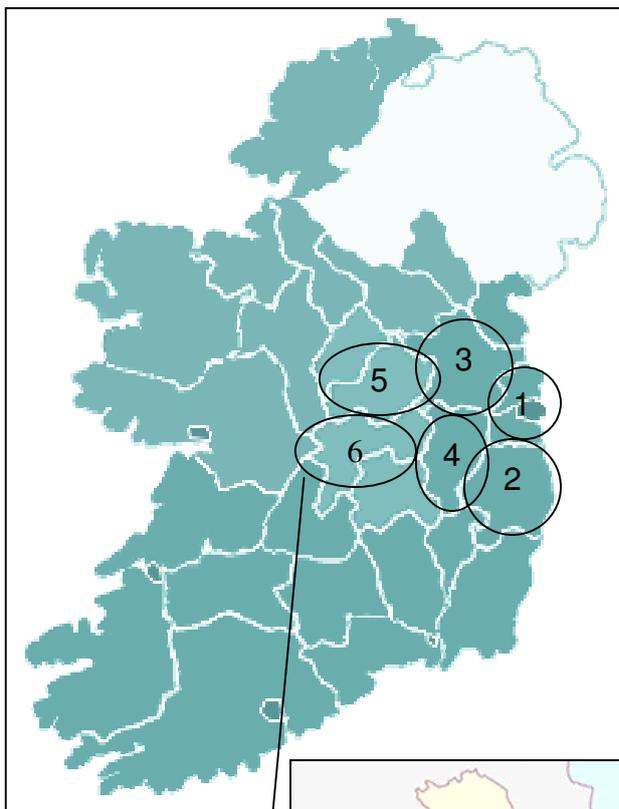
**Figure 4.2: Regional Planning Authorities**



Source: Irish Regions Office ([www.iro.ie/regional\\_authorities.html](http://www.iro.ie/regional_authorities.html))

The Regional Authorities (RAs) relevant to this case study include:  
 - Dublin RA  
 - Mid-East RA  
 - Midland RA  
Note: Dublin and Mid-East RA constitute the Greater Dublin Area Regional Authority

**Figure 4.3: Local Authorities (County Councils)**



1. Dublin  
 2. Wicklow  
 3. Meath  
 4. Kildare  
 5. West Meath  
 6. Offaly  
Note: Counties 1, 2, 3 & 4 constitute the Greater Dublin Area Authorities



**4.2.3 Relevant legislation**

As mentioned above it was decided by the Consultancy that the development of a major new water source for Dublin could be considered a Strategic Water Management Plan or Programme under the requirements of the SEA Directive and Irish SEA Regulations. As a result an SEA is being carried out on the development strategy of the two main options: abstractions from Lough Ree on the River Shannon, and desalination in the Irish Sea. The decision to carry out an SEA can be based on the following relevant legislation:

- Article 3(2) of the *SEA Directive* (2001/42/EC) specifies:

“Subject to paragraph 3, an environmental assessment shall be carried out for all plans and programmes,

- (a) which are prepared...for water management..., and which set the framework for future development consent of projects listed in Annexes I and II to Directive 85/335/EEC, or
- (b) which, in view of the likely effect on sites, have been determined to require an assessment

pursuant to Article 6 or 7 of Directive 92/43/EEC.”

- The Irish SEA *Regulations S.I. No 435/2004* [European Communities (Environmental Assessment of Certain Plans and Programmes) Regulations 2004] cover plans and programmes as listed in Article 3(2) of the SEA Directive. Article 9(1) of these Regulations relates to the requirement to carry out environmental assessment. Specifically the Article states:  
“Subject to sub-article (2), an environmental assessment shall be carried out for all plans and programmes:
  - (a) which are prepared for...water management..., and which set the framework for future development consent of projects listed in Annexes I and II to the Environmental Impact Assessment Directive, or
  - (b) which are not directly connected with or necessary to the management of a European site but, either individually or in combination with other plans, are likely to have a significant effect on any such site.”

Not only is the new water source for Dublin considered a water management plan or programme, but the requirement for an SEA under the Regulations (435/2004) was also made on the basis that (a) the provision of a new water source for Greater Dublin will provide opportunities for future developments that would require EIA both in the Greater Dublin Water Supply Area and any areas that are served along the route of the proposed pipeline, and (b) the potential sources of Lough Ree on the River Shannon and Dublin Bay, are both European Sites<sup>16</sup>.

Following the requirements for an SEA it is likely that any subsequent project (assumed for the purposes of this study to be the River Shannon option, i.e. the pipeline transporting water from Lough Ree on the river Shannon to the Greater Dublin Area), will require planning

<sup>16</sup> Article 2(3) of Regulations S.I. No 435/2004 state that “European site” means: “(a) a site (i) notified for the purpose of Regulation 4 of the European Communities (Natural Habitats) Regulations, 1997 (S.I. No 94 of 1997)...(b) a site adopted by the Commission as a site of Community importance for the purposes of Article 4(2) of the Habitats Directive in accordance with the procedure laid down in Article 4(2) of that Directive, (c) a special area of conservation within the meaning of the European Communities (Natural Habitats) Regulations, 1997, (d) an area classified pursuant to paragraph (1) or (2) of Article 4 of the Birds Directive.

permission and result in the mandatory requirement for an environmental impact assessment (EIA). The requirements for an EIA, in relation to water abstraction, are laid out in the following relevant legislation:

- Under the requirements of the *EIA Directive* (85/337/EEC as amended by 97/11/EC) projects likely to have significant effects on the environment are required to undergo “an assessment with regards to their effects” (Article 2(1)). Projects subject to such an assessment are listed in Annex I (for which EIA is mandatory) and Annex II (which may require an EIA) of the Directive.

It is likely that the abstraction project will be subject to mandatory EIA (Ryan, Pers. Comm., 2006). Under the Directive EIA is mandatory for “groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres” (Annex I (11)), and for certain kinds of water transfer schemes (Annex I (12))<sup>17</sup>.

- Part X of the *Planning and Development Act 2000* specifies the requirements for environmental impact assessment in Ireland. Part 10 of *Regulations S.I. 600/2001* [Planning and Development Regulations 2001] implement the provisions of the Act with regards EIA. Schedule 5 of the Regulations set out the prescribed classes of development. As with the EIA Directive, EIA is mandatory for “groundwater abstraction or artificial groundwater recharge schemes, where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres” (Part 1 (11)). Part 1 (12) refers to water transfer schemes as in the EIA Directive.

However, the abstraction in this case will be from surface water, so it seems unlikely that EIA would be mandatory under Annex I (11) of the EIA Directive. It may however, be required on the basis of the transfer of water, either under Annex I (12)(a) or (b) or on a non-mandatory basis under Annex II (10)(m) on the basis of being likely to have significant effects – “works for the transfer of water resources between river basins not included in Annex I”.

<sup>17</sup> 12. (a) Works for the transfer of water resources between river basins where this transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres/year;

(b) In all other cases, works for the transfer of water resources between river basins where the multi-annual average flow of the basin of abstraction exceeds 2 000 million cubic metres/year and where the amount of water transferred exceeds 5 % of this flow. In both cases transfers of piped drinking water are excluded.

The relevant authority would be required to apply to An Bord Pleanála<sup>18</sup> for approval of the development (under the Planning and Development Act) and an abstraction order (under the Water Supplies Act 1942).

Once approval has been obtained from the DoEHLG on the Feasibility Study and on the preferred option, these will be adopted by relevant authorities, and incorporated into county development plans, local area plans and other relevant plans and programmes. A review of county development plans, by relevant local authorities, may be required to ensure that the development of the major water source is consistent with the development policies of each Plan. In Ireland SEA is mandatory for County Development Plans (Article 7 of the Planning and Development (Strategic Environmental Assessment) Regulations 2004 – S.I. No. 436/2004). A review of county development plans may in turn result in the review of the Regional Planning Guidelines, which would also be subject to SEA (Article 10 of S.I. No. 436/2004).

#### 4.2.4 Relevant links between Directives

In this case study the primary focus is on the possible links between the WFD and the EIA and SEA Directives (as illustrated in Figure 4.4). Discussion of the key issues in relation to the various linkages is provided. Issues relating to public/stakeholder participation are also examined and the issue of ‘appropriate assessment’ under the Habitats Directive touched upon.

#### 4.2.5 Current scenario

Several issues and possible areas of overlap arise with regards the application of environmental assessment under the current scenario, i.e. prior to full implementation of the WFD.

Although the SEA being undertaken of the ‘development strategy’ [water management plan/programme] is unlikely to coincide with any SEA required for draft RBMPs, other issues may arise during the continued development of the programme of measures (POMs) and RBMPs for each RBD, and completion of the process of putting the water abstraction project in place. Table 4.2 provides a brief outline of the key dates and tasks for both the WFD implementation process and main stages of the Dublin

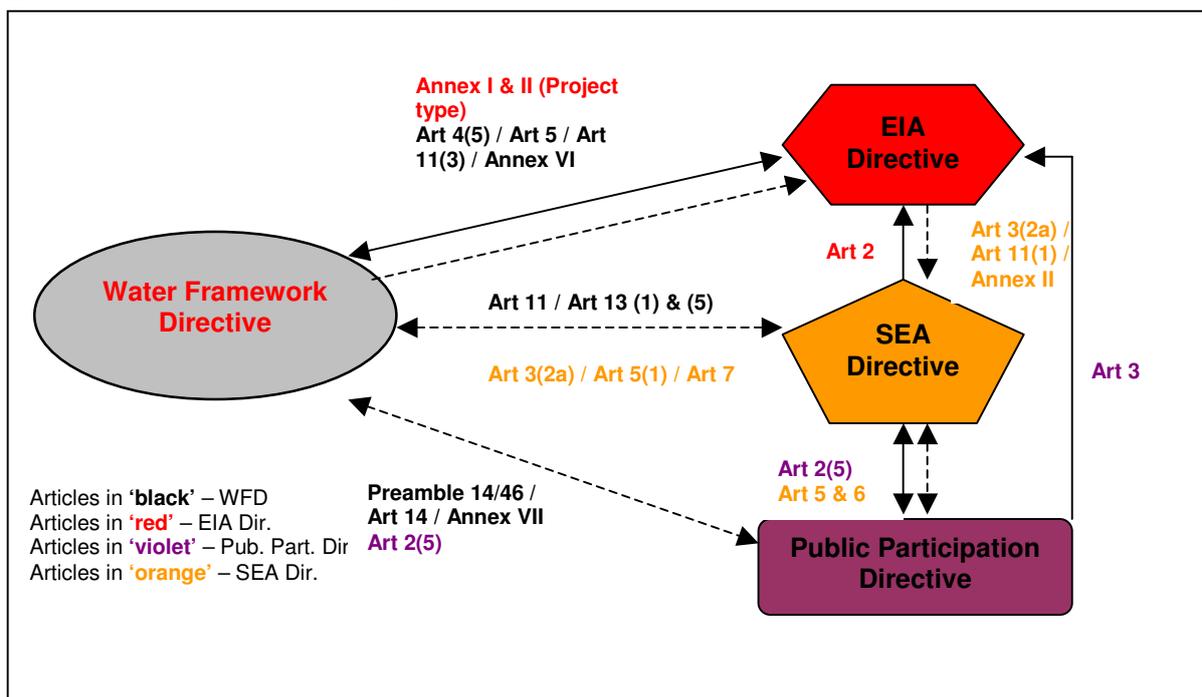
‘water supply project’ (for the purposes of this study the timetables start from 2006 in each case).

The flow diagram below (Figure 4.5) illustrates the various linkages taking place and those that may occur between the various activities, under the current scenario. Several issues arise from the scenario presented in Figure 4.5. While no specific overlaps (apart from ‘consultations’) are presented, there would appear to be areas where one activity i.e. a large-scale development proposal, could have an influence on the WFD implementation process and on land-use planning processes in particular.

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<sup>18</sup> An Bord Pleanála is the Irish Planning Appeals Board. Since 2001 the Board has been responsible for assessing and determining major local authority infrastructure developments within an authority’s own functional area and also for proposals by local authorities regarding the compulsory purchase of land.

Figure 4.4 Direct and indirect linkages/interactions between Directives for Case Study 1



Articles in 'black' – WFD  
 Articles in 'red' – EIA Dir.  
 Articles in 'violet' – Pub. Part. Dir  
 Articles in 'orange' – SEA Dir.

**Index of Articles in Figure 4.4**

Articles from the WFD	Articles from the EIA Directive	Articles from the SEA Directive	Articles from the Public Participation Directive
<p><b>To EIA Directive:</b></p> <ul style="list-style-type: none"> <li>• Art. 4(5) – Environmental Objectives</li> <li>• Art. 5 – RBD Characterisation</li> <li>• Art. 11(3) – Programme of measures (POMs)</li> <li>• Annex VI – Measures to be included in POMs</li> </ul> <p><b>To SEA Directive:</b></p> <ul style="list-style-type: none"> <li>• Art. 11 – POMs</li> <li>• Art. 13(1) &amp; (5) – RBMPs</li> </ul> <p><b>To Public Participation Directive:</b></p> <ul style="list-style-type: none"> <li>• Art. 14 – Public information &amp; consultation</li> <li>• Annex VII – Contents of RBMPs</li> </ul>	<p><b>To WFD:</b></p> <ul style="list-style-type: none"> <li>• Annex I – Projects subject to mandatory EIA</li> <li>• Annex II – Projects which may require EIA</li> </ul> <p><b>To SEA Directive:</b></p> <ul style="list-style-type: none"> <li>• Art. 2 – Application of EIA and 'another form of assessment'</li> </ul>	<p><b>To WFD:</b></p> <ul style="list-style-type: none"> <li>• Art. 3(2)(a) – Scoping: plans &amp; programmes subject to mandatory SEA</li> <li>• Art. 5(1) – Environmental report</li> <li>• Art. 7 – Transboundary consultation</li> <li>• Annex II(1) – Criteria to determine significance of effects</li> </ul> <p><b>To EIA Directive:</b></p> <ul style="list-style-type: none"> <li>• Art. 3(2)(a) – Scoping: plans &amp; programmes which set the framework for future development consent of projects</li> <li>• Art. 11(1) – Relationship with other Community legislation</li> <li>• Annex II – Criteria to determine significance of effects</li> </ul> <p><b>To Public Participation Directive:</b></p> <ul style="list-style-type: none"> <li>• Art. 5 – Environmental report</li> <li>• Art. 6 – Consultations</li> <li>• Art. 7(2) – Transboundary consultations</li> </ul>	<p><b>To WFD:</b></p> <ul style="list-style-type: none"> <li>• Art. 2(5) – Public participation concerning plans &amp; programmes</li> </ul> <p><b>To EIA Directive:</b></p> <ul style="list-style-type: none"> <li>• Art. 3 – Amendments to EIA Directive (85/337/EEC)</li> </ul> <p><b>To SEA Directive:</b></p> <ul style="list-style-type: none"> <li>• Art. 2(5) – Public participation concerning plans &amp; programmes</li> </ul>

**Table 4.2 – Timetables for WFD implementation and the Water Supply Project**

<i>WFD Implementation</i>		<i>Water Supply Project</i>	
<b>Key Dates</b>	<b>Task</b>	<b>Key Dates</b>	<b>Task</b>
June '06	Develop classification systems for surface water and groundwater	April '06	Completion of environmental report (SEA) & draft feasibility study
June '06	Establish & maintain monitoring programmes	June - July '06	Completion of SEA consultation
June '06	Prepare & publish work programme & timetable for production of RBMPs	August '06	Amendment of feasibility study resulting from SEA consultation
		August – Sept '06	DoEHLG approval of feasibility study
		Oct '06	Decision by Dublin City Council (DCC) and adoption by DCC of feasibility study
		Nov. '06	Adoption by relevant local authorities of best option
June '07	Prepare & publish overview of significant water management issues in each RBD	2007	Submission of preliminary report
June '08	Prepare & publish draft RBMPs + 6 months for written comments	2008	DoEHLG approval of preliminary report
June '08	Publish draft POMs + 6 months for comments		
June '09	Establish environmental objectives & final POMs (publish POMs by this date) & develop RBMPs for implementation		
June '09	Publish RBMP		
2010	Water pricing policies	2010	Completion of EIS (EIA) & other statutory processes
2012	Latest date to make POMs operational	2012	Completion of contract document & procurement
2015	Meet objectives of first RBMP and adopt second RBMP (relevant local authorities must review & if necessary update the first RBMP by 2015 – including POMs)	2016	Completion of construction + project commissioned

Note: RBMPs & POMs must be reviewed every 6 years

Source: Adapted from European Communities (Water Policy) Regulations 2003 (S.I. No. 722/2003) & Dublin Region Water Supply – Major Source Development

#### 4.2.5.1 Main Issues

##### *Development Plans*

One of the requirements resulting from the Dublin water supply development strategy process is that once the DoEHLG have approved the 'feasibility study', local authorities affected by the proposed development will be required to formally adopt the study (including the preferred option) and incorporate it into their Development Plans, Local Area Plans and other relevant plans or programmes. As Sanitary (Local) Authorities are responsible for water provision in their area (under the Public Health (Ireland) Act 1878), it is likely that some reference will already have been made, within existing plans, for the need to increase water supply services in order to meet demand. Part II, Section 10(2) (b) of the Planning and Development Act 2000, requires that objectives relating to "the provision or facilitation of the provision of infrastructure including...water supplies" be

included in a development plan. As the need to supply water to the Greater Dublin Area was identified as early as 1995, it is likely that most local authorities will have already taken this into consideration (see Table 4.3 below) (although not likely to be very detailed given the number of options being considered). However, as the abstraction of water from Lough Ree on the River Shannon would be quite a substantial project, there is a possibility that the incorporation of the proposed development would lead to substantial changes/'variations' of relevant (County) Development Plans, which would subsequently need to be amended.

Under Article 7 of the Planning and Development (Strategic Environmental Assessment) Regulations 2004, a local (planning) authority is required to consider whether variations to a development plan are likely to have significant effects on the environment. The criteria to be

taken into consideration when making this decision includes, among other things, “the degree to which the plan sets the framework for projects and other activities...the degree to which the plan influences other plans, including those in a hierarchy...the relevance of the plan for the implementation of European Union legislation on the environment (e.g. plans linked to waste-management or water protection)...the effects on areas or landscape which have a recognised national, European Union or international protection status” (Schedule 2A).

For the purposes of this study and due to the very nature of the development proposal the ‘variations’ to development plans are indeed likely to be significant, and an environmental assessment (SEA) would then have to be carried out on the revised plan. As a minimum the following reasons would provide justification for this:

- i. a large-scale development such as this would be likely to help set the framework for future projects, either directly linked to this project or for similar such projects;
- ii. amendments to the plan are likely to influence local area plans and other relevant plans;
- iii. as this is a project linked specifically to the provision of water and abstraction from a particular water body (likely to be protected under the requirements of the WFD), the (county) development plan may have some influence (indirectly) with the implementation of the WFD for the specific body of water; and
- iv. as both options being considered under the ‘development strategy’ cover areas which are European Sites (Lough Ree being designated an SPA and SAC), it is likely that any amendments to development plans would have some sort of an effect on the designated sites.

Another issue to consider is the influence that regional planning guidelines (RPG) may have on the formal adoption and subsequent revision of development plans by relevant (local) authorities. The provisions for RPGs are found in Chapter III of the Planning and Development Act 2000. Regional authorities (of which there are eight in Ireland – see Figure 4.2) are responsible for producing regional planning guidelines. These guidelines provide a “long-term (12-20 years – Section 23(1)(b)) strategic planning framework for the development of the region...” (Section 23(1)(a)). RPGs greatly influence the production of development plans by local authorities, the contents of which need to be incorporated when drafting a new

development plan or when making ‘variations’ to an existing plan. Table 4.4 provides an outline of the regional planning authorities relevant to this case study and the dates that RPGs were adopted. Guidelines are required to be reviewed every six years (Section 24).

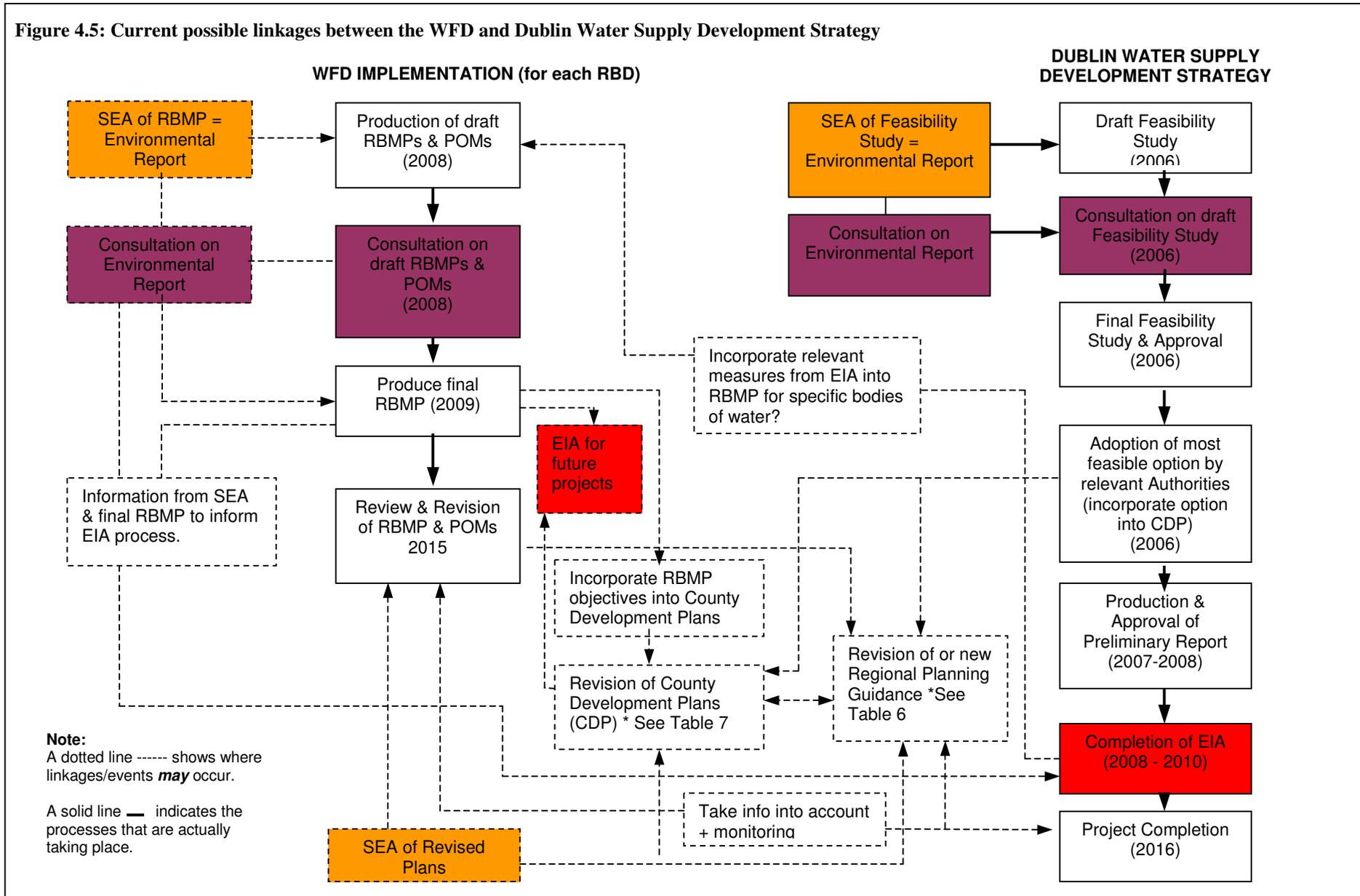
The likely significant effects on the environment of implementing the RPGs, are required to be assessed under the provisions of Article 10 of the Planning and Development (Strategic Environmental Assessment) Regulations 2004. It is likely that the next RPGs to be produced will have to undergo an SEA. Development plans may also be affected by the production of RBMPs under the WFD implementation process. Under the provisions of the Planning and Development Act 2000, it is not compulsory for local planning authorities to incorporate objectives relating to the protection and preservation of the quality of the environment including the elimination of water pollution and the protection of waters, into their (county) development plans. The First Schedule of the Planning and Development Act 2000 provides a list of objectives, which *may* be included in the development plan. However, they are obliged to include measures relating to infrastructure, to take RBMPs into consideration when dealing with planning applications, and to integrate development plans with other plans<sup>19</sup>.

Currently objectives relating to water management are contained within separate water quality management plans (set up under Water Pollution Acts 1977 – 1990, and Local Government (Water Pollution) Regulations 1978 – S.I. No. 108). It is thought that water management objectives are not currently integrated into development plans (Scannell, Pers. Comm. 2006). However, water management plans will eventually be superseded by river basin management plans.

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<sup>19</sup> Scannell, Y. (2005) pp 71-72.

Figure 4.5: Current possible linkages between the WFD and Dublin Water Supply Development Strategy



**Table 4.3 – Consideration of Greater Dublin Area water supply in development plans**

<i>County Council</i>	<i>Abstract from County Development Plan</i>
Offaly County Council	“The Council will endeavour to facilitate developments, which may have exceptionally large requirements for water by allowing the potential water resources of the River Shannon to be utilised, where possible, subject to appropriate safeguards” (Offaly County Council, 2003).
South Dublin County Council	“It is the policy of the Council to co-operate with adjoining authorities to continue the sustainable development and improvement of the water supply and drainage schemes throughout the County to meet the anticipated water and drainage requirements of the area” (South Dublin County Council, 2004).
Dublin City Council	“Dublin’s ongoing health and prosperity is dependent on an efficient and cost effective water services infrastructure. The review of the Greater Dublin Water Supply Strategic Study indicated water demand up to the year 2021, identified a commitment of water conservation, a need for demand management policies to be introduced, and planning for new water source development” (Dublin City Council, 2005).

**Table 4.4 – Regional planning authorities and regional planning guidelines**

<i>Regional Planning Authority</i>	<i>Regional Planning Guidelines Adopted</i>
Dublin Regional Authority	Regional Planning Guidelines Greater Dublin Area 2004 – 2016 - Adopted 8 <sup>th</sup> July 2004
Mid-East Regional Authority	Midland Regional Authority Regional Planning Guidelines - Adopted 25 <sup>th</sup> May 2004

Although county development plans cover the jurisdiction of local authorities (See Figure 4.3), and RBMPs cover river basins as such, it is assumed that the relevant local authorities within each river basin district will need to cooperate with each other in terms of ensuring that the measures contained within RBMPs are implemented. Given the potential influence that RBMPs may have not only in terms of water quality management, but also in terms of the potential to set the framework for future development consent, it would be appropriate that objectives contained within the RBMP should be incorporated into development plans, and that planning authorities will choose to amend their development plans accordingly. Objectives contained within RBMPs are likely to have significant effects on the environment and any subsequent revisions/‘variations’ of county development plans are likely to require an environmental assessment (SEA). County development plans are required to be reviewed within four years of their publication and a new plan produced every six years (regional authorities are responsible for reviewing local authorities’ development plans). Under the provisions of Article 7 of the Planning and Development (Strategic Environmental Assessment) Regulations 2004, an SEA may be required for a new development plan depending on the significance of its effects on the environment. For the purposes of this study it is assumed that an SEA will be undertaken for new development plans.

In order to avoid duplication in the application of SEA resulting from a) ‘variations’ to county development plans as a result of integrating RBMP objectives, and b) production of new development plans (as they may have reached the end of their current cycle), it is possible that only one SEA would need to be undertaken in these circumstances. As RBMPs are not due to be finalised until 2009 it may be possible that county development plans for relevant authorities will be due for review or renewal around the same time. Table 4.5 outlines the current status of county development plans for those authorities likely to be affected by the development strategy.

From this table it is possible to assume that reviews of current plans are likely to be taking place during the 2008 – 2009 period. If this is the case then local authorities could incorporate RBMP objectives at the same time i.e. into their new revised plan, for which only one SEA will be required. If relevant authorities decided to incorporate RBMP objectives into development plans when the first round of RBMPs is produced, subsequent long-term reviews and revisions of RBMPs and POMs may in turn result in the continued revision of development plans, which may subsequently require SEA.

### *Environmental Impact Assessment*

As already mentioned it is likely that RBMPs and POMs will set the framework for future development consent within river basin districts, particularly as RBMPs will need to be taken into consideration by relevant authorities when dealing with planning applications. Projects, which may arise as a result of a RBMP, may result in the requirement for an EIA. Also, by their very nature, county development plans also set the framework for future development. If objectives from the RBMP are incorporated into county development plans this may help to avoid duplication of any environmental assessments (EIA) taking place for relevant project proposals.

### *Appropriate Assessment*

Although the WFD and environmental assessment processes (EIA and SEA) are the focus of this case study, it is worth mentioning the requirement for ‘appropriate assessment’ (AA) under the provisions of the Habitats Directive. As already mentioned both options being considered for the Dublin Water Supply Development Strategy are European Sites i.e. designated sites under the Habitats and Birds Directives. The Development Strategy, considered under the requirements of the SEA Directive as a strategic water management plan, could also be subject to ‘appropriate assessment’ (Articles 6(3) & (4) of the Habitats Directive), although this depends on whether the Development Strategy is really a ‘plan’ of the sort to trigger AA under Article 6 of the Habitats Directive. If it was, then in theory the SEA being undertaken of the draft feasibility study, could perhaps constitute ‘appropriate assessment’ i.e. the SEA may satisfy the requirements of an appropriate assessment, or the appropriate assessment could be integrated within the SEA. However, as two separate options are being considered, both of which are designated special areas of conservation, then ideally, two separate assessments would need to be carried out. However, the SEA being undertaken could be considered to relate more to an ‘options’ study and as a result may not be a ‘plan’ in the sense envisaged to trigger an AA.

As only one option will eventually be chosen as the preferred option under the Development Strategy, it is questionable whether the Development Strategy is a ‘plan’ in the sense of Article 6 of the Habitats Directive. It may, therefore, be more appropriate for an ‘appropriate assessment’ to be undertaken or incorporated alongside the EIA of the preferred option. Interestingly, although the Habitats Directive is not explicit on the ‘type’ or

‘form’ that appropriate assessment should take, the Irish regulations (European Communities (Natural Habitats) Regulations 1997 - S.I. No. 94/1997) which implement the provisions of the Directive, specify that “an environmental impact assessment in respect of a proposed operation or activity shall be an appropriate assessment for the purposes of this Regulation” (Chapter IV, Section 17 (2)). In choosing the option of water abstraction from the River Shannon and the likely significant effects on Lough Ree and possibly other protected areas along the course of the proposed development, it is assumed that an ‘appropriate assessment’ will be undertaken. While mandatory EIA will be undertaken of the preferred development option, it is more than likely that the EIA will also be considered sufficient in terms of carrying out an assessment under the requirements of the Habitats Directive, thereby avoiding duplication of assessment.

### *‘Human Activity’*

The abstraction of water from Lough Ree will cross the boundaries of both the Shannon River Basin District and the Eastern River Basin Districts. Under the requirements of the WFD (2000/60/EC) [Implemented in Ireland through the European Communities (Water Policy) Regulations 2003 (S.I. No. 722/2003) – Article 7] river basin districts are required to assess the impact of human activity on the status of surface waters and on groundwater (Article 5), the results of which appear in a characterisation report. Although no definitions are provided in the WFD for ‘human activity’<sup>20</sup>, activities such as water abstraction projects could, in theory, be considered as such.

Results from the EIA carried out on the proposed water abstraction project on the River Shannon and from any other project EIAs carried out within relevant RBDs, have the potential to influence future RBMPs and POMs for specific bodies of water within river basin districts. Impacts identified during the EIA process could be fed back into the WFD process. In particular, information on impacts could be used to inform future assessments of ‘human activity’ within RBDs, the results of which would be used to inform any new characterisation reports and be included in the future review and revision of RBMPs and POMs. It would appear that any relevant information resulting from the proposed abstraction project would

<sup>20</sup> (Annex II, Section 1.4 does, however, outline significant anthropogenic pressures)

coincide with the review and revision of RBMPs and POMs by 2015.

**Table 4.5 – Current status of County Development Plans for Case Study 1**

<i>Relevant Authority</i>	<i>Time-frame of Current Development Plan</i>
Dublin City Council	2005 – 2011
DunLaoghaire-Rathdown County Council	2004 – 2010
Fingal County Council	2005 – 2011 (currently a draft plan)
South Dublin County Council	2004 – 2010
East & West Wicklow County Council	2004 – 2010
Mid & North Kildare County Council	2005 – 2011
South East Meath County Council	2007 – 2013
Westmeath County Council	2008 – 2014 (in the process of being prepared)
Offaly County Council	2003 – 2009

Similarly, results from large-scale development projects (or projects occurring within river basin districts) have the potential to influence planning processes. Depending on the degree to which ‘human activities’ are affecting specific bodies of water and the degree to which information on impacts from human activities resulting from EIAs is taken into account, planning processes may be influenced sufficiently to increase protection of the environment for impacts resulting from such activities. There is, therefore, considerable potential for environmental protection to be strengthened within the planning system overall. In this case any new regional planning guidelines produced may be influenced by information resulting from both the completion of the proposed project and the review and revision of RBMPs and POMs.

#### *Environmental Objectives*

A large water abstraction project, such as the one proposed, could have an effect on the nature and level of environmental objectives to be achieved under Article 4 of the WFD. There is a possibility that RBDs may opt to achieve “less stringent environmental objectives” (Article 4(5)) for specific bodies of water, particularly if the body of water e.g. Lough Ree or any other bodies of water within the two affected RBDs, “is so affected by human activity” [in this case abstraction, waste water treatment and pipeline development] that achievement of objectives would be “infeasible or disproportionately expensive”. However, there are a number of conditions imposed on RBDs before considering the ‘less stringent’ option. In this case the RBDs would have to show that the environmental and socio-economic needs served by the water abstraction project could not be achieved by any

other means (Article 4(5)(a))<sup>21</sup>. They would also have to ensure that for surface waters the “highest ecological and chemical status possible is achieved” and for groundwaters the “least possible changes to good groundwater status”, particularly if impacts resulting from the water abstraction project could not have been “reasonably avoided” (Article 4(5)(b)). Finally, the RBDs would have to ensure that the status of the body of water in question would not deteriorate further (Article 4(5)(c)).

When establishing a Programme of Measures (POM), for the achievement of environmental objectives, the RBDs need to ensure that such measures include those required “to implement Community legislation for the protection of water” [including those within the EIA Directive] (Article 11(3)). Results from the EIA process and measures undertaken during the EIA i.e. the identification of aspects of the environment (e.g. the bodies of water affected by the project) likely to be significantly affected by the proposal, including mitigation measures, may be sufficient in terms of the achievement of specific objectives under the WFD.

#### *Baseline Data & Monitoring*

Under the ‘current’ scenario there are a number of opportunities for the sharing of data between the two processes (WFD implementation and Dublin Water Supply Development Strategy):

- In terms of timing, information resulting from SEAs of the draft RBMPs for the relevant river basin

<sup>21</sup> In this case an alternative might be the desalination option in Dublin Bay, although that will also affect SAC/SPA sites. However, these are marine sites and therefore the issue of affecting groundwater or surface waters under the WFD in this way is unlikely to arise in the same way (although coastal water bodies do come under the WFD).

districts, and information resulting from the final RBMPs themselves (both to be produced during 2008) may be used to inform the baseline of the EIA being undertaken (during 2008 – 2010) for the proposed water abstraction project.

- As already mentioned information on impacts identified during the EIA process may be used to inform future WFD characterisation processes. Similarly, baseline data from WFD characterisation reports could be used to inform the baseline of any future SEAs carried out.
- Opportunities exist for the sharing of monitoring data. Monitoring is not a legal requirement under the EIA Directive. However, due to the nature of proposed development and the likely impacts that it may have, the project proponent may choose to undertake monitoring upon completion of the development or be required under planning or licensing conditions. Resulting monitoring data could be fed back into the WFD process and used to inform future RBMPs and POMs (information used to develop RBMPs, using tools such as Geographical Information Systems (GIS), could also be used to manage activities such as water abstraction on a catchment basis. By including more environmental analysis the requirements for obtaining abstraction orders should become more stringent (Piper *et al*, 2002)). A water abstraction order will be required for this particular project, a condition of which may include a requirement for monitoring. Water abstracted for human consumption must comply with the European Communities (Quality of Surface Water Intended for the Abstraction of Drinking Water) Regulations 1989. These Regulations specify monitoring regimes, with which ‘Sanitary Authorities’ must comply. An abstraction order for Lough Ree may impose certain conditions such as river/lake monitoring, which may apply during construction and following completion of the project (Ryan, Pers. Comm., 2006). Similarly, information obtained during monitoring under the requirements of the WFD may be used to inform future EIAs and SEAs undertaken within river basin districts. In fact continued monitoring of land-use impacts resulting from ‘activities’ within RBDs may fulfil the requirements for monitoring under SEA regulations, and therefore help avoid duplication. Article 7 of the WFD makes provisions for the monitoring of water bodies, within each RBD, which have been used or

are intended to be used in the future for the abstraction of water for human consumption. Annex V (1.3.5) of the Directive stipulates that for bodies of water providing more than 100m<sup>3</sup> of water a day to communities over 30,000 in population that monitoring is required to be carried out 12 times per year. It is assumed that the Shannon River water abstraction option would meet these criteria.

### Consultations

Under this current scenario there are unlikely to be any *direct* overlaps between the two processes (WFD Implementation and Development Strategy) in terms of consultations. Regarding the development strategy major stakeholders are consulted, with any inputs being “assigned due weighting in the design and implementation stages of the project” (Ryan, Pers. Comm. 2006). Workshops are also held to inform key stakeholders on progress (Thompson, Pers. Com. 2006). Those involved with the development strategy are also likely to be the same stakeholders consulted with regards the SEA being carried out. A number of environmental authorities are required to be formally consulted under the provisions of Articles 9(5) and 13(1) of the European Communities (Environmental Assessment of Certain Plans and Programmes) Regulations 2004. Non-statutory consultees are also involved in the process including the two river basin districts (Shannon and Eastern RBD), which will be directly affected by the abstraction project. Consultations will also be required for the EIA process. Again, stakeholders consulted are likely to be the same as those involved at earlier stages of the development strategy.

As water abstraction from the River Shannon to Dublin would affect two river basin districts it is thought that mechanisms would need to be put in place in terms of consultations between the two RBDs. It is likely that the River Basin District Advisory Councils, set up for each RBD “to consider matters relating to the preparation of river basin management plans and other matters relevant to the protection and use of the aquatic environment and water resources...” (Article 16(1) of European Communities (Water Policy) Regulations 2003), would play a lead role here. With regards WFD implementation extensive ‘internal’, i.e. within RBDs, consultations will occur throughout the process (involving relevant authorities, the river basin district advisory council, technical council and steering committee). The public (“any person” - Article 14(2) European Communities

(Water Policy) Regulations 2003) will also be consulted with regards draft RBMPs. Consultations ‘internal’ to the RBD will cover not only river basin management issues, but also the carrying out of the SEA of draft RBMPs. It is assumed that the lead authority within each RBD would be responsible for conducting or initiating the SEA on the draft RBMP. The lead authority is likely to do this in association with partner authorities within the RBD (O’Mahony, Pers. Comm. 2006). *Indirectly*, there is a possibility that overlaps may occur between consultations carried out as part of the EIA process for the proposed abstraction project and consultations taking place on both the SEA and draft RBMP. However, any overlaps are likely to focus on project type and the implications that this may have on river basin management. In this case it is likely that consultations would occur between the same stakeholders currently involved at the feasibility study stage of the development strategy.

#### 4.2.6 Future scenario

The following scenario (Figure 4.6) helps to illustrate possible linkages/overlaps once the WFD has been fully implemented, and a similar development project proposed within a river basin district. In this ‘future scenario’ the basic WFD process is provided, including key stages. A number of assumptions are made for this scenario:

- Objectives within RBMPs are incorporated in county development plans,
- The main elements of the WFD process are repeated every six years in terms of review and subsequent revision,
- Development plans are produced every six years.

##### 4.2.6.1 Main Issues

###### *Baseline Information*

Within this scenario there are several opportunities for the sharing of baseline information between the various processes:

- Information collected during RBD characterisation could be used to inform the preparation of new or revised local authority development plans. Where water management issues have not in general been integrated into development plans in the past, the integration of information from the RBD process, particularly in relation to human activity and associated impacts (WFD, Article 5(1)), within the water sector, would help to strengthen the consideration of such issues within the planning system.

- Again, information collected during RBD characterisation could be used to inform the baseline for any SEAs being undertaken of revised plans (either development plans or river basin management plans). Environmental assessments of proposed projects within a RBD could also take advantage of two sources of baseline data: data from RBD characterisation, and data from SEA baseline.
- Depending on the type of project/‘human activity’ and whether it affects a particular body of water, information gathered during an EIA could be used to inform the RBD characterisation process.

###### *Monitoring*

Monitoring programmes set up under the RBD process could also be used for monitoring under the requirements of the SEA Directive (Article 10), therefore avoiding duplication. Also, monitoring within RBD could be used to determine the level to which water management objectives and measures within the RBMP are being effectively incorporated and taken into consideration within local development plan processes.

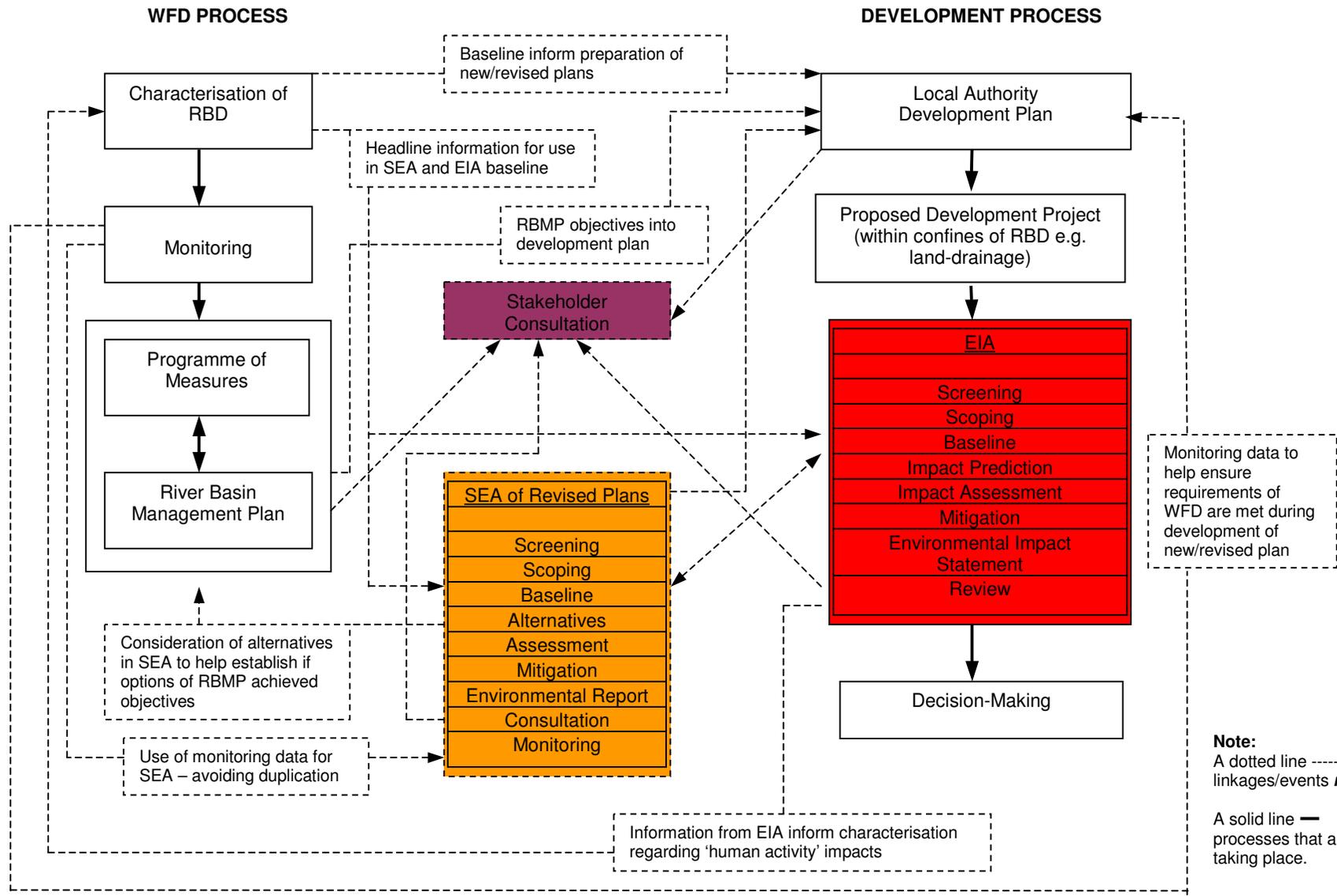
###### *Alternatives*

Article 5(1) of the SEA Directive requires the identification, description and evaluation of reasonable alternatives of a plan or programme. This includes taking the objectives and geographical scope of the plan or programme into consideration. The WFD process involves choosing measures that are most applicable to the RBD in terms of achieving environmental objectives set out in the RBMP. In this scenario the consideration of alternatives within the SEA being carried out on a revised RBMP, could be used to assess the various options/measures under the WFD and whether these options/measures are helping to achieve the various environmental objectives.

###### *Stakeholder Consultations*

This scenario shows that there are likely to be overlaps in terms of the requirements to consult various stakeholders for each of the processes. It would appear unlikely that there would be direct overlap in terms of the timing for each process i.e. consultations would take place within different time frames. However, the main overlap is likely to be between those involved/consulted. There is a danger therefore that ‘consultation’ fatigue could set in. The focus and purpose of such consultations will need to be made very explicit.

Figure 4.6: Possible future linkages between the WFD and development process



#### 4.2.7 Conclusions

Two different scenarios are presented through this case study example, both of which help to illustrate the possible overlaps and interactions between the WFD and the environmental assessment Directives: EIA and SEA. In the first scenario two processes, which are currently ‘in progress’, are presented: the implementation of the WFD, and the initiation of the Dublin Water Supply Development Strategy. The effects that a development strategy may have on the implementation of the WFD are illustrated, as are the implications that both process may have on the planning process in general. A ‘futuristic’ picture is presented in the second scenario. In this scenario two processes are presented: the WFD process, which has already been implemented, and the development process, which would occur ordinarily. The effects of the WFD process on the development process are illustrated. A number of key issues were identified and presented for each scenario, the findings of which can be summarised as follows:

- The ‘preferred option’ resulting from the Development Strategy i.e. the development option chosen for the provision of water to the Greater Dublin Area, will need to be adopted by relevant authorities and incorporated into county development plans. ‘Variations’/revision of county development plans may result. An SEA of revised plans may be required.
- Regional Planning Guidelines may also need to be revised to take account of the ‘preferred option’ before local planning authorities can adopt and incorporate the ‘preferred option’ into county development plans. SEA may be required for the revised RPGs. However, it should be noted that development plans only have to “have regard” to the RPGs and the fact that the ‘preferred option’ is not referred to in the RPGs would have no legal significance for the development plans (Scannell, Pers. Comm., 2006, Scannell, 2005).
- Although not a statutory requirement local planning authorities may be influenced to incorporate the provisions of the RBMP i.e. objectives and measures, into county development plans. Subsequent revisions to development plans may result in the need for an SEA of the revised plan. It is likely that incorporation of RBMP objectives/measures would coincide with the review and subsequent development of new development plans for each authority, which would help avoid the need for two separate SEAs (i.e. one SEA for ‘variations’ to the plan and one SEA for a ‘new’ plan).
- There is a possibility that duplication of assessment may occur. EIA may be required for projects resulting from RBMPs and also from County Development Plans. Duplication of assessment could possibly be avoided if objectives relating to RBMPs were incorporated into county development plans.
- ‘Appropriate Assessment’ of the two options (being considered in the development strategy) may be required under provisions of the Habitats Directive. However, it may be more appropriate that this takes place at the project level when EIA is being undertaken of the preferred option. EIA being carried out on the proposed development may also satisfy the requirements of the Habitats Directive in terms of ‘appropriate assessment’, therefore avoiding duplication of assessment. It is questionable whether the feasibility study currently subject to SEA is necessarily a ‘plan’ in the sense of the Habitats Directive (Article 6), and only one option will go forward to affect European sites.
- Information from EIAs, on impacts resulting from activities such as water abstraction projects (as demonstrated in this case study), could be used to inform any future assessments of ‘human activity’ for characterisation processes under the WFD, the results of which would be fed into revised RBMPs and POMs. Information on assessment of effects of ‘human activity’ within RBDs and information on impacts identified during EIAs may also influence planning processes (including new RPG) and strengthen protection of the environment overall.
- Relevant measures from the EIA process relating to specific bodies of water could be incorporated into the production of draft POMs. Such measures may help to achieve specific objectives under the WFD.
- Baseline data from SEA and RBMP processes may inform EIA baseline for the proposed development. Information on impacts identified during EIA may inform future WFD characterisation processes. It is

likely that monitoring may be required for water abstraction licences. Monitoring data from the development project may help inform future RBMPs and POMs. Similarly, monitoring data from WFD process may be used to inform future EIAs and SEAs, therefore helping to avoid duplication.

- Consultations are likely to take place for each process i.e. WFD implementation and Development Strategy, but due to timing it is unlikely that any direct overlaps will occur between the processes. Some key stakeholders are likely to be involved in both processes.
- Information from RBD characterisation, particularly in relation to 'human activity' and associated impacts, could be used to inform local authority development plans, SEA and EIA baseline. Information from environmental impact statements (for proposed projects/'activities') could be useful for informing RBD characterisation. The availability of such information between various bodies is considered essential.
- River basin monitoring programmes could be used for the purposes of monitoring in SEAs and to ensure that measures within the RBMP are being incorporated sufficiently into local authority development plans. This would help strengthen water resources issues within SEA and development planning.
- Alternatives in SEA could be used to assess whether environmental objectives of the RBD are being met. The SEA would help assess whether measures being used are effective in achieving the overall objectives of the river basin management process and provide a focus for public participation in the evaluation of alternatives.

## 4.3 Case Study 2: Lough Corrib

### 4.3.1 Background

Lough Corrib (or Loch Coirib in Irish) is the second largest lake in Ireland. It is situated north of Galway City, on the West coast (see Figure 4.7). The Lough, which falls within the boundaries of the Western River Basin District (WRBD), was selected as a Case Study as a good example to illustrate possible interactions between the WFD and the Birds and Habitats Directives in particular.

Lough Corrib is very important for tourism and angling. Galway County Development Plan (Galway County Council, undated) highlights Lough Corrib as "one of the most important wild fisheries in Europe", which attracts much in the way of tourism and places emphasis on the importance of the Lough as a habitat. Angling tourism is considered a primary water based tourism product on the lake, and extensive angling development programmes have been undertaken in the past (Ireland West Tourism, 2002). According to the Western Regional Fisheries Board (2004) a programme of fishery development continues for the Corrib system, with the objective of maintaining wild brown trout and salmon for Lough Corrib. The Lough is the only designated<sup>22</sup> 'salmonid'<sup>23</sup> lake in Ireland. Water quality standards for salmonid fishery waters need to be very stringent due to the highly sensitive nature of salmonid fish to water pollutants (Enfo, undated (b)). The Corrib development programme has included such issues as water quality management and surveys of all rivers and streams in the catchments (Western Regional Fisheries Board, 2004).

The importance of Lough Corrib for its rich flora, fauna and habitat type is reflected in its designation as a special protection area (SPA) under the requirements of the Birds Directive, as a candidate<sup>24</sup> special area of conservation (cSAC) under the requirements of the Habitats Directive (because it is currently classed as a 'candidate' site does not mean that the site is given any less protection (O'Connor, Pers. Comm., 2006). According to Clerkin (2000) once a landowner is notified of the proposal to designate a site as an SAC, the site enjoys full protection. It is also a proposed natural heritage area (pNHA)<sup>25</sup>. Natural heritage areas are the basic designation for wildlife conservation in Ireland (DoEHLG, undated). Under the Habitats Directive the Lough has been selected for the conservation of 13 Annex I habitats (of which six are priority types), and seven Annex II species, while under the Birds Directive it has been selected for the conservation of 11 Annex I bird species (Galway City Council, 2004). The Lough is the only SPA within the WRBD to qualify for international importance for the overall number of wintering waterfowl (WRBD, undated).

<sup>22</sup> Designated under the European Communities (Quality of Salmonid Waters) Regulations 1998 (S.I. No. 293/1988).

<sup>23</sup> 'Salmonid' refers to game fisheries, as opposed to coarse ('cyprinid') fisheries.

<sup>24</sup> Candidate SACs are sites awaiting adoption by the European Commission.

<sup>25</sup> Designated under the requirements of the Wildlife Amendment Act (2000).

Overall the Lough supports in excesses of 20,000 waterfowl and is considered one of the top ornithological sites in Ireland (NPWS, 2004). However, recent studies have shown a decrease in the number of water birds on the Lough since 1997/98 (Boland & Crowe, 2005). The most notable decrease has been of the species, Common Scooter, whose breeding numbers have declined severely, due to disturbance and direct predation (Crowe, Pers. Comm., 2006). Another important issue to note is the presence of the fresh water pearl mussel, *Margaritifera margaritifera*, in Lough Corrib, which is very sensitive to pollution. This pearl mussel is protected in Ireland under the 1976 Wildlife Act and is also listed under the Habitats Directive. In addition *Margaritifera margaritifera* is listed on the Red Data List<sup>26</sup> as “endangered” (Working Group on Characterisation and Risk Assessment, 2005; NPWS, 2002).

The Lough is also an important water supply for East Galway and Galway City, whose populations are rapidly increasing (NiChionna, Pers. Comm., 2006). In fact, half the population of the county of Galway depend on the Lough for its domestic water supply (Galway County Council, undated). There is evidence to suggest that the surface water channels for Corrib and catchment floodplains “have been extensively modified hydrologically by drainage schemes and that water quality is also problematic for the conservation areas of the sites” (WRBD, undated). The WRBD (undated) also states “existing drainage schemes, in the...Corrib catchment, appear to have modified a number of turlough<sup>27</sup> habitats”.

BirdWatch Ireland (undated) identified a number of threats to waterways habitats in general including “eutrophication, caused by pollution or increased nutrients from agriculture, sewage, industry, forestry and dumping. Additional threats...include drainage of river beds or banks, siltation from forestry, construction or drainage work, over fishing and creation of dams or weirs”. Specifically the National Parks and Wildlife Service (2002) identify a number of threats to the quality of Lough Corrib, mainly as a result of water pollution. Causes of pollution include intense agricultural activities on the eastern side of the lake, uncontrolled discharge of sewage causing eutrophication of the lake, and loss of native lakeshore vegetation from increased housing and boating

development. NPWS records for Lough Corrib also show that between 2001 and 2003 certain areas of the SAC were impacted negatively by agricultural improvements, and sports and leisure activities, and neutrally impacted by communication networks (Lynn, Pers. Comm., 2006).

#### 4.3.2 Geographical context

As previously mentioned Lough Corrib falls within the Western River Basin District (WRBD). The WRBD and Lough Corrib are outlined in Figure 4.7:-

*Western River Basin District (WRBD)* – The WRBD consists of seven local authorities, including Galway City Council and County Councils for Clare, Galway, Leitrim, Mayo, Roscommon and Sligo. The lead authority, responsible for coordinating the RBMP process, is Galway County Council. The WRBD has 951 river water bodies, 5,638 lake water bodies (of which only 381 are reported on within the characterisation report), 95 groundwater bodies, 68 transitional water bodies and 30 coastal water bodies (WRBD, 2004).

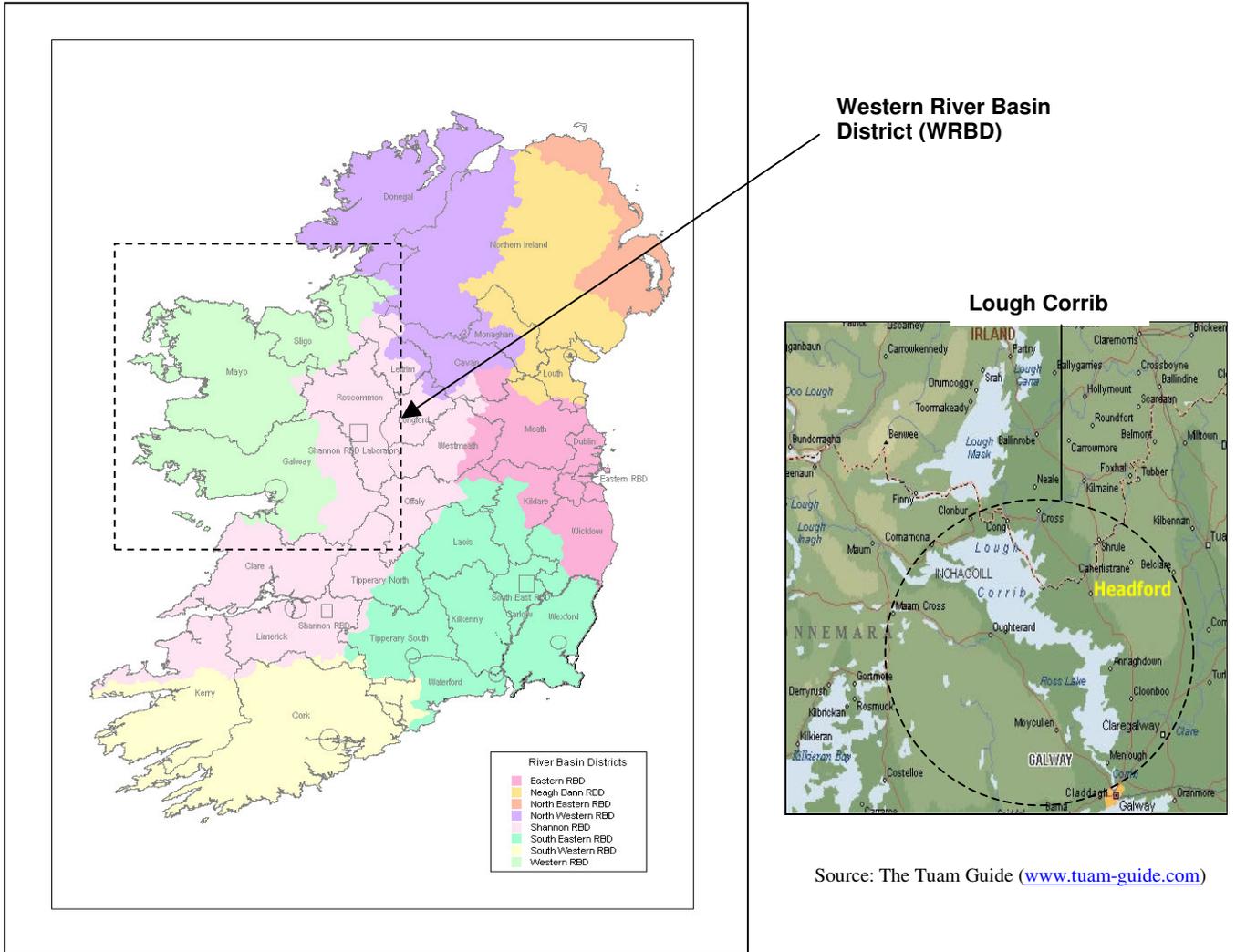
*Lough Corrib* – Located north of Galway City, Lough Corrib has an area of approximately 18,240 ha. The lake, which can be divided into two parts, a shallow basin to the south and a larger deeper basin to the north is surrounded by pastoral farmland to the south and east, and bog and heath to the west and north (NPWS, 2002). Several rivers join the Lough (rivers Black, Clare, Dooghta, Cregg and Owenriff and a channel from Lough Mask), but the main outflowing river is the Corrib, which reaches the sea at Galway City (NPWS, 2004). The Lough falls within the administrative area of Galway County Council with some in Mayo County Council and a tiny area within Galway City Council (NiChionna, Pers. Comm., 2006).

In order to provide consistency with Case Study 1 and the various issues that might arise, the relevant regional authorities and county councils for this Case Study are illustrated in Figures 4.8 and 4.9.

<sup>26</sup> The Red Data List is a list compiled by the International Union for Conservation of Nature and Natural Resources (IUCN).

<sup>27</sup> Turloughs are habitats unique to Ireland. They are temporary lakes that flood with changes in groundwater.

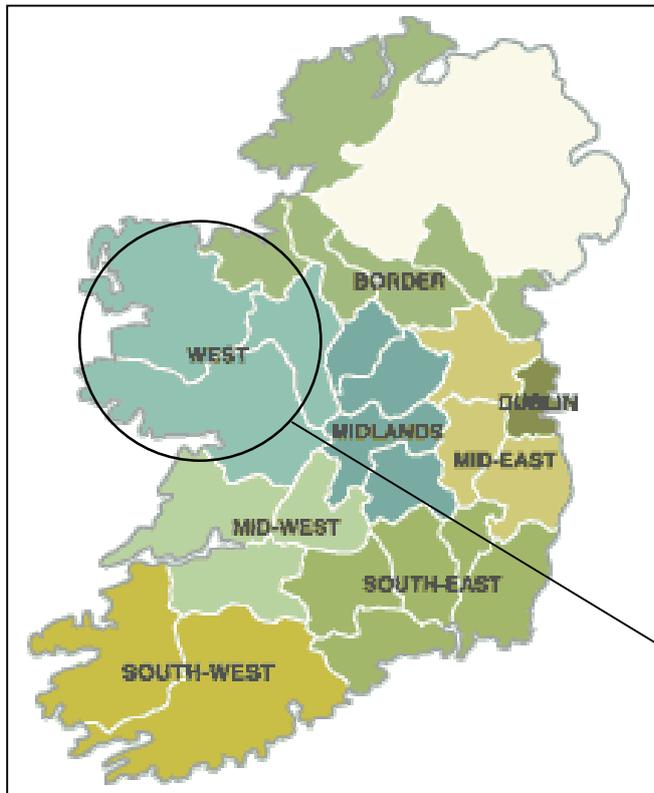
Figure 4.7 – Location of Lough Corrib and the Western River Basin District



Source: WFD Ireland ([www.wfdireland.ie](http://www.wfdireland.ie))



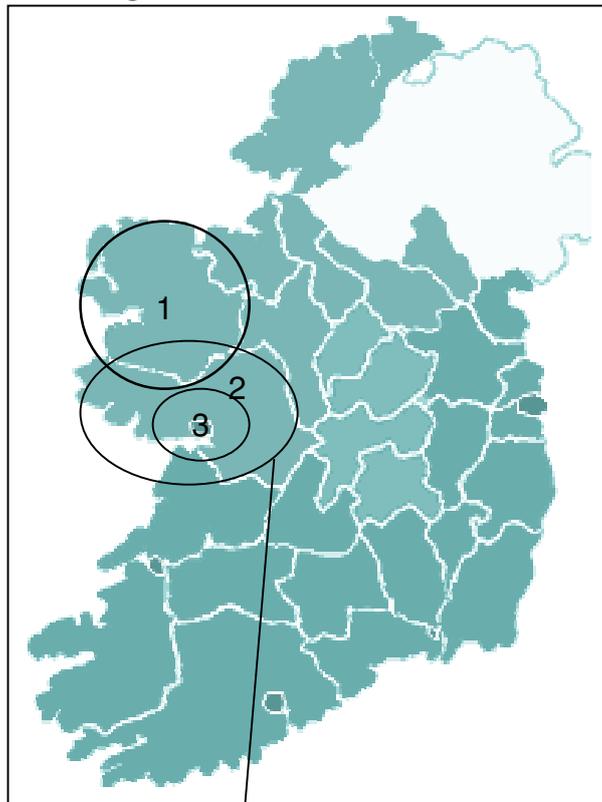
**Figure 4.8 – Regional Planning Authorities**



Source: Irish Regions Office ([www.iro.ie/regional\\_authorities.html](http://www.iro.ie/regional_authorities.html))

The Regional Authority relevant to this case study is The West Region.

**Figure 4.9 – Local Authorities (County/City Councils) covering Lough Corrib**



- 1. Mayo
- 2. Galway
- 3. Galway City

**4.3.3 Relevant legislation**

The Directives relevant to this particular case study include the WFD, and the Birds and Habitats Directives. Aspects of EIA and SEA are also touched upon.

The Habitats Directive is transposed into Irish legislation through the European Commission (Natural Habitats) Regulations 1997 (S.I. No. 94/1997). Note that as well as transposing the requirements of the Habitats Directives, these Regulations also set controls for the protection of special protection areas as designated under the Birds Directive. The National Parks and Wildlife Service (NPWS), within the Department of Environment, Heritage and Local Government, are responsible for all aspects of nature conservation. The team is made up of approximately 25 scientific research staff and 70 conservation rangers, who patrol the country (Lynn, Pers. Comm., 2006).

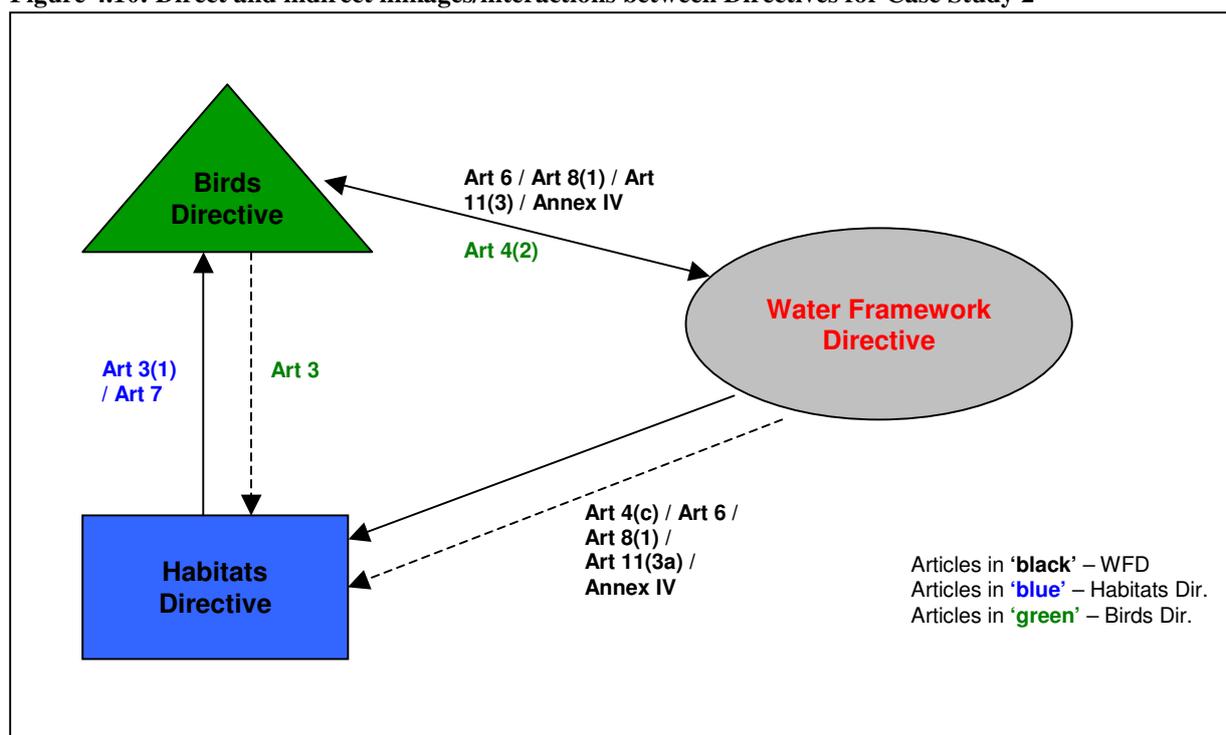
**4.3.4 Relevant links between Directives**

The most relevant potential links between Directives for this case study are illustrated by Figure 4.10 below

**4.3.5 Current scenario**

The links between the WFD, Birds and Habitats Directives and others are illustrated in Figure 4.11. Pink text within the flow diagram represents elements contained within the European Commission (Natural Habitats) Regulations 1997. Various issues are identified, and where appropriate, cross-referencing is made to Case Study 1. The issues considered are not unique to Lough Corrib and could be applied to any water body, which is designated under the Birds and Habitats Directive.

**Figure 4.10: Direct and indirect linkages/interactions between Directives for Case Study 2**



**Index of Articles in Figure 4.10**

**Articles from the WFD**

**To Birds Directive:**

- Art. 6 – Register of protected areas
- Art. 8(1) – Monitoring
- Art. 11(3)(a) – POMs
- Annex IV – Content of register of protected areas

**To Habitats Directive:**

- Art. 4(c) – Environmental Objectives
- Art. 6 – Register of protected areas
- Art. 8(1) – Monitoring
- Art. 11(3)(a) – POMs
- Annex IV – Protected Areas: contents of register of protected areas

**Articles from the Birds Directive**

**To WFD:**

- Art. 4(2) – Protection of wetlands and wetlands of international importance

**To Habitats Directive:**

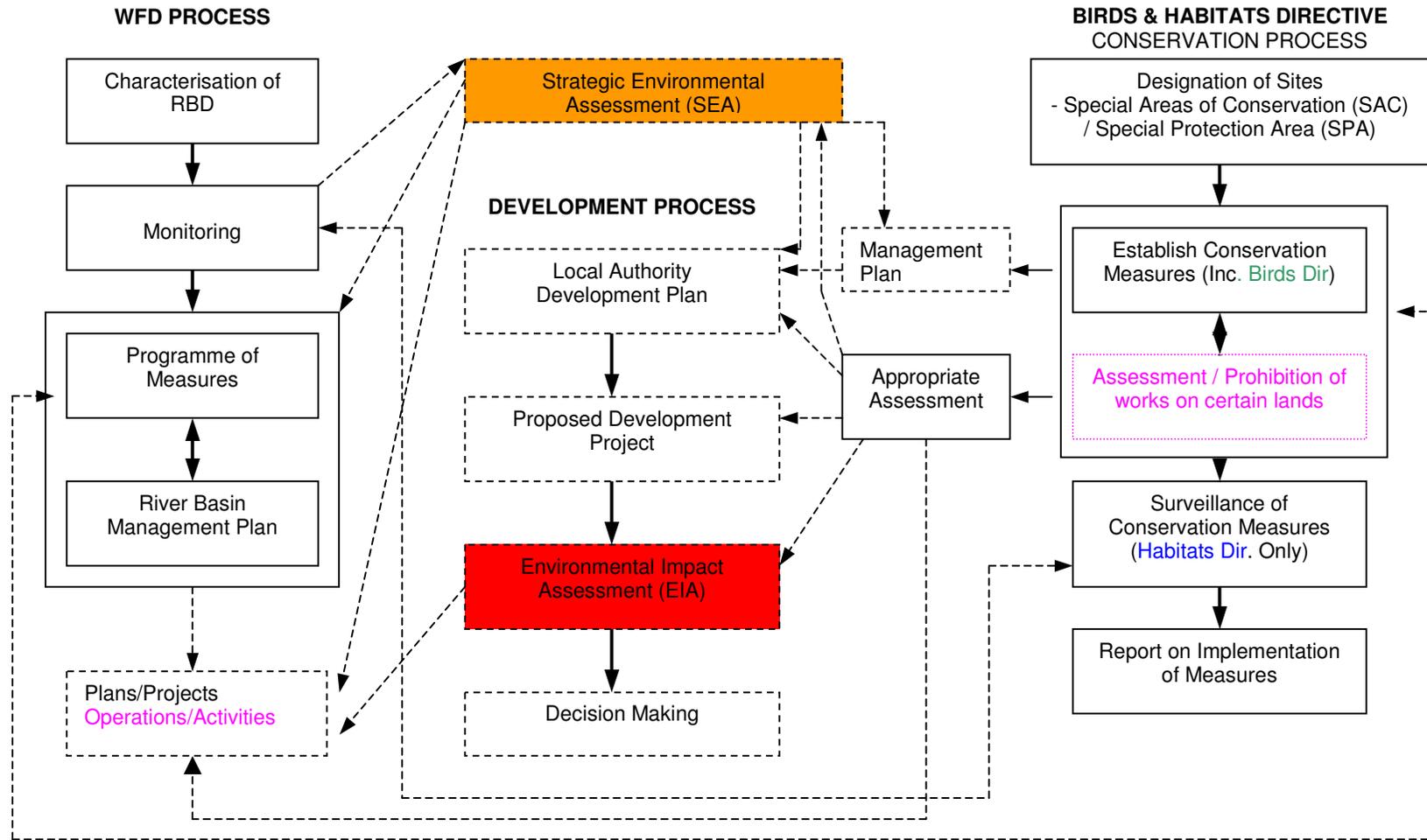
- Art. 3 – The preservation, maintenance and re-establishment of a sufficient diversity and area of habitats for all species of bird
- Art. 4(4) – Avoidance of pollution or deterioration of habitats or any disturbances

**Articles from the Habitats Directive**

**To Birds Directive:**

- Art. 3(1) – Conservation of natural habitats and habitats of species: inclusion of special protection areas in Natura 2000 Network
- Art. 7 – Amendments to Birds Directive: in relation to special conservation areas

**Figure 4.11: Possible linkages between the WFD and the Birds and Habitats Directives**



**Note:**  
A dotted line ----- shows where linkages/events **may** occur.

A solid line indicates the processes that are actually taking place.

#### 4.3.5.1 Main Issues

##### *Objectives/Measures*

The first obvious link between the WFD and Birds and Habitats Directives is the requirement to establish measures. When identifying environmental objectives for the purposes of developing POMs, there is also a requirement to include objectives for protected areas: “*Member States shall achieve compliance with any standards and objectives at the latest 15 years after the date of entry into force of this Directive, unless otherwise specified in the Community legislation under which the individual protected areas have been established*” (Article 4(1)(c), WFD). It is assumed that within the provisions of this Article that ‘new objectives’ will be developed for protected areas under the requirements of the WFD. With regards the development of POMs, as a means of achieving the objectives set for RBDs, where measures already exist, as established under the requirements of the Birds and Habitats Directives, these must be taken into account (Article 11(3)(a), WFD).

It is assumed that conservation measures are contained within management plans for each SAC, which in turn inform a ‘national’ conservation assessment (see next section for more information on conservation management plans). It is possible that any conservation measures for Lough Corrib will be included or taken into consideration when developing POMs. However, where a body of water i.e. Lough Corrib has two sets of objectives (conservation objectives/measures under Birds and Habitats Directives and environmental objectives/measures under the WFD) there is an issue in terms of deciding which set of objectives is the most stringent and which, as a consequence, should apply: “*Where more than one of the objectives under paragraph 1 relates to a given body of water, the most stringent shall apply*” (Article 4(2), WFD).

Another issue to consider is the incorporation of conservation measures, which could be contained within conservation management plans (under the Birds and Habitats Directives), into county development plans. County development plans relevant to this case study area and their current status are included in Table 5.8. Incorporating conservation measures into county development plans will help ensure that the conservation of the Lough is taken into consideration for any future planning applications relevant to the site. Section 10 of the Planning and Development Act 2000 specifies the type

of information to be included in development plans. This includes objectives for “the conservation and protection of the environment including, in particular, the archaeological and natural heritage and the conservation and protection of European sites and any other sites...” (section 10 (c)).

Although not a mandatory requirement to establish conservation measures through appropriate management plans (Article 6(1) of the Habitats Directive only requires MSs to involve management plans “if need be”<sup>28</sup>) a draft conservation management plan for Lough Corrib cSAC and SPA was prepared in May 2000. However, formal implementation of the plan has been stalled for a number of reasons, including changes in the boundary of the cSAC, overlap with the SPA, delays in public consultation and decisions on raised bog management, and it is unlikely that a new plan will be published any time soon<sup>29</sup> (Lynn, Pers. Comm., 2006). However, for the purposes of demonstrating the possible links between these plans and others, it is assumed, for the purposes of this study that such plans have been published or are in the process of being published for many of the SAC sites in Ireland. Article 17 of the Habitats Directive (Section 37 of the EC (Natural Habitats) Regulations 1997) requires the production of a report every six years, which includes information concerning conservation measures and an evaluation of the impact of measures on the conservation status of the natural habitat types and species. The next Habitats’ Directive report for Ireland is due to be published in 2007 (Lynn, Pers. Comm., 2006). It is assumed, for the purposes of this study, that conservation measures contained within management plans for specific sites will be included in this report.

Depending on the results of the evaluation, there would also appear to be an opportunity for the development of new conservation measures for a particular site. In fact, once implemented, management plans will be reviewed every five years (Lynn, Pers. Comm. 2006). This should enable new conservation measures for specific sites to be fed into the new Habitats’ Directive report. To avoid any ‘variations’ to development plans (outside their statutory revision period), in order to take account of new

<sup>28</sup> If measures are not established through management plans, Member States are still required to establish necessary conservation measures: either statutory, administrative or contractual measures (CEC, 2000).

<sup>29</sup> Although management plans are being prepared for many sites, to date only 10% of plans have progressed through the public consultation phase (Lynn, Pers. Comm., 2006).

**Table 4.6 – Current status of development plans relating to Lough Corrib**

<i>Relevant Authority</i>	<i>Time-frame of Current Development Plan</i>
Galway City Council	2005 – 2011
Galway County Council	2003 – 2009
Mayo County Council	2003 – 2009

conservation measures, it may be possible to co-ordinate the production of the ‘Habitats’ Directive Report’, with the production of new development plans. From Table 4.6 it is possible to assume that most current development plans would be due for review and subsequent renewal during the 2006 – 2008 period. If this is the case then local authorities could incorporate [new] conservation objectives/measures at the same time.

However, it should be noted that objectives contained within RBMPs are also likely to be incorporated into country development plans (see Case Study 1). As measures contained within the conservation management plan for Lough Corrib are likely to be included in the POMs and subsequent RBMP, there is likely to be some overlap. If objectives/measures resulting from the various processes occur at different times i.e. are unable to be updated at the same time as a result, the relevant authority will have to ensure that the most up-to-date measures for Lough Corrib are incorporated into the development plan.

Although Lough Corrib has not been provisionally identified as a HMWB, if Lough Corrib and its catchment floodplains were considered to be have been ‘heavily modified’ (as a result of current pollution impacts), this could subsequently cause problems for habitats and for the overall conservation of sites in the area, and with regard to the nature and level of environmental objectives to be achieved under Article 4 of the WFD. This issue is touched upon in Case Study 1, but may also have specific consequences for Lough Corrib. When setting objectives for Lough Corrib within the RBMP, it could be the case that ‘less stringent environmental objectives’ might be set for this body of water. The degree to which objectives will need to be achieved may result in Lough Corrib achieving ‘ecological potential’ as opposed to ‘good ecological status’ (there may be a knock on effect resulting from the need to achieve ‘less’ in terms of the ‘status’ of the Lough. While this is very unlikely to happen, given its importance nationally and in Europe (it would not be accepted by the general public or the European Union), this does serve to highlight the potential significance of the objective setting.

Lough Corrib is clearly an important water habitat, upon which numerous birds and other flora and fauna are reliant.

If, hypothetically, less stringent environmental objectives were set for Lough Corrib, this may result in protection offered under the WFD being less effective, with birds and habitats being impacted negatively as a result. Despite the Lough and its catchments possibly being ‘modified’ this does not mean that the most stringent environmental objectives should not be applied, as the Lough contains a number of vulnerable species e.g. salmonid fish and fresh water pearl mussel, which are particularly sensitive to pollution, (O’Connor, Pers. Comm., 2006).

Interestingly the Western River Basin District characterisation study (2004) did not identify any lakes as being ‘heavily modified’.

#### *Monitoring*

Requirements for monitoring in relation to the Birds and Habitats Directives are not particularly strong. The Birds Directive does not refer to monitoring at all, while the Habitats Directive (Article 11) only requires the ‘surveillance’ of the conservation of natural habitats and species, and does not specify how and to what extent this surveillance should be carried out. Monitoring under the Habitats Directive in Ireland is undertaken by the NPWS on a habitat by habitat or species by species basis. The conservation status, of a representative sample of habitats and species listed in Annexes 1 – 5 of the Directive, is assessed. Monitoring projects have been initiated for various habitats, including turloughs, and species including the Pearl Mussel (both of which occur in Lough Corrib or its surrounding catchments). National baseline surveys are also being conducted for species such as lampreys, seals and woodland habitats (Lynn, Pers. Comm., 2006). The Central Fisheries Board undertakes the monitoring of salmon in Ireland.

Opportunities exist for the exchange of monitoring information, particularly in relation to water-based habitats, between the WFD and the Birds and Habitats Directives. The detailed requirements for monitoring under the WFD (Article 8 & Annex V) could be used to strengthen any weaknesses and gaps in monitoring data and subsequently shared between the various processes. Article 8(1) of the WFD states that monitoring programmes should be “supplemented by those specifications contained in Community legislation under

which the individual protected areas have been established". This would suggest that duplication of monitoring requirements could be avoided by 'integrating' the various monitoring processes. However, in circumstances where monitoring under the Birds and Habitats Directives may be limited, the WFD provides an opportunity to strengthen the process. This would be particularly useful in Ireland where it is recognised that information on habitats and species is still incomplete and that there is an urgent need for more survey work (Irish Peatland Conservation Council, 2000). Annex V (1.3.5) of the WFD provides for additional monitoring requirements for protected areas. It ensures that bodies of water, which form habitat and species protection areas, are included in WFD operational monitoring programmes. The WFD goes on to state that such monitoring "shall be carried out to assess the magnitude and impact of all relevant significant pressure on these bodies [of water] and, where necessary, to assess changes in the status of such bodies resulting from the programme of measures...".

Monitoring of water quality and effects on aquatic flora and fauna (which certain bird species e.g. Common Scooter, may rely on for feeding) could help to inform any surveys/monitoring being carried out on waterways birds. For example, poor water quality may have an effect on aquatic flora and fauna, which in turn may affect the number of birds using the Lough. Up to now very little has been known about waterways birds (as opposed to other bird species) in Ireland, but surveys are now being carried out with priority being given to the Kingfisher (listed in Annex I of the Birds Directive and the only species in this group of birds in Ireland) and waterways birds within SACs (Crowe, Pers. Comm., 2006).

Although some monitoring has been taking place in Ireland in relation to birds and habitats, monitoring programmes for most freshwater habitats have yet to be initiated (Lynn, Pers. Comm., 2006). The only monitoring specific to the Habitats Directive of Lough Corrib SAC that has been carried out to date has been on the species *Margaritifera margaritifera* and on a raised bog habitat (Addergoole bog). Monitoring of the lamprey species within Lough Corrib SAC is expected to be undertaken later in 2006 (O'Connor, Pers. Comm., 2006). WFD monitoring may have significant influence in the way that future monitoring programmes, that cover the requirements of the Habitats Directive, are developed. It may be necessary to update existing monitoring programmes or develop new programmes for birds and habitats depending on the outcome of WFD monitoring. The information and

monitoring requirements of the WFD are considered by some to be quite challenging, and the surveying of lakes such as Lough Corrib is considered a major undertaking mainly due to size (Western Regional Fisheries Board, 2001). However, it is also possible that monitoring/survey data gathered through programmes such as the Corrib Development Programme or conservation projects could help fill data gaps as appropriate.

Monitoring undertaken as part of a development process e.g. monitoring of water abstraction projects (see Case Study 1) and its impact on water quality and protected areas, could also be used to inform future POMs/RBMPs and supplement monitoring carried out under this process. Monitoring data on the effects of projects on the conservation status of a habitat could also be used to inform 'appropriate assessments' carried out for plans or projects not directly connected with the SPA/SAC, but which may have significant effects on the site. The issue of appropriate assessment is discussed in further detail below.

Article 6(2) of the Habitats Directive requires that appropriate steps be taken to avoid, within the SAC, "*the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this [Habitats] Directive*". In response to this Article, and to help avoid such 'significant disturbance' a list of action has been drawn up where particular activities require permission from the Minister<sup>30</sup> (Lynn, Pers. Comm., 2006). These activities or 'enactments' are provided in Part 1, Second Schedule of the European Communities (Natural Habitats) Regulations 1997, and include among others, drainage schemes and fisheries. Information on other activities and their impacts on designated sites are also monitored and logged by NPWS conservation rangers<sup>31</sup> (Lynn, Pers. Comm., 2006). Information gathered during the monitoring of such activities, whether fed directly back to the planning process or via the WFD RBMP process, could influence the content of relevant county development plans and their planning policies. As such planning policies could reflect the need to ensure that new development be designed and located so that adverse pressures are not created for the water environment, which could compromise the

<sup>30</sup> Identified as the Minister for Arts, Culture and the Gaeltacht under the EC (Natural Habitats) Regulations 1997; now the Minister for Community, Rural and Gaeltacht Affairs.

<sup>31</sup> The NPWS is made up of a small team of approximately 25 scientific research staff and approximately 70 conservation rangers who patrol the country (Lyn, Pers. Comm., 2006).

ability of RBDs to meet the objectives of the WFD (Environment Agency *et al*, 2006).

### *Baseline Data*

As discussed in Case Study 1, there are numerous opportunities for the sharing of baseline and monitoring data across the different directives, the availability of such data and co-ordination between the various bodies involved is thought essential for consistency and the avoidance of duplication. It has already been illustrated that data gathered as a result of monitoring requirements can be shared between directives. While the WFD process requires the gathering of physical, chemical and biological data, during RBD characterisation and monitoring, it is the biological/ecological data, which is of particular importance in terms of its links with other directives, namely the EIA and Birds and Habitats Directives.

For example, biological data gathered as part of the RBD characterisation process could be used to inform the EIA process. This would be particularly relevant to the screening stage i.e. deciding whether an EIA is necessary, where criteria such as the environmental sensitivity of the area is likely to be affected by the proposed project, needs to be taken into consideration. This includes, amongst others, taking into account the absorption capacity of the natural environment in relation to wetlands and areas classified or protected under the Birds and Habitats Directives (Annex III (2), EIA Directive).

Similarly, data on different types of habitats and species within a particular area, as identified under the provisions of the Birds and Habitats Directives, could be used to inform EIA baseline evaluation in terms of identifying which habitats and species may be affected by the proposed development/activity. Where management plans exist for a designated site, these plans are required to take into account the characteristics specific to the site, including all foreseen activities (CEC, 2000). Information on site characteristics may inform EIA baseline. McGowan *et al* (2002) highlight that the availability of biological data during baseline evaluation would also “allow subsequent monitoring of impacts and should therefore contribute to greater accuracy of impact prediction and...the provision of more effective mitigation measures”. Ineffective mitigation measures under EIA may result in a particular development causing deterioration in water status (the issues of water status is discussed in more detail below) (Environment Agency *et al*, 2006).

While the initial RBD characterisation process involved the provision of information on existing pressures and potential

effects on water bodies, it did not involve planned or future assessment of effects (EPA, 2005). Information used to inform and influence the production of new or revised development plans (whether as a result of information obtained through the EIA, SEA or Birds and Habitats Directives) may help to overcome this problem, as such plans should provide information on future pressures, which in turn should feed back and influence future RBD characterisation.

There are numerous source of baseline information relating to nature conservation designated areas in Ireland, including habitat maps (only for SACs which have management plans), NHA habitat cards, EU Natura database, reference data sets, habitat-specific studies, forest soils projects, and CORINE land-cover mapping (Ó Riain *et al*, 2005). However, the data derived from these sources varies considerably both in terms of format and content, some of which may not be suitable for the purposes of setting standards for protected areas under the WFD. It is recognised that where information is available that improvements need to be made both in terms of the quality of data and its availability to support the WFD process. It is generally considered that there is a lack of suitable baseline data in Ireland, particularly with regards water related requirements of protected habitats and birds (O'Connor, Pers. Comm., 2006). The WFD process is heavily reliant on the use of Geographical Information Systems (GIS), particularly in relation to the geographical coverage of RBDs (Annex I(ii)) and in relation to the characterisation of surface water (Annex II(I)(1.1)(vi)). However, it is recognised that in Ireland there is a general lack of digitised habitat maps and species distribution maps under the Birds and Habitats Directives (O'Connor, Pers. Comm., 2006) and as a result there is a danger that water based birds and habitats may not be dealt with satisfactorily in the RBMP process.

### *Water Quality/Status – Ecological/Conservation Status*

This Case Study helps to illustrate possible interaction/conflict between the long-term objective of achieving “good ecological status” as required by the WFD and “favourable conservation status” as required by the Habitats Directive.

The WFD requires that all designated water bodies i.e. those identified within RBDs, should achieve “good ecological and chemical status” by 2015, although water bodies that are identified as being “heavily modified” only have to achieve ‘good ecological potential’. Due to uncertainties in predicting, for example, future impacts on catchment systems and understanding how nutrients and pollutants move through these systems in the long-term, it is thought unlikely that

achievement of good ecological status by 2015 will be possible, but at the very least the process will identify catchments which are most vulnerable and help move towards better environmental quality (Faversham House Group, 2006).

The Habitats Directive requires that natural habitats and species of Community interest are restored or maintained at a “favourable conservation status”. Article 1(i) states that conservation status is ‘favourable’ when:

“- *Population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and*  
 - *the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and*  
 - *there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis.*”

Using this Case Study it is possible to take the example of the freshwater pearl mussel *Margaritifera margaritifera*, which has been identified in Lough Corrib and which is protected under the site designation SAC, under the provision of the Habitats Directive and EC (Natural Habitats) Regulations 1997. It has already been mentioned that this pearl mussel is very sensitive to pollution and is under threat from extinction in Ireland. National monitoring carried out in 2004 on the freshwater pearl mussel found that no Irish population of this species is currently in “favourable conservation status” (O’Connor, Pers. Comm., 2006). Although measures may have been put in place in order to re-establish and conserve the status of this species it may be possible that the quality of the water in which it lives continues to decline. The pearl mussel is heavily reliant on the highest water quality for survival. Through the implementation of the WFD it is hoped that stringent thresholds will be set for this species and that a rigorous and strict programme of measures be implemented for relevant catchments (O’Connor, Pers. Comm., 2006). However, according to the National Parks and Wildlife Service (2004) the overall quality of the water of the Corrib is only considered to be satisfactory. Also, the WRBD characterisation study (2004) identifies the larger lakes in the RBD as being at high risk i.e. risk of failing to achieve the objectives of the WFD due to the effect of human activities. Specifically, Lough Corrib was identified as ‘probably at significant risk’ from morphology and point source pollution, and being ‘at significant risk’ from pollution. The overall lakes risk assessment for the WRBD puts Lough Corrib at ‘significant risk’.

As water is supplied to Galway city from Lough Corrib through existing water abstraction schemes it is possible that additional water abstraction may be required in the future in order to deal with increases in population and housing infrastructure. Information from county development plans could be used to inform the WFD process as to whether such schemes are planned for the future development of the area. Such schemes could be considered as ‘human activity’ under the requirements of the WFD, but given its status as a protected area it could not be made subject to less stringent environmental objectives (under Article 4(5) of the WFD). Also, when establishing a Programme of Measures (POM), for the achievement of environmental objectives, the RBDs need to ensure that such measures include those required “to implement Community legislation for the protection of water” [including those within the Birds and Habitats Directive – Annex VI, Part A] (Article 11(3)). If measures for the protection of water-based birds, habitats and species, are stringent enough (as set out under the Birds and Habitats Directives), then these may be sufficient in terms of the achievement of specific objectives under the WFD. Also, where objectives are unlikely to be achieved then additional measures including the establishment of “stricter environmental quality standards” may be included in the POMs (Article 11(5)).

Another issue to consider is the possible ‘cumulative effects’ of activities on water quality and ultimately on birds, habitats and species protected by the Lough Corrib cSAC and SPA. The WFD would appear to be quite vague in terms of the ‘scale’ or type of human activity to be considered in the RBD characterisation process (Article 5(1)). However, it is assumed that for a specific body of water to be so affected by ‘human activities’ that the objectives of the WFD cannot be achieved, the ‘activities’ in question are more than likely to relate to larger scale initiatives. Assuming that only large-scale activities are taken into consideration for their effects on water quality, there is a possibility that small-scale single development activities and their potential effects will not be taken into consideration. A small development on its own, which may be discharging small amounts of sewage or other polluting substances into the Lough, for example, may not be considered to pose a significant risk to water quality (although some very local activities leading to changes in water quality/quantity could, it is thought, represent the greatest threats to biodiversity and ultimately fall outside the scope of the RBMP process (O’Connor, Pers. Comm., 2006)), but when considered together with other small scale developments around the Lough, their cumulative effects may be significant.

### Appropriate Assessment

Where a SPA or SAC may be affected by a plan or programme, an appropriate assessment (AA) will need to be undertaken in order to comply with the Habitats Directive. This issue is also discussed in Case Study 1. Article 6(3) of the Habitats Directive specifies:

*“Any plan or project not directly connected with or necessary to the management of the site, but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives. In the light of the conclusions of the assessment of the implications for the site...the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned...”.*

Through this case study example there are several plans or projects which may affect Lough Corrib SAC and SPA and therefore be subject to appropriate assessment. These include the local authority development plan, which sets the framework for future developments in the area; proposed development projects resulting from the development plan, which may have significant effects on the Lough or other protected areas depending on the scale of the development; and plans or projects resulting from the RBMP process.

However, under the provisions of the Irish Regulations concerning natural habitats (European Communities (Natural Habitats) Regulations 1997 – S.I. No. 94/1997) only ‘operations’ or ‘activities’ are subject to appropriate assessment. Regulation 2 interprets “*operation or activity*” as meaning:

“Any use of –

(a) land (including the foreshore and the seabed out to the exclusive fishery limits of the State), and

(b) water covering such land,

other than -

(i) development which is not exempted development within the meaning of the Local Government (Planning and Development) Acts, 1963 to 1993, and

(ii) development by a local authority, or

(iii) an operation or activity which requires consent or other authorisation, pursuant to any enactment set out in Part I or II of the Second Schedule.”

This interpretation implies that ‘plans’ and local authority

developments (which would be contained within local development plans) are in fact exempt from the provisions of the Regulations. By excluding development plans in particular, this may represent a failure of the Irish Regulations to properly transpose the provisions of the Habitats Directive. The European Court of Justice (ECJ) recently ruled that the UK had failed to transpose the provisions of Article 6(3) and (4) as a result of failing to make land-use plans subject to appropriate assessment (ECJ C-06/04 – see section 2.5 above). Land-use plans also include development plans. In fact guidelines on managing Natura 2000 sites (CEC, 2000) state that “land-use plans should be considered by Article 6(3) to the extent that they are likely to have relevant significant effects on a Natura 2000 site”.

As mentioned in Case Study 1 the Habitats Directive is not explicit on the ‘type’ or ‘form’ that AA should take, although guidance on managing Natura 2000 sites (CEC, 2000) suggests that for projects likely to have significant effects on a protected site that it may be appropriate for an assessment to be undertaken which fulfils the requirements of the EIA Directive (85/337/EEC). However, the guidance also points out that an assessment under the Habitats Directive would be narrower in scope than EIA as it would focus on the “implications for the site in view of the site’s conservation objectives”. In view of this the guidance suggests that the methodology for AA could be drawn from EIA methodology. In fact the Irish Habitats Regulations specify that “*an environmental impact assessment in respect of a proposed operation or activity shall be an appropriate assessment for the purposes of this Regulation*” (Chapter IV, Section 17 (2)). The use of EIA as an appropriate assessment is also stipulated in Part IV, Section 27 of the Regulations.

As EIA applies specifically to ‘projects’ both the EC guidance and the Irish Regulations would appear to exclude consideration of the assessment of ‘plans’. The reason for this may be because plans are already subject to assessment under the requirements of the SEA Directive. Guidance on the assessment of development plans in relation to the Habitats Directive (Scottish Executive, 2006) recognises that there is no set format for AA, but that any assessment carried out should be “of a scale and level of detail” so that it can be “ascertained that the plan will not adversely affect the integrity of any site and sufficiently rigorous to justify the conclusions”. As mentioned plans that may require AA under the Habitats Directive are also likely to be subject to SEA under the SEA Directive (a requirement for appropriate assessment of a plan also triggers the application of SEA to

the plan in question (Scott Wilson *et al*, 2006)). There is, therefore, potential for overlap between the two assessment processes. However, the SEA Directive makes provisions to help avoid duplication of assessment (Preamble Para. 15, & Articles 4, 5, & 11). Taking this into consideration it may be possible for AA as required for plans under the Habitats Directive to be incorporated into the SEA also being undertaken of the plan i.e. through a combined procedure. This, however, is only thought possible if the combined procedure “fulfils the requirements of the SEA Directive and the Habitats Directive” (Scottish Executive, 2006). The Scottish Executive (2006) recognises that a fully integrated process would not be possible due to the different focus and requirements for each type of assessment, but that elements of the SEA process could be used to inform the AA e.g. baseline information, impact prediction, alternatives and consultation, and that each process could run in parallel to each other with results from each process clearly presented in the environmental report. It is recognised that a parallel process such as this would help avoid duplication of effort, result in savings in resources and encourage ‘joined up thinking’ (Scott Wilson *et al*, 2006 & Scottish Executive, 2006).

Another issue to consider relates to the application of AA should SACs and/or SPAs be designated *after* RBMPs and POMs have already been published. It is unclear whether RBMPs and/or POMs will necessarily both be subject to AA (see Chapter 6 Discussion below). If, however, RBMPs and/or POMs are subject to both SEA and AA, the assessments will be required to be carried out in conjunction with the plan making process i.e. SEA is applied to proposed plans and carried out alongside the development of the plan. However, there may be a situation, particularly in this Case Study scenario where the SAC is currently only a ‘candidate SAC (cSAC)’ awaiting agreement by the European Commission, or where new SPAs or SACs are designated after RBMPs and POMs have been published. As the RBMP/POM will have been subject to SEA, under the requirements of the SEA Directive, the need for additional AA on the effects of the plan on the newly designated site may well be overlooked.

#### 4.3.6 Conclusions

This case study example helps to illustrate the potential relationship i.e. overlaps and interactions, between the WFD and the protected areas Directives: Birds and Habitats. The scenario presents two processes: the WFD process, which has already been implemented, and the conservation process, which would occur ordinarily under the provisions of the

Birds and Habitats Directives. It should be noted that the issues identified are not representative of Lough Corrib alone and could be applied to any designated site within a RBD. Lough Corrib is only being used as an example to help illustrate possible linkages between directives. A number of issues concerning the implications that each process has on the other were identified and can be summarised as follows:

- Where conservation objectives already exist for a protected area it may be possible to incorporate these into the WFD process, therefore avoiding duplication. The main issue centres on whether the objectives being set are the most stringent. It may be necessary, for the purposes of achieving the overall objectives of the WFD, to develop new more ‘stringent’ objectives if for some reason existing objectives are not considered stringent enough in terms of protecting the ecological integrity of the designated site (this would apply to aquatic based sites).
- Stringent conservation measures as established under the Habitats Directive, for the protection of water-based birds, habitats and species are thought essential in terms of helping towards the achievement of ‘good ecological status’ under the WFD. Such measures are likely to be incorporated into the WFD process (Article 4(1)(c)) and established in the POMs for the RBD. Where specific water bodies are affected by ‘human activities’ ‘less stringent environmental objectives’ may be set providing, inter alia, the highest status possible is achieved (not entailing disproportionate cost) and there is no further deterioration (Article 5).
- Conservation measures for Lough Corrib should be incorporated into relevant county development plans (CDPs). There could be overlap if the same measures were included in POMs/RBMPs, which should also be incorporated into CDPs. Much depends on the timing of the different processes, but most up-to-date measures should be incorporated into CDPs.
- Monitoring in relation to aquatic habitats, undertaken as part of the RBMP process, could be used to strengthen surveillance requirements under the Habitats Directive and to inform any waterways birds surveys/monitoring being undertaken. Information from survey programmes undertaken outside the requirements of the WFD and Birds and Habitats Directives could be integrated into new monitoring programmes.

- Monitoring data on the impacts of certain developments on water quality and protected areas could be used to inform future POMs/RBMPs as well as informing AAs carried out under the requirements of Article 6 of the Habitats Directive. Data gathered on activities that may cause disturbance to designated sites under the Habitats Directive, and their associated impacts could also be fed back into the RBMP process and subsequently used to update and inform development plans and their policies.
- Biological/ecological data gathered during RBD characterisation could be used to inform the screening process in EIA in terms of providing information on the sensitivity of the proposed site and absorption capacity of the natural environment in relation to protected areas. Data on habitats and species under the Birds and Habitats Directives could be used to inform EIA baseline evaluation, which may subsequently influence impacts monitoring and improve mitigation measures. Information collected through EIA, SEA and the Birds and Habitats Directives could be fed into new or revised development plans which would help to inform future RBD characterisation in terms of the provision of information on future pressures for a specific area.
- The WFD is reliant on GIS but a lack of adequate/suitable baseline data and digitised habitat maps and species distribution maps may result in some important habitats/species being omitted from the RBMP process. Lack of suitable data may influence the setting of standards for protected areas under the WFD, which could in turn affect the 'status' of a particular body of water.
- There is a possibility that small-scale 'activities' may be overlooked in the RBMP process in terms of their effects on water quality and ultimately on biodiversity. It is thought that 'cumulative effects' of small-scale initiatives (for those developments already in existence and those likely to take place in the future) need to be considered to ensure accurate assessment of water quality and ensure most stringent objectives are set.
- Plans and projects which result from the development process or WFD process may require an 'appropriate assessment' (under the provisions of Article 6(3) of the Habitats Directive) depending on whether they are likely to affect the integrity of the designated site. It would appear that the Irish Habitat Regulations, through the exclusion of development plans and local authority development projects from these provisions, risk being in breach of the Habitats Directive in a similar way to the UK, which has now been required to amend its regulations, following a recent ECJ judgement. The Irish Government may therefore wish to consider this matter with some urgency.
- Due to the different characteristics of plans and projects it may be necessary to carry out two different forms of AA for those plans and projects, which fall under the provisions of Article 6(3) of the Habitats Directive. It is suggested that for proposed projects an assessment based on EIA methodology be carried out ensuring that its focus is on the implications of the project on the integrity of the site and its conservation objectives. If a project is already subject to EIA under the requirements of the EIA Directive, then the AA for the purposes of the Habitats Directive could be combined with the EIA process to avoid duplication. An assessment of a plan is likely to be less specific and detailed than EIA for a project. As plans such as local authority plans are subject to SEA under the requirements of the SEA Directive and also likely to be subject to AA for their effects on the designated site, it is thought that a combined procedure as suggested by the Scottish Executive (2006) be undertaken to help avoid duplication of assessment.
- AA should, if run in parallel with SEA, be undertaken during the plan-making process i.e. to proposed plans. If carried out in this way the SEA process itself, for example during scoping, may be used to screen out the need for a formal AA if the SEA process is able to influence the draft plan to the extent that it will not affect the integrity of a designated site. There may, however, be a situation where a POM/RBMP has been published, for which an SEA has already been carried out, but since its publication new site designations have been made (under the provisions of the Habitats Directives). If new SPAs or SACs are designated the already published POM/RBMP may affect the integrity of the site and would therefore be subject to AA under the provisions of Article 6(3) of the Habitats Directive. In this case additional assessment would need to be undertaken, but information from existing SEA could, it is thought, be used to inform this process, thereby avoiding duplication of effort.

## 4.4 Case Study 3: International River Basin Districts - NS-SHARE Project

### 4.4.1 Background

The Neagh Bann RBD (NBIRBD) and North Western RBD (NWIRBD) are both designated as International RBDs under the provisions of the WFD (Article 3(3)) (see Figures 4.12 and 4.13 and section 4.4.2 below). These river basin districts cross over between the Republic of Ireland and Northern Ireland and were chosen as a Case Study to help illustrate the links between various Directives in relation to transboundary consultations and co-ordination of the different bodies involved. Northern Ireland also contains the North Eastern RBD (a RBD with no international borders) and the Shannon RBD (SIRBD), which is also designated as an International RBD, but these RBDs are not considered in the context of this particular study.

Overall co-ordination for the implementation of the WFD between Northern Ireland and the Republic of Ireland is undertaken, on a bilateral basis at Ministerial level, between the Minister with responsibility for the Environment in the North and the Minister for the DoEHLG in the South. A North South Working Group<sup>32</sup> on Water Quality provides assistance to Ministers on co-ordination (EHSNI, 2005)<sup>33</sup>. Implementation of the WFD within each RBD is co-ordinated by the Environment and Heritage Service of Northern Ireland (EHSNI) and the relevant local authorities in the Republic of Ireland.

Under the EU Community Initiative, INTERREG IIIA Programme<sup>34</sup>, a cross border water management consultancy project, called the North South Shared Aquatic Resources (NS-SHARE) project, was set up to help implement the objectives of the WFD in the region. NS-SHARE is the main vehicle for delivering the objectives of the WFD between August 2004 and March 2008 (across the three RBDs mentioned above) (NS SHARE, 2005a). Its main aim is to facilitate co-ordinated implementation and delivery of the

technical tasks required by the WFD (EHSNI, undated (a)), resulting in a harmonised approach. To aid this process a Steering Group was set up under NS SHARE, which comprises representative from Government Departments in the Republic of Ireland and Northern Ireland, the EPA and the co-ordinating authorities (McNally, Pers. Comm., 2006). The NS SHARE project is being promoted and led by Donegal County Council (in the Republic of Ireland) (EHSNI, 2005).

*The North Western IRBD* supports a mixture of activities including boating and leisure tourism on the Erne system (a major lake and river system), and angling and sea fisheries on the coast (the Donegal coast boasts the largest sea port in Ireland, Killybegs). The Erne system also supports the production of hydroelectric power, and water across the region supports a large agricultural area (NS SHARE, 2005 (b)). Intensive arable farming takes place in the Foyle (river) basin and valley, while the Erne catchment is mainly pasture and supports livestock farming. The Republic of Ireland register of protected areas lists 77 SACs and 27 SPAs, which are water dependent, within the region (NS SHARE, undated (a)).

*The Neagh and Bann IRBD* consists of Lough Neagh, which is the largest freshwater lake in Ireland. The Lough has six major rivers flowing into it, one of which is the Upper Bann. The rivers flowing into the Lough drain 43% of Northern Ireland as well as parts of County Monaghan in the Republic of Ireland. Water drains from the lake via the Lower Bann River. Lough Neagh has several local, national and international environmental designations, including being designated as a Ramsar site. The Lough supports local fishing, as well as providing drinking water to Belfast. Sand extraction also takes place (NS SHARE, 2005 (c)). The portion of the NBIRBD, which lies within the Republic of Ireland is made up of improved pasture and supports extensive arable farming. There are 4 SACs and 2 SPAs that are water dependent within the region, which are listed in the Republic of Ireland register of protected areas (NS SHARE, undated (b)).

### 4.4.2 Geographical Context

The location of the NWIRBD and the NBIRBD are illustrated in Figures 4.12 and 4.13 respectively.

*North Western International River Basin District (NWIRBD)* – The NWIRBD covers an area of approximately 12,265 km<sup>2</sup> (approximately 4,785 km<sup>2</sup> falls within Northern Ireland) (EHSNI, 2005). The RBD comprises of the Erne and Foyle river basins, together with the basins of Lough Melvin,

<sup>32</sup> The Working Group, which was set up in 2000 includes officials (with technical expertise) from the North and South of Ireland. The Group co-operates on a range of initiatives for implementing the WFD (DoEHLG – [www.environ.ie](http://www.environ.ie))

<sup>33</sup> Within the Republic of Ireland the DoEHLG established a National Co-ordination Group (NCG) to co-ordinate and promote, at national level, implementation of the Implementation of the WFD.

<sup>34</sup> The INTERREG IIIA Programme is designed to support cross-border co-operation, social cohesion and economic development between regions of the European Union. The Northern Ireland/Ireland Programme covers all of Northern Ireland and the six Border Counties and aims to address the economic and social disadvantages that can result from the existence of a border (Special EU Programmes Body – [www.seupb.org/prog.htm#INTERREGIIIATOHERCOMMUNITYINITIATIVES](http://www.seupb.org/prog.htm#INTERREGIIIATOHERCOMMUNITYINITIATIVES))

Bradoge River, Lough Swilly and related small coastal river basins in west County Galway (DoEHLG and DoENI, 2003). Counties of the Republic of Ireland covered by this RBD include all of county Donegal, and portions of counties Sligo, Leitrim, Longford, Cavan and Monaghan. The co-ordinating authority for the Republic of Ireland portion of the NWIRBD is Donegal County Council (McNally, Pers. Comm., 2006). Counties of Northern Ireland covered by this RBD include all of county Fermanagh, and portions of counties Londonderry and Tyrone. The co-ordinating authority for the Northern Ireland portion of the NWIRBD is the Environment and Heritage Service Northern Ireland (EHSNI) (McNally, Pers. Comm., 2006). The RBD has 665 river water bodies within the Republic of Ireland plus 150 cross-border river water bodies, 227 lake water bodies plus 1 cross border lake water body, 72 groundwater bodies (29 of which are cross border bodies), 22 transitional water bodies and 23 coastal water bodies (NS SHARE, undated (a)).

*Neagh Bann International River Basin District (NBIRBD)* – The NBIRBD covers an area of approximately 7,900 km<sup>2</sup> (approximately 5,740 km<sup>2</sup> falls within Northern Ireland) (EHSNI, 2005). The RBD comprises of Lough Neagh and River Bann basins and includes river basins draining to the outer estuarine limits of Dundalk Bay (rivers Fane, Castletown, Cully Water, Kilcurry, Ballymascanlan and Flurry) and Carlingford Lough (Newry river) (DoEHLG and DoENI, 2003). Counties of the Republic of Ireland covered by this RBD include most of county Louth, portions of counties Monaghan and Meath. The co-ordinating authority for the portion of the RBD within the Republic of Ireland is Monaghan County Council (McNally, Pers. Comm., 2006). Counties of Northern Ireland covered by this RBD include all of counties Armagh, and portions of counties Down, Tyrone, Londonderry, and Antrim. The co-ordinating authority for the Northern Ireland portion of the RBD is the EHSNI (McNally, Pers. Comm., 2006). The RBD has 71 river water bodies within the Republic of Ireland plus 74 cross-border river water bodies, 16 lake water bodies, 28 groundwater bodies (5 of which are cross border bodies), 9 transitional water bodies and 5 coastal bodies (NS SHARE, undated (b)). Figures 4.12 and 4.13 highlight the location of each of the international river basin districts.

#### 4.4.3 Relevant legislation

The Case Study examines transboundary consultation and co-ordination relating to the implementation of the WFD and its relationship in this regard with other Directives. The relevant text of the WFD and implementing Regulations are outlined below. It should be noted that the timetable for implementation of various elements of the WFD within Irish Regulations was brought forward by six months and is therefore currently in advance of WFD implementation in Northern Ireland.

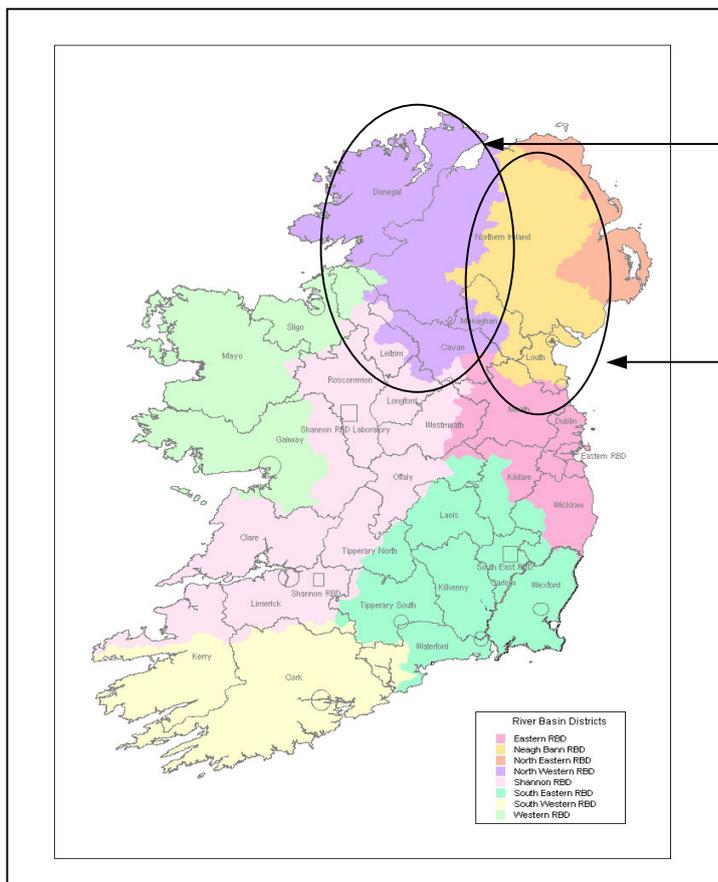
The **WFD** is specific in its requirement for co-ordinated action and the involvement of the public, particularly in relation to the RBMP, by way of information and consultation:

- Preamble 14 states that the success of the Directive is reliant on *“close cooperation and coherent action at Community, Member State and local level as well as on information, consultation and involvement of the public, including users”*.
- Preamble 23 emphasises the need for common principles in order to co-ordinate the effort of MSs *“to contribute to the control of transboundary water problems”*.
- Preamble 35 states *“within a river basin, where use of water may have transboundary effects, the requirements for the achievement of the environmental objectives established under this Directive, and in particular all programmes of measures, should be co-ordinated for the whole of the river basin district...”*.
- Preamble 46 deals specifically with the issues of participation and states *“to ensure the participation of the general public including users of water in the establishment and updating of river basin management plans, it is necessary to provide proper information of planned measures and to report on progress with their implementation with a view to the involvement of the general public before final decisions on the necessary measures are adopted”*.

Transboundary issues are set out in the following Articles of the WFD:

- Article 3(3) concerns the establishment of international river basin districts where a river basin covers the territory of more than one MS. In addition this Article stipulates that *“appropriate administrative arrangements”* are established for the purpose of applying the rules of the Directive.
- Article 3(4) concerns the need for the requirements of the Directive to co-ordinated for the whole of the RBD including international river basin districts.

**Figure 4.12 – Location of the North Western & Neagh Bann River Basin Districts**

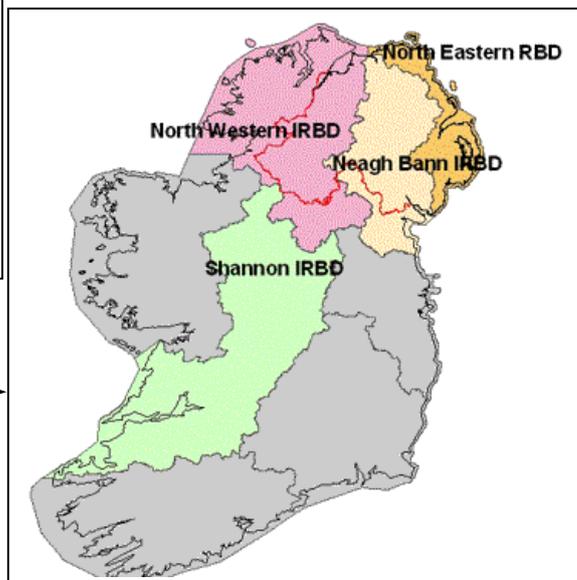


Source: WFD Ireland ([www.wfdireland.ie](http://www.wfdireland.ie))

North Western International River Basin District (NWIRBD)

Neagh Bann International River Basin District (NBIRBD)

**Figure 4.13 – International River Basins**



The International River Basin Districts are illustrated here. The red line marks the border between Northern Ireland and the Republic of Ireland.

Source: EHSNI ([www.ehsni.gov.uk](http://www.ehsni.gov.uk))

The specific requirements for public information and consultation are laid out in Article 14 of the Directive. Article 14(1) encourages “*active involvement of all interested parties...in particular in the production, review and updating of the river basin management plans*”. In addition there is a requirement, for each RBD, for certain information to be made available to the public for comment. This information includes: timetable and work programme for the production of the RBMP (Article 14(1)(a)), interim overview of significant water management issues (Article 14(1)(b)), and draft copies of the RBMP (Article 14(1)(c)). Six months is the time allocated for receipt of comments on these documents (Article 14(2)). The RBMP is required to include “*a summary of the public information and consultation measures taken, their results and the changes to the plan made as a consequence*” (Annex VII (A)(8)).

**The European Communities (Water Policy) Regulations 2003** (S.I. No. 722/2003), which implements the provisions of the WFD in the Republic of Ireland, stipulates the following in relation to co-ordination and public involvement:

- Article 3(c) requires public authorities<sup>35</sup> to “*consult, co-operate and liaise with other public authorities and the competent authorities in Northern Ireland...to ensure co-ordination of the requirements of the Directive...in relation to the whole of each...international river basin district*”.
- Article 3(e) also requires public authorities to “*encourage the active involvement of all interested parties in relation to the measures being taken by the authority for implementation of the Directive*”
- Article 4(1) relates to the requirements of the Minister<sup>36</sup>. It is the role of the Minister to “*promote the co-ordinated implementation of the Directive...together with the competent authorities in the State and in Northern Ireland, in relation to international river basin districts*”.
- Article 6(4) requires the co-ordinating local authority to “*act as the co-ordinator for all the relevant local authorities*”. This Article designates Monaghan County Council as the co-ordinating local authority for the Neagh Bann RBD and Donegal County Council for the North Western RBD.

<sup>35</sup> Public authorities are listed in the First Schedule of S.I. No. 722/2003 and include such bodies as the EPA, relevant local authorities, regional authorities, Waterways Ireland, the Heritage Council etc.

<sup>36</sup> The Minister is the Minister for the Environment, Heritage and Local Government - Regulations S.I. No. 722/2003

- Article 14 sets out the requirements for public information and consultation on the RBMP.
- Article 16<sup>37</sup> requires relevant local authorities to establish river basin district advisory councils. These councils are set up to consider, amongst others, matters relating to the preparation of RBMPs. The advisory councils are responsible for determining their own procedures (Article 16(3)(3)).

RBD Advisory Councils were set up as “a permanent forum for direct dialogue and interaction between interested parties and the relevant public authorities” (DoEHLG, 2004b), and as such will encourage interested and concerned parties to raise important issues related to the RBDs and water quality in general (Sheils, Pers. Comm., 2006). However, the Advisory Councils appear to be designed more to ensure that RBMPs are agreed by local authority councils rather than necessarily ensuring wider public participation (Kelly, Pers. Comm., 2006). Under the NS SHARE project Advisory Councils have been set up for the NWIRBD and the NBIRBD, although they only have a statutory role within the Republic of Ireland portions of the RBDs. An equivalent body in Northern Ireland is the National Stakeholder Group, which meets annually and involves a broad spectrum of stakeholders, including members of RBD Advisory Councils (McNally, Pers. Comm., 2006).

**The Water Environment (Water Framework Directive) Regulations (Northern Ireland) 2003** implement the provisions of the WFD in Northern Ireland. The relevant Articles for the purposes of co-ordination and participation are:

- Article 3(2)(b) requires the Department<sup>38</sup> to “*consult the relevant competent authority in the Republic of Ireland to ensure co-ordination of the programme of measures for the whole of the international river basin district*”.
- With regards the preparation of RBMPs Article 12(1) requires the Department to co-ordinate with “*the relevant competent authority in the Republic of Ireland with the aim of producing a single plan for the whole of each international river basin district*”. Where a single plan cannot be produced then the Article enables the preparation of a RBMP for the part of the IRBD falling within Northern Ireland (Article 12(2)).
- Article 13 sets out the provisions with regards the

<sup>37</sup> This Article was amended by the European Communities (Water Policy)(Amendment) Regulations 2005 (S.I. No. 413/2005)

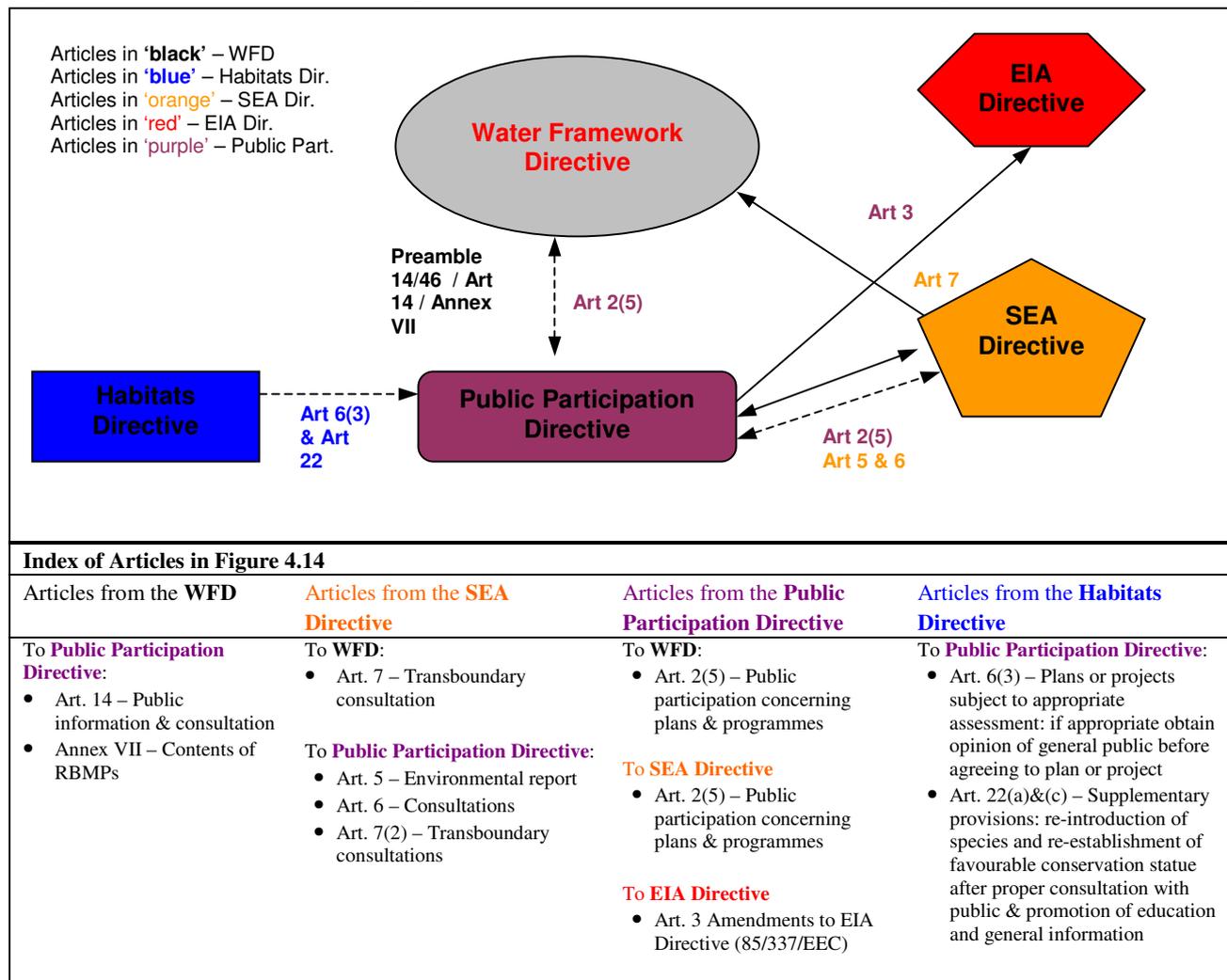
<sup>38</sup> The Department is the Department of the Environment.

production of RBMPs and public participation. Specifically, the Department is responsible for publishing “the background documents in a manner calculated to bring them to the attention of persons and bodies likely to be affected by them...”. Article 13(6) lists the persons and bodies to be consulted.

**4.4.4 Relevant links between Directives**

The most relevant potential links between Directives for this case study are illustrated by Figure 4.14 below.

**Figure 4.14: Direct and indirect linkages/interactions between Directives for Case Study 3**



#### 4.4.5 Current Scenario

As already mentioned this Case Study examines possible links between the WFD and other relevant directives e.g. EIA, SEA and the Public Participation Directives, in relation to transboundary consultation and the co-ordination of the different bodies involved (see Figure 4.14). Various issues are discussed, and where necessary and as appropriate, cross-referencing is made to Case Studies 1 and 2 in order to avoid duplication.

The importance of involving the public and other interested and relevant bodies, in the implementation of the WFD is acknowledged in Ireland, both in the setting up of Advisory Councils<sup>39</sup> (see above) and other initiatives such as:

- Websites for individual RBDs.
- A public access website containing information relating to the implementation of the WFD in Ireland ([www.wfdireland.com](http://www.wfdireland.com)), which also includes minutes of meetings of the National Co-ordination Group (NCG) (DoEHLG, 2004a).
- The establishment, by the DoEHLG, of the WFD Co-Ordination Group (mentioned above), which is supported by a number of additional advisory/technical working groups in specialist areas.
- The establishment of a “national stakeholder forum” within Northern Ireland, through which interested parties can take forward discussion and ideas (EHSNI, undated (b)).
- The NS SHARE Risk Assessment Reporting Tool, which is an interactive map and database system, which is accessible by the public and specialist users (NS SHARE, 2005d). The reporting tool provides access to the results of information produced in accordance with Article 5 of the WFD i.e. RBD characterisation.
- The Sustainable Water Network (SWAN), which is an umbrella body for Ireland’s thirty leading environmental groups who work together to protect Ireland’s waters by participating in the implementation of the WFD (SWAN, undated (b)).

For this particular Case Study the role that is played by the NS SHARE project is considered particularly important in terms of harmonising approaches taken to implement the provisions of the WFD, both in the Republic of Ireland

and in Northern Ireland. Consultants are contracted to examine differences in implementation within the relevant RBDs (i.e. those within the Republic of Ireland and within Northern Ireland) and assist NS SHARE in harmonising approaches as far as possible (McNally, Pers. Comm., 2006). An example of co-ordinated effort can be found in the development of a Register of Protected Areas (required under Article 6 of the WFD). The EHSNI developed a preliminary Register of Protected Areas for Northern Ireland, while the EPA produced a similar Register for the Republic of Ireland. Through NS SHARE the two Registers are being reviewed with the aim of producing an integrated ‘Register of Protected Areas for Ireland’ (EHSNI, undated (c)).

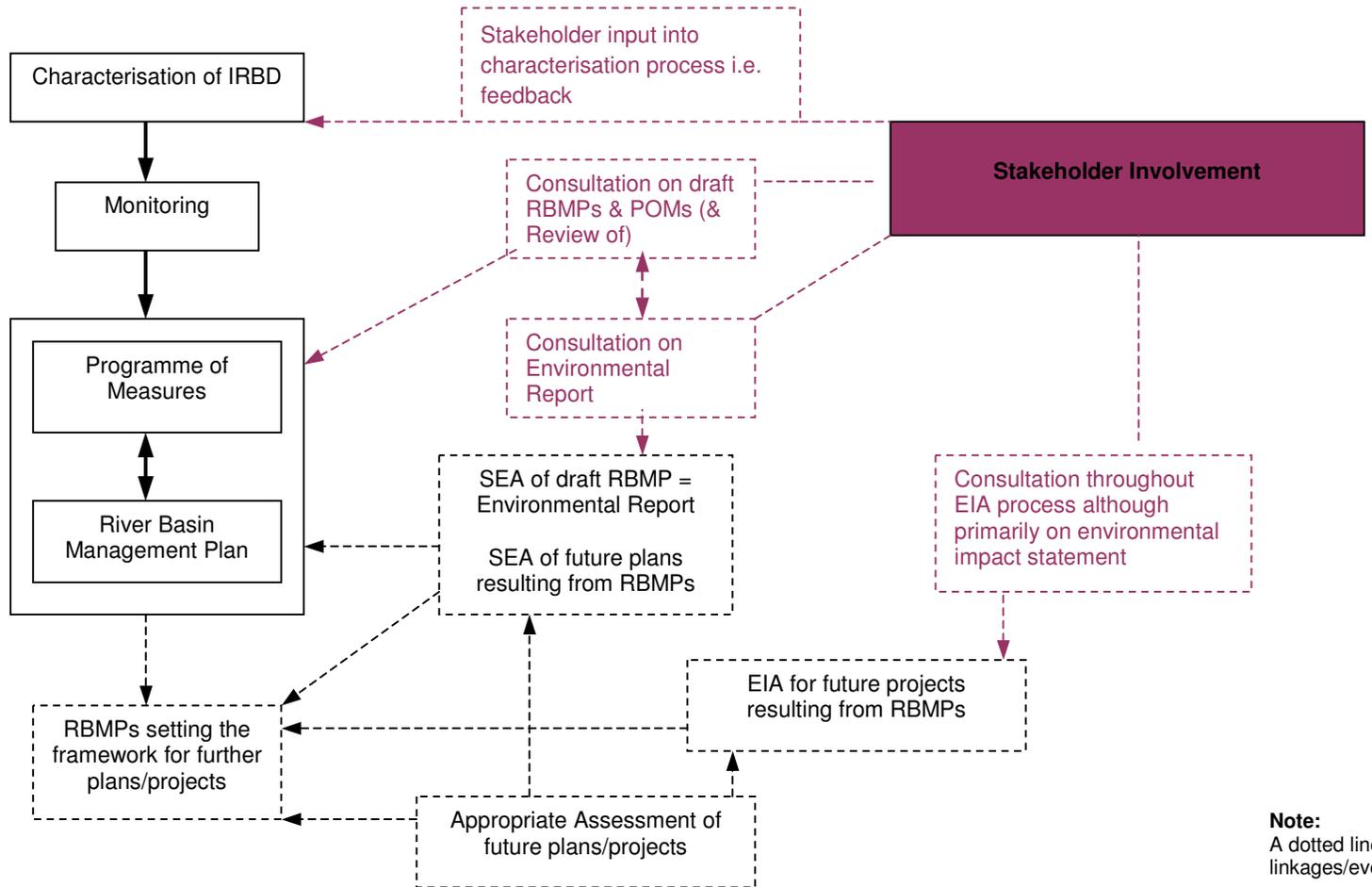
It should be noted that consultation documents have been produced for both the NBIRBD (NBIRBD, 2006) and the NWIRBD (NWIRBD, 2006) on the timetable and work programme for making RBMPs within these RBDs. They relate specifically to WFD implementation in Ireland, although similar documents in relation to Northern Ireland will be produced later in 2006. These documents fulfil the requirements of Article 14(1)(a) of the WFD.

It is recognised that “effective public participation brings greater transparency, openness and creativity to decision-making” (DoEHLG, 2004b), and that participation by interested parties should occur at the earliest stages of implementing the WFD and not just in relation to the development of RBMPs (DoEHLG and DoENI, 2003). It is evident that numerous bodies are involved in the process of implementing the provisions of the WFD, both in Northern Ireland and in the Republic of Ireland, for which careful co-ordination is considered essential. However, there may be other processes, which run in conjunction with the WFD process, for which additional consultation/participatory mechanisms are required. These are examined below (Figure 4.15).

<sup>39</sup> Advisory Councils provide an opportunity for “environmentalists to sit side by side with County Councillors and representatives from the agriculture, industry, angling, community, and academic sectors to work together to protect the waterways of their region” (SWAN, undated (a)).

Figure 4.15: Possible linkages between the WFD and the Public Participation, EIA and SEA Directives

WFD PROCESS (for each IRBD)



**Note:**  
 A dotted line ----- shows where linkages/events **may** occur.  
 A solid line — indicates the processes that are actually taking place.

#### 4.4.5.1 Main Issues

Keeping the WFD process as the focus of this study it is possible to identify areas where linkages in relation to stakeholder input are likely to occur (see Figure 4.15) – Case Study 1 also highlights some issues in this regard. While stakeholders are encouraged to participate as early as possible within the various processes i.e. WFD, EIA and SEA, the main areas where there are likely to be direct overlaps are between the WFD and the SEA Directive. Consultation in a transboundary context is only considered in any detail within the environmental assessment directives, and while the WFD places much emphasis on consultation and participation as a whole, particularly in relation to RBMPs, there is little by way of transboundary consultation, except the requirement that “*appropriate administrative arrangements*” are made (Article 3(3), WFD). These ‘administrative arrangements’ appear to have been addressed (as discussed above), although may be further strengthened through requirements for transboundary consultations under the SEA Directive. Under the requirements of the SEA Directive (Article 7(1)) a copy of the draft plan and programme as well as the SEA environmental report is required to be sent to the affected MS so that arrangements for consultation between States can be made as appropriate. This implies that consultation would have to occur between Northern Ireland and the Republic of Ireland on draft RBMPs regardless of the administrative arrangements already in place.

As already mentioned it is assumed for the purposes of this study that an SEA will be required to be carried out on draft RBMPs, and presumably also on any subsequent reviews and updates of RBMPs. While the lead authority within each RBD is likely to be responsible for the SEA of its RBMP (see Case Study 1), it is thought that independent bodies will be contracted by relevant authorities to carry out the SEA on their behalf (McNally, Pers. Comm., 2006). In Northern Ireland the Department of the Environment (DOE) is designated (under Regulation 4 of ‘The Environmental Assessment of Plans and Programmes Regulations (Northern Ireland) 2004’) as the Consultation Body for the SEA process. Relevant authorities must submit plans and programmes for consultation to the SEA Coordination Unit within the EHSNI (EHSNI, undated (d)).

Under the scenario presented above consultation will be

required on both the draft RBMPs (all interested parties are encouraged to be actively involved in the production, review and updating of RBMPs, as required under Article 14 of the WFD) and the environmental reports resulting from the SEAs for each IRBD. An issue may arise where, due to legislative requirements (see the Water Environment (Water Framework Directive) Regulations (Northern Ireland) 2003 above), and presumably also timing (regulatory requirements differ between the Republic of Ireland and Northern Ireland), two separate RBMPs may be produced for each IRBD i.e. one for water bodies falling within the Republic of Ireland portion of the RBD and one for the Northern Ireland portion of the RBD. This would result in the need for SEA to be carried out twice resulting in duplication of effort, as consultation would be needed on both draft RBMPs and environmental reports.

NS SHARE hope, through co-ordination of various working groups e.g. monitoring work group, which include representatives from the EHSNI, that a harmonised approach to monitoring and the development of POMs, in particular, will be developed which will help ensure equitable implementation across the RBDs (McNally, Pers. Comm., 2006). Similarly, those bodies responsible for carrying out the SEA on the draft RBMPs should work closely with NS SHARE to help avoid overlaps and duplication of effort. As RBMPs are required to be reviewed and updated every six years, it is likely that SEAs will need to be carried out again on any ‘modified’ plan. Relevant authorities and consultation bodies within the Republic of Ireland and Northern Ireland will need to consider how best to co-ordinate effort in terms of carrying out SEA on ‘modified’ plans, particularly as the NS SHARE project is likely only to be in existence until 2008.

Another issue to consider is the possibility of additional plans, programmes or projects being proposed/developed as a result of the final RBMPs. RBMPs may set the framework for future plans, programmes or projects, which may require SEA, EIA and/or Appropriate Assessment under the Habitats Directive (see Case Study 1 and 2). Transboundary consultation would have to take place under the requirements of the various directives (SEA and EIA), should the plans, programme or projects be likely to have significant environmental effects on another MS. This would apply to plans, programmes or projects which may

occur in the Republic of Ireland portion of the IRBD and the Northern Ireland portion of the IRBD and vice versa. The different RBMPs produced for each IRBD may result in the production of similar plans and programmes or projects, which may apply to both Northern Ireland and the Republic of Ireland. The authorities may need to consider how best to co-ordinate procedures in this case, to avoid excessive duplication.

SEA (and EIA), on the other hand, may help facilitate the consultation process for RBMPs and POMs. Since consultation is required under the WFD “in particular” on the RBMPs (Art. 14), by undertaking SEA in parallel to the development of the RBMP the two consultation processes can be developed simultaneously to mutual benefit. The mechanisms and the requirements for transboundary consultation are already enshrined in the legal processes for environmental assessment (incorporating the Espoo<sup>40</sup> requirements, for example).

#### 4.4.6 Conclusions

- It is possible that two RBMPs and subsequently two SEAs will be developed/carried out for each IRBD i.e. one for the Republic of Ireland portion of the RBD and one for the Northern Ireland portion of the RBD. While NS SHARE hope to harmonize approaches as far as possible e.g. in relation to POMs, those carrying out the SEA of the draft RBMP will also need to work closely with NS SHARE to help avoid duplication of effort, although should give careful consideration as to how future SEAs on ‘modified’ RBMPs will be co-ordinated in an effective manner.
- RBMPs may set the framework for future plans, programmes or projects, which may require EIA, SEA and/or Appropriate Assessment. Issues may arise where each of the two RBMPs produced for the same IRBD result in a number of plans, programmes or projects, which may be similar in nature and which require the same assessment processes, therefore resulting in duplication of effort.
- Transboundary/cross-border consultation and co-ordination needs to take into account the different

legislative/regulatory requirements of affected MSs, particularly in relation to the timing of implementation of various directives. To help avoid duplication of effort in relation to IRBDs i.e. in the production of RBMPs and their environmental assessment, relevant bodies should work closely together and where one State may be ahead in terms of implementing particular elements of the WFD, the other State can work closely with its neighbour to ensure that various processes are not ‘reinvented’ as such (McNally, Pers. Comm., 2006).

- SEA (and EIA) can help facilitate the consultation process for RBMPs and POMs since transboundary consultation is already a requirement of SEA and EIA, providing SEA is applied to RBMPs/POMs equally in both MSs.

<sup>40</sup> Espoo Convention on Environmental Impact Assessment in a Transboundary Context (and SEA Protocol) (UNECE, 1991)

## 5 Discussion

### 5.1 The WFD and SEA

The case studies illustrate the potential complexity of the relationship of the WFD with the other Directives. However, there are obviously overlaps between the case studies in terms of the issues they cover. Some of these complexities depend upon the extent of application of the SEA Directive to plans and programmes drawn up under the WFD. The SEA Directive also encourages the integration of the requirements of other Directives with those of the SEA Directive.

The arguments for RBMPs requiring SEA are strong, and simply require close attention to the criteria laid out in the SEA Directive for screening those plans and programmes that should be subject to SEA:-

- RBMPs are to be produced by an ‘authority’ (Art. 2 (a)).
- RBMPs are required by legislative provision (MSs are required to implement the WFD which establishes this requirement) (Art. 2 (a)).
- RBMPs are plans for the purposes of water management and therefore considered likely to have significant effects on the environment (Art. 3 (2) (a)). Even though there is some potential for interpretation of whether plans listed are considered automatically to have significant environmental effects (Sheate and Leinster, 2005), in the case of RBMPs even if they were not listed they are likely to have significant effects on the environment, particularly positive effects, since that is their intention.
- RBMPs are likely to set the framework for future development consents of projects (under the EIA Directive) (Art. 3 (2) (a)), via the POMs that are contained within the RBMP, i.e. they will influence the scale, nature and location of subsequent projects or activities.

Since there appears to be widespread recognition among the literature that POMs should be subject to SEA (for the same reasoning as above, only POMs set the framework directly for project EIAs), there can be little justification for not applying SEA to RBMPs as well, which set the framework for the POMs. Furthermore, there is a

particularly strong argument to support the need for SEA at the RBMP level, since the WFD itself stresses the importance of public consultation on the RBMP “*in particular in the production, review and updating of river basin management plans*” (Art. 14, WFD), with at least six months required for consultations. This is consistent with the requirement of the Aarhus Convention for early and effective public consultation in environmental decision-making (and reflected in the SEA Directive), and highlights the important strategic planning role for the RBMP, such that the public should be consulted during the RBMP planning process. If the RBMP does not set the framework for POMs and subsequent projects/activities, what is its purpose? This also supports an important practical benefit in applying SEA to the RBMP process, since SEA already provides a consultation process (including transboundary consultation where required) which can facilitate consultation on the draft RBMP.

The issue where there has been uncertainty is the last of the four criteria above – ‘setting the framework’ for EIA of projects, and the desire to avoid duplication. While the SEA Directive seeks to avoid *duplication of assessment* this does not mean that assessment should not be carried out at multiple decision levels. Indeed the SEA Directive (in Art. 5 (2) and (3)) recognises the value of a hierarchy of plans and programmes, the need to consider appropriate detail according to the level of the plan, and relevant information from other levels of decision-making. It is therefore quite clear that there may be assessments at a number of different levels of decision-making, e.g. at RBMP, POM and project EIA levels, but that at each level the assessment should be appropriate to that level of decision-making and will address those matters that are best addressed at that particular level.

In the case of RBMPs and POMs, therefore, while POMs are likely to be relatively detailed programmes which set the framework for potential projects, RBMPs should address the more strategic issues of the whole RBD, if - as the WFD expects<sup>41</sup>, - they are to be more than simply a

<sup>41</sup> Article 13, WFD:

“1. Member States shall ensure that a river basin management plan is produced for each river basin district lying entirely within their territory.”

“5. River basin management plans may be supplemented by the production of more detailed programmes and management plans for sub-basins, sector, issue or water type, to deal with particular aspects of water management.....” (Emphasis added). See also Annex VII for list of what RBMPs should cover.

collection of POMs. These will include broad strategic water management options that should be assessed at the RBD level before being selected for subsequent POMs, where SEA would then be more focused on alternative means of implementing the chosen options. This provides a very clear process of ‘tiering’ and a clear means of focusing the assessment at the most appropriate levels, which avoids duplication of assessment, but ensures that the public are consulted in an early and effective manner (i.e. at the draft RBMP stage which sets the strategic direction in terms of selection of water management options and subsequent POMs). Joint or parallel procedures for SEA of RBMPs and POMs may be possible, e.g. combining consultation processes together, so long as the SEA requirements of both are met.

## 5.2 WFD and land use planning

There are considerable opportunities for interaction between RBMPs and CDPs, though the exact nature of the relationship is still rather uncertain and will depend very much upon the nature of the types of developments that are likely to (1) emerge out of the RBMP/POMs process that are of sufficient importance to influence county development plans, and (2) that are likely to arise through the development planning process and have significant influence upon the RBMP/POMs process. The Dublin Water Supply Development Strategy illustrates the latter of these two examples, since it originates through development planning processes. In this case if the option discussed in the case study goes ahead it will need to be incorporated into CDPs (and possibly RPG), and which will in this case also influence the future RBMPs yet to be developed. When the RBMPs are adopted they in turn are likely to set in train potential development projects, via POMs, that may be subject to EIA, and may need to be incorporated into existing CDPs. In both these situations amendments to plans may trigger a requirement for SEA. The key to avoiding excessive duplication of assessment (as opposed to appropriate types and levels of assessment of different plans and programmes) will be to seek efficiencies through the careful timing of revisions of plans so that, e.g. amendments to CDPs triggered by RBMPs or POMs can be addressed as part of the normal revision cycle of CDPs wherever possible. This may be where good coordination between RPG at the regional level and RBMPs (and for example, Flood Risk Management Plans) can help identify potential strategies and options well in advance, and so facilitate better coordination among the various levels of assessment.

Since RBMPs and CDPs are ultimately the responsibilities of local authorities, there should be scope for coordination in practice.

## 5.3 Appropriate assessment

The requirement for AA under the Habitats Directive is resulting in some confusion as to what sort of assessment is actually required and when it should be applied. In the context of the WFD it is unclear whether AA will apply to RBMPs, POMs, other sub-RBMP management plans or all of them. This is a significant issue requiring some consideration. The discussion in this section sets out a tentative suggested interpretation of when AA might apply in the context of the WFD. However, it should in no way be considered a formal legal opinion, and ultimately it is for the Government (DoEHLG) to consider the correct legal transposition of Article 6 of the Habitats Directive and how and when AA is required in the context of the WFD.

Article 6 (3) of the Habitats Directive requires that

*“Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives...”*

(Emphasis added)

What is meant by AA is unclear, other than that it must assess the implications of the plan or project on the conservation status of the designated site. In the case of projects, EIA can probably serve the function of AA as well, since it will be in sufficient detail by virtue of being a site/location based study (this is also the view of the European Commission (CEC, 2000)). In the case of a plan it may be that SEA is insufficient to meet the requirements of AA, depending on the nature of the plan and its strategic level. However, there is potential for considerable confusion over whether AA is required for a plan affecting a designated site, once you are dealing with a plan that is anything other than one addressing land use at a level where aspects of the plan can be physically identifiable with the location of the site in question. Some plans may require SEA, but may be very strategic sectoral plans that do not at that level establish in sufficient detail the way in which a designated site will be used or affected, which would be the trigger for AA.

### 5.3.1 Interpreting Article 6 (3)

As a site-based, conservation-focused assessment an AA need not necessarily be particularly onerous, especially if combined with or delivered through EIA. Since the Habitats Directive does not define AA the term might be read as a “catch all” provision that is deliberately inclusive of all circumstances which might require EIA or SEA (on the basis that a potentially significant effect may arise) and thus is designed to ensure that environmental assessment takes place where necessary. The word “thereon” in Article 6 (3) also implies a degree of closeness or proximity of the effects of the plan in relation to the designated site. The European Commission guidance “Managing Natura 2000 Sites” (CEC, 2000) suggests that land use plans, including regional plans, are likely to require AA where they are likely to have significant effects on a site. It does, however, recognise that very strategic plans or policy statements are unlikely directly to have such effects.

The argument needs to be considered that RBMPs and POMs *may* have a significant effect on Natura 2000 sites, i.e. the potential cannot be completely ruled out. In light of this and based on a purposive interpretation of the Habitats Directive, the WFD needs to be interpreted in light of the aims and objectives of the Habitats Directive – the scope of the Habitats Directive should not be narrowed by application of the subsequently legislated WFD. Accordingly, RBMPs and POMs need to be reviewed as to whether AA is required. European Commission guidance (CEC, 2000) and ECJ case law - C127/02<sup>42</sup> - make it clear that screening for AA is allowed, i.e. that plans not likely to have a significant effect do not need to be subject to AA. RBMPs and POMs, therefore, will need to be screened individually, since naturally the conservation objectives of each site will be different.

<sup>42</sup> Landelijke Vereniging tot Behoud van de Waddenzee, Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij, interveners: Coöperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij UA, C127/02 Para 71 (3) (a): “The first sentence of Article 6(3) of Directive 92/43 must be interpreted as meaning that any plan or project not directly connected with or necessary to the management of the site is to be subject to an appropriate assessment of its implications for the site in view of the site's conservation objectives if it cannot be excluded, on the basis of objective information, that it will have a significant effect on that site, either individually or in combination with other plans or projects.”

Para. 43: “It follows that the first sentence of Article 6(3) of the Habitats Directive subordinates the requirement for an appropriate assessment of the implications of a plan or project to the condition that there be a probability or a risk that the latter will have significant effects on the site concerned. (Emphasis added)

The words “*in view of the site's conservation objectives...*” suggest a narrowly focused assessment, not covering the whole range of environmental factors normally addressed in EIA and SEA. The critical difference here is that if the integrity of a designated site is likely to be adversely affected the Habitats Directive creates a veto on that action (Art. 6), quite unlike formal EIA or SEA. Of course, the simplest way to avoid the need for AA is to ensure that proposed plans or projects are not likely to have significant effects on Natura 2000 designated sites (SPAs and SACs). This may best be achieved through the earliest application of SEA and EIA and its iteration with the proposed plan or project in order to avoid the potential effects in the first place. Article 6 does not distinguish in its requirement for AA between positive and negative effects, only that the plan or project cannot go ahead if adverse effects on the integrity of the site are identified through the assessment. However, case law suggests that a significant effect is one that is considered to be where the sites' conservation objectives are likely to be undermined, in other words where there are negative effects<sup>43</sup>, and not where there might be positive effects that might support the site's conservation objectives.

For many RBMPs/POMs, they are necessarily going to have to address designated sites and elements of them may be integral to the future management of those designated sites in terms of the aquatic management measures that may be put in place. AA may, therefore, need to be carried out for such RBMPs/POMs alongside or incorporated within SEA, and potentially for revisions/amendments to RBMPs/POMs. Whether RBMPs will require AA will depend on how strategic they are and the extent to which they are manifested at the site level. It may be that only POMs or other sub-plans or programmes of RBMPs will meet the requirement for AA. The recent ECJ judgement in *Commission v United Kingdom* (C-06/04) requires the UK to apply AA to land use plans, but caution is needed as to how much can be read across from this judgement to other sectoral plans. The ECJ had previously determined in C127-02 (above) that a requirement for AA is conditional on there being a probability or risk that there will be a significant effect.

<sup>43</sup>C-127/02, para. 47:-

“So, where such a plan or project has an effect on that site but is not likely to undermine its conservation objectives, it cannot be considered likely to have a significant effect on the site concerned.”

The implication is not that AA will be required for all plans that might however indirectly affect a site, but that for a plan to be required to undergo AA, the probability or risk of a significant (and adverse) effect on the site needs to be determined. That probability is, logically, likely to decline the further up the decision-making hierarchy the plan is located. So, at the POMs level it might be considered that there is some likelihood that an action or project identified in the POM affecting a specific designated site is likely to be promoted, but this may be less likely at the RBMP level where there is more scope for considering other alternatives to avoid affecting a site adversely. The probability is less because there is an intervening stage before project level. As explained, this is a tentative interpretation and one for the Government and ultimately the courts to decide.

In summary, therefore, there is perhaps a lower probability of requiring AA for RBMPs precisely because they are more strategic (because they are at least one step removed from having significant effects at the designated site level). POMs are perhaps more likely to be subject to AA because they directly influence or set in train those individual actions or projects that arise from them which could directly affect a specific designated site. However, each will need to be screened for AA on a case by case basis.

Finally, it would appear that the Irish Habitat Regulations, through the exclusion of development plans and local authority development projects from these provisions, risk being in breach of the Habitats Directive in a similar way to the UK, which has now been required to amend its regulations, following the ECJ judgement (C-06/04). The Irish Government may therefore wish to consider this matter with some urgency.

#### **5.4 Stringent standards and objectives**

There is potential for conflict between the objectives set for conservation sites designated under the Habitats and Birds Directives and those objectives set under the WFD. The WFD is clear that where there is such a conflict that the most stringent objectives shall apply. The main issue centres on whether the objectives being set are the most stringent. It may be necessary, for the purposes of achieving the overall objectives of the WFD, to develop new more 'stringent' objectives if for some reason existing objectives are not considered stringent enough in terms of

protecting the ecological integrity of the designated site (this would apply to aquatic based sites). In the case of Lough Corrib conservation measures should be incorporated into relevant CDPs and these could overlap if the same measures are included in POMs/RBMPs, which should also be incorporated into CDPs. Much depends on the timing of different processes, but most up-to-date measures should be incorporated into CDPs. SEAs of CDPs are required to take into account other plans and programmes, including RBMPs.

There is a need to consider 'cumulative effects' of (smaller scale) human activities to ensure accurate assessment of water quality and setting of appropriate stringent objectives. Cumulative effects also need to be considered as part of the WFD objective setting and in the identification of key water management issues for consultation in June 2007, prior to the first RBMPs/POMs being produced.

In the case of Lough Corrib there is a strong argument for 'stringent' standards/objectives to be established due to the vulnerability of certain species that are dependent on high water quality. Even though there has been some modification of the water body by human activity, exemptions under the WFD cannot be applied to protected areas. Stringent conservation measures established under the Habitats Directive, for the protection of water-based birds, habitats and species are likely to be essential in helping towards the achievement of "good ecological status" under the WFD. Such measures are likely to be incorporated into the WFD process (Article 4(1)(c)) and established in the POMs for the RBD. The WFD therefore provides an additional institutional mechanism for promoting better water quality for conservation purposes.

#### **5.5 Information and baseline data**

There is clearly the potential for synergy in terms of baseline data collection across the assessment processes (EIA, SEA, AA), and RBMPs and POMs. Baseline data from SEA, RBMP and Habitats conservation processes may inform EIA baseline for proposed developments at project level. Information on impacts identified during EIA may inform future WFD characterisation processes. Information from EIAs, on impacts resulting from activities such as water abstraction projects, could be used to inform any future assessments of "human activity" for characterisation processes under the WFD, the results of which would be fed into revised RBMPs and POMs.

Information on assessment of effects of “human activity” within RBDs and information on impacts identified during EIAs may also influence planning processes (CDPs, RPG) and strengthen protection of the environment overall.

Relevant measures from the EIA process relating to specific bodies of water could be incorporated into the production of draft POMs. Such measures may help to achieve specific objectives under the WFD. Information from RBD characterisation, particularly in relation to “human activity” and associated impacts, could be used to inform local authority development plans, SEA and EIA baseline. Availability of such information between various bodies is considered essential and efforts at establishing data repositories or observatories and regular state of the environment reporting will help ensure much greater efficiency in data collection for WFD purposes and for assessment purposes. Experience in SEA is highlighting the need to undertake baseline data collection in as an efficient and focused way as possible. Baseline data collection is often the most time consuming part of any assessment process and the ability to go to centralised repositories of data will make the assessment processes far less onerous. The centralised collection of environmental impact statements (EISs) from EIAs and ERs from SEAs, and making them available via the Internet, will also help ensure that knowledge is not lost, and that assessments are building on what has gone before. Since the WFD characterisation, planning, implementation and monitoring processes, and EIA, SEA and AA processes are all very data dependent, it is essential that synergies are built upon.

The Environmental Data Exchange Network (EDEN) (EPA, 2006) is being coordinated in Ireland by the EPA and the Local Government Computer Services Board to make available in one place all the data that is available on environmental issues, and to:-

- ensure that environmental data is more readily available to authorities, agencies and other bodies;
- that a manageable common approach to environmental information exchange is created;
- enhance potential for data integration;
- lower overall costs in data exchange; and
- introduce environmental data standards across a broad spectrum of data.

The outputs resulting from the implementation of the WFD, EIA, SEA, Birds and Habitats Directives identified above should provide importance sources of data for

EDEN.

## 5.6 Consultation/coordination

Consultations are likely to take place for WFD, SEA, and EIA processes, but these may not necessarily coincide in terms of timing, e.g. in the case of Dublin Water Supply this seems unlikely. However, the same stakeholders may well be involved in multiple processes (e.g. WFD, CDP, development projects) and so efforts will be needed to try to minimise consultation fatigue among key stakeholders. NGOs and statutory agencies, for example, are likely to be working on limited resources and unable to allocate time and staff to all consultation opportunities available. This means that many organisations will end up prioritising which planning processes they engage in, and to what extent. Effort at engaging stakeholders early and effectively in decision-making (in line with the Aarhus Convention) is likely to be beneficial since engagement in the strategic direction of planning processes will help ensure there is more consensus on potential measures to be taken, rather than risk of conflict when specific measures are brought forward at a later stage.

Consultation processes under the WFD have already started (see for example. SIRBD, 2006), beginning with the publication of the timetable and work programme for the development of RBMPs by June 2009. The WFD establishes a clear timetable for consultation on RBMPs. The national WFD Regulations have established deadlines which are generally six months ahead of the formal WFD deadlines. In each RBD in Ireland consultation will therefore be required in:-

- June 2007 – publication of an overview of significant water management issues (with at least six months for consultation);
- June 2008 – publication of draft RBMPs (with at least six months for consultation); and
- June 2009 – publication of final RBMPs.

This timetable means that SEA requirements for RBMPs – if they are to help facilitate consultation processes – need to be put in place urgently, since the June – December 2007 consultation requirement on key water management issues would equate to the scoping stage in SEA where, at the very least, the environmental authorities need to be consulted on the scope of the SEA. Public consultation will be required at least on the SEA Environmental Report alongside the draft RBMP/POMs. It would be most effective and practical that both the WFD and SEA

elements are fully coordinated. Mechanisms need to be put in place to ensure coordinated action and the sharing of information between relevant authorities and across departments to help ensure that environmental protection is integrated effectively into policies and plans.

In the case of the IRBDs it is possible that two RBMPs and subsequently two SEAs will be needed for each IRBD i.e. one for the Republic of Ireland portion of the RBD and one for the Northern Ireland portion of the RBD. This does seem to contradict the very idea of an international river basin as a means of ensuring integrated river basin management, but pragmatically may be the only way in which different institutional structures in each MS either side of the border can deliver on the WFD in these circumstances. Close coordination and collaboration, however, will be essential not just to avoid duplication of effort, but to ensure coherent RBMPs/POMs are delivered. For example, as RBMPs may set the framework for future programmes or projects, which may require SEA, EIA and/or AA, each of the two RBMPs produced for the same IRBD may result in a number of programmes or projects, which may be similar in nature and which require the same assessment processes. Alongside the assessment processes transboundary/cross-border consultation and co-ordination (for RBMPs/POMs and SEA/EIAs) needs to take into account the different legislative/regulatory requirements of the two MSs, particularly in relation to the timing of implementation of the various Directives, and indeed compliance with those Directives. For example, the UK has already decided that SEA will apply to RBMPs/POMs (Defra/WAG, 2006). If one MS is not fully compliant with a Directive, and the other is, this is likely to cause problems in agreeing a coherent approach across IRBDs. This suggests that Ireland and the UK should keep abreast of ECJ judgements affecting other countries to see if they have implications for their own implementation.

## 5.7 Monitoring

In the same way as there are synergies in baseline data collection, so there are potential synergies in the monitoring requirements and activities generically under the WFD, Birds and Habitats Directives and SEA (and indirectly EIA, as monitoring may take place even though it is not a formal requirement of the EIA Directive). Some examples of potential synergies are given below, but this might need to be the subject of a more detailed study examining potential data and monitoring synergies among

these Directives, particularly in the context of developing data observatories and state of the environment reporting and in the context of the EDEN data management project mentioned in the context of baseline data above (section 5.5). Examples include:-

- Biological/ecological data gathered during RBD characterisation could be used to inform the screening process in EIA (for ordinary development projects, not just those emerging from RBMPs/POMs) in terms of providing information on the sensitivity of the proposed site and absorption capacity of the natural environment in relation to protected areas. Data on habitats and species under the Birds and Habitats Directives could be used to inform EIA baseline evaluation, which may subsequently influence impacts monitoring and improve mitigation measures. Information collected through EIA, SEA and the Birds and Habitats Directives could be fed into new or revised development plans which would help to inform future RBD characterisation in terms of the provision of information on future pressures for a specific area.
- River basin monitoring programmes could be used for the purposes of monitoring in SEAs and to ensure that measures within the RBMP are being incorporated sufficiently into local authority development plans. This would help strengthen water resource issues within SEA and development planning. Monitoring in relation to aquatic habitats, undertaken as part of the RBMP process, could be used to strengthen surveillance requirements under the Habitats Directive and to inform any waterways birds surveys/monitoring being undertaken. Information from survey programmes undertaken outside the requirements of the WFD and Birds and Habitats Directives could be used to support new WFD monitoring programmes.
- Monitoring data on the impacts of certain developments on water quality and protected areas could be used to inform future POMs/RBMPs as well as informing AAs carried out under the requirements of Article 6 of the Habitats Directive. Data gathered on activities that may cause disturbance to designated sites under the Habitats Directive, and their associated impacts could also be fed back into the RBMP process and subsequently used to update and inform development plans and their policies.

The WFD is very reliant on GIS, but a lack of suitable data may influence the setting of standards for protected areas under the WFD, which could in turn affect the allocated or achievable ‘status’ of a particular body of water. A lack of data may also mean that small-scale ‘activities’ and potential cumulative effects may be overlooked in the RBMP process in terms of their effects on water quality and ultimately on biodiversity.

### **5.8 Forthcoming legislation relevant to this study - Floods Directive**

The European Commission first proposed an EU action on flood risk management on 12 July 2004 in the Commission Communication on ‘Flood risk management; flood prevention, protection and mitigation’ (COM (2004)472) (CEC, 2004). The Commission developed a proposal for a Directive, including extensive consultations with stakeholders and the public during 2005, with the final Internet-based consultation taking place between 20 July and 15 September 2005. Findings of the final consultation showed that “the approach proposed by the Commission was very broadly endorsed” (CEC, 2005b).

On 18 January 2006 the Commission adopted its proposal for a Directive of the European Parliament and of the Council on the assessment and management of floods (COM (2006)15 final of 18.1.2006) (CEC, 2006a). The proposal creates an EU framework for flood risk management that is closely related to the WFD. The proposed Directive aims to help MSs prevent and limit floods, their damaging effects on human health, the environment, infrastructure and property via a three-step process. This involves a preliminary flood risk assessment of river basins and associated coastal zones, and where real risks of flood damage prevail, zones will be subject to flood risk maps and flood risk management plans focusing on prevention, protection and preparedness (CEC, 2006b). The European Council agreed to adopt a common position on the draft Floods Directive in June 2006 (Council of the EU, 2006)<sup>44</sup> in readiness for a Second Reading of the draft Directive later in 2006. The draft Floods Directive is therefore another potential Directive that will interact with the WFD, EIA, SEA, Birds, Habitats and Public Participation Directives, and so will need to be considered

in any future efforts to coordinate procedures among the Directives. In Ireland one effect would be to make flood risk management plans statutory plans for the purposes of the SEA Directive, and therefore requiring SEA. Clearly these plans will have the potential for interaction with RBMPs/POMs and with CDPs and RPG, all of which may be subject to SEA and/or AA, adding a further level of complexity that should be taken into account when seeking to develop coherent approaches to water and land use planning processes. The first application in Ireland of SEA to Flood Risk Management Plans has been commissioned (late 2006) by the Office of Public Works with respect to the Lee Catchment, and will provide an opportunity to review these potential interactions.

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<sup>44</sup> Council of the European Union (2006), Press Release 192, 2740<sup>th</sup> Council Meeting, Environment, 27 June 2006. Available from [http://www.eu2006.at/en/News/Council\\_Conclusions/2706Environment.pdf](http://www.eu2006.at/en/News/Council_Conclusions/2706Environment.pdf) [Last accessed 24/11/06]

## 6 Conclusions and Recommendations

Following the discussion above, which brings together the key findings of the various tasks undertaken, a number of conclusions and recommendations (R1-13) are made. Given the timetables for implementing the WFD most of the recommendations made are **urgent** or need action in the short term.

### 6.1 The WFD and SEA

All RBMPs and POMs will need to be screened for SEA, but *prima facie* both would appear to have the potential to meet the four key SEA Directive criteria. There is considerable confusion among those involved in implementing the WFD as to whether SEA will apply to RBMPs and/or POMs. **The view from this research is that both RBMPs and POMs should be subject to the SEA Directive**, recognising that each will need to assess different issues at their respective levels. The timetable for implementing RBMPs, and the six-month minimum consultation requirement at each stage means that SEA needs to be introduced into the RBMP process with sufficient time before consultation on significant water management issues in June 2007 (which would equate to the scoping stage of SEA), i.e.:-

- significant water management issues by June 2007;
- draft RBMPs by June 2008; and
- final RBMPs published by June 2009,

Clear guidance, perhaps in the form of a circular letter, is therefore needed at the earliest opportunity (see also R1 and R2 below). Principally, such guidance would focus on:-

- the need to undertake SEA on RBMPs and POMs;
- who is responsible for undertaking the SEAs;
- the appropriate synchronising of SEA and RBMP processes, e.g. SEA scoping at the time of the SWMI reports);
- the appropriate consideration of alternatives (which need to be considered as early as possible in the SEA process); and
- how the SEA process can help facilitate public involvement in the RBMP consultation process.

It is recognised that detailed guidance on specific issues will depend on a clear understanding of the content of RBMPs and POMs which is only now beginning to happen.

### Recommendation 1

**Both River Basin Management Plans (RBMPs) and Programmes of Measures (POMs) should be made subject to the SEA Directive.** DoEHLG needs to issue guidance on applying the SEA regulations to RBMPs and POMs at the earliest opportunity.

### Recommendation 2

**DoEHLG should ensure that SEA guidance on RBMPs and POMs clarifies where responsibility for SEA lies; and promotes the positive benefits of integrating SEA and the RBMP/POMs processes.**

### 6.2 WFD and Land Use Planning

The potential interactions between RBMPs and CDPs are significant. The exact nature of the relationship will depend upon the nature of the types of developments that are likely to:-

- (1) emerge out of the RBMP/POMs process that are of sufficient importance to influence county development plans; and
- (2) that are likely to arise through the development planning process and have significant influence upon the RBMP/POMs process.

There is, therefore, potential for two way traffic between RBMPs/POMs and CDPs, one potentially bringing about the amendment of the other where proposals or developments are of such significance as to require revision or amendment of the other plan. Amendments to plans may trigger a requirement for SEA and projects coming forward under RBMPs/POMs or via CDPs may trigger EIA. There is potential therefore for overlap or duplication of assessment, but also for positive synergy across assessment levels. Careful timing of revisions of plans will be needed to reduce the potential for duplication of effort, e.g. amendments to CDPs triggered by RBMPs/POMs should be addressed as part of the normal revision cycle of CDPs wherever possible. Coordination between RPG at the regional level and RBMPs (and also Flood Risk Management Plans) could help identify potential strategies and options well in advance, and so facilitate better coordination among the various levels of assessment. Since local authorities have responsibility for land use planning and WFD implementation some coordination should be possible.

### Recommendation 3

**DoEHLG should issue guidance to local authorities and RBDs on the relationship between RBMPs/POMs and county development plans and regional planning guidance,** to promote effective coordination between the WFD and land use planning and assessment processes, including timing of revisions.

### 6.3 Appropriate assessment and RBMPs/POMs

The relationship between RBMPs, POMs and AA under the Habitats Directive will require legal clarification by Government. The arguments outlined in this research suggest that POMs are likely to be subject to AA, but there may be more of a question as to whether RBMPs should be. It is difficult in the absence of any RBMPs having yet been produced to know exactly what these plans will look like, but on the basis of the legal requirements in the Habitats Directive, RBMPs are clearly meant to provide the strategic framework for subsequent plans or programmes of measures. As such the probability or risk of the RBMP affecting a specific designated site may possibly be less than that for a POM. However, both RBMPs and POMs will need to be screened for AA on a case by case basis. Since it would also appear the Government may be risking potential breach of the Habitats Directive by not requiring AA for land use plans, Government will need to consider amending the Regulations and issuing new guidance on AA as soon as possible. Given the timetable for RBMP/POMs production, and the need for SEA (R1 and R2 above), the same timescale needs to apply to clarification on AA, given the potential for interaction between the WFD, SEA and Birds and Habitats Directives. If AA is to be undertaken it needs to be properly integrated with the WFD and SEA processes.

### Recommendation 4

**DoEHLG should consider the issue of ‘appropriate assessment’ and RBMPs/POMs** and the possible need to amend the Habitats Regulations and issue guidance in relation to requiring AA for land use plans as soon as possible.

### 6.4 Stringent standards and objectives

In the context of objective setting under the WFD, there is a need to consider ‘cumulative effects’ of (smaller scale)

human activities to ensure accurate assessment of water quality and setting of appropriate stringent objectives. Cumulative effects are central to SEA, although experience of undertaking such assessments is rather limited (though developing). The application of SEA to RBMPs and POMs will facilitate the assessment of cumulative effects as part of those processes, and will help identify WFD objectives in the RBMP, as well as provide information for further iteration in the future. However, cumulative effects also need to be considered as part of the WFD objective setting and in the identification of key water management issues for consultation in June 2007, prior to the first RBMPs/POMs being produced.

### Recommendation 5

**Cumulative effects should be addressed explicitly as part of the WFD implementation strategy, and will need to be coordinated by the WFD National Coordination Group.** The integration of RBMP production with SEA will facilitate this.

### 6.5 Information, baseline data and monitoring

From this research and especially the case studies it is clear that data issues remain uppermost in terms of the challenges faced by RBDs and conservation bodies implementing the Birds and Habitats Directives. Baseline data from different processes, particularly in relation to conservation, need to be improved as a matter of urgency both in terms of quality of data gathered and its availability.

Directly linked to this is the need to ensure availability of adequate resources for the development of digitised data on water-based birds and habitats so that it can be used alongside the WFD process and inform RBD characterisation. Without such data important birds and habitats may be excluded from the RBMP process. GIS data from monitoring processes, particularly under the WFD, but also from Birds and Habitats Directives and in relation to EIA and SEA, should be collated at a national level for use in other decision-making processes. The EDEN project is a key step in this direction.

## Recommendation 6

**DoEHLG and EPA should ensure the EDEN data management project makes full utilisation of the outputs from the application of the WFD, EIA, SEA, Habitats and Birds Directives and takes into account the data needs of these key Directives in prioritising investment in GIS data collection and management systems.**

## 6.6 Consultation and coordination

### 6.6.1 RBMPs, consultation and SEA

As already identified in R1 and R2 the consultation requirements on the RBMPs are quite demanding and consultation strategies need to be put in place well in advance of drafting the RBMPs/POMs. **SEA can help facilitate this if it is introduced into the RBMP process as early as possible.** Aside from and alongside SEA (R1, R2) there is a need for consistent *methods* of involving 'interested parties' across the RBDs i.e. consultation measures adopted for the WFD process should be the same across RBDs. While public participation measures are being coordinated by the WFD National Public Participation Working Group, it would be helpful for information and/or guidance concerning these measures to be made available to the public via the internet, and also that such guidance should promote SEA as a means of helping deliver public participation in the RBMP process. Formally this will involve at least consulting the environmental authorities during SEA scoping and the wider public and stakeholders on the SEA Environmental Report alongside the draft RBMP/POMs.

## Recommendation 7

**Specific information/guidelines about the consultation process and methods to be adopted for RBMPs should be produced by DoEHLG/WFD National Public Participation Working Group and should promote the SEA process as the mechanism for helping to deliver the public consultation requirements of the WFD.**

### 6.6.2 Consistency in approach

It is also clear that coordination can extend to the role of individual authorities since river basin authorities also have competence for agriculture, industrial pollution, land use planning etc. There should be scope for stronger coordination within authorities, e.g. in dealing with WFD and SEA, and across authorities where RBDs cover multiple administrations (i.e. the competent authorities

responsible for managing RBDs are the local authorities acting jointly). In the context of IRBDs, there is a strong case for the continued existence of a co-ordinating body e.g. NS SHARE, for transboundary issues, beyond the current RBMP process.

There may be useful lessons to learn from approaches to implementing the WFD from other MSs and this may be best achieved by close liaison with colleagues in the relevant environmental authorities through the various EU WFD working groups and through targeted commissioned research.

## Recommendation 8

**DoEHLG should issue further guidance on coordinating within and across authorities the implementation of the WFD, SEA and land use planning in particular.** This could be part of the same guidance referred to in R1 and R2.

## Recommendation 9

**The Government should continue to give high priority to ensuring appropriate Ireland / UK coordination in relation to implementation of the WFD, especially in relation to river basins shared with Northern Ireland. An extension in the timeframe of the NS SHARE project is recommended.**

## Recommendation 10

**DoEHLG/EPA should commission targeted research to explore possible lessons from different approaches of other EU Member States with regard to implementing the WFD, for example with respect to coordination with land use planning, cross-border cooperation, and integration with other Directives.**

### 6.6.3 Education and awareness raising

A clear message coming from a number of the interviewees for this research is that many organisations are unfamiliar with the potential implications of the WFD, or if they are they are far less familiar with its potential interactions with other Directives such as the EIA/SEA Directives or the Birds/Habitats Directives. There is a clear opportunity here for the EPA and/or DoEHLG to be carrying out an educational and awareness raising role in organising facilitated workshops for authorities, agencies and NGOs on the WFD and other Directives. A first step in relation to this project may be a workshop to present

and discuss the findings from this research to stakeholders. However, from the experience to date, it would seem that such a workshop should be the start of a longer campaign strategy to engage with stakeholders beyond those immediately involved in delivering the WFD, particularly to reach across to those engaged in conservation management and land use planning.

For example, a facilitated workshop should be run within each RBD on how the various Directives will interact with and affect the WFD process (this should be done *before* drafting of RBMPs begins). These workshops should:

- Help authorities to become aware of the different processes and implications for river basin management planning (currently knowledge tends to be on their own area of expertise with little knowledge or understanding of the ‘wider’ picture and other processes which affect them).
- Help interested parties i.e. stakeholders make informed decisions. Consultation and subsequent feedback is unlikely to be effective if stakeholders do not understand the issues in the first place.

It is also suggested that a National workshop be held with representatives of each RBD and other bodies/stakeholders involved, after the first RBMPs have been produced to discuss how the application of SEA and/or other processes were addressed and carry out a SWOT (strengths, weaknesses, opportunities, threats) or similar analysis so that lessons may be learnt and more coordinated/harmonised approaches adopted.

### Recommendation 11

**DoEHLG and/or EPA should consider organising a facilitated workshop on how the various Directives considered by this research will interact and affect the WFD process.** This will need to take place, at the earliest opportunity in order to influence the RBMP planning process.

### Recommendation 12

**A national workshop should be organised by DoEHLG/EPA once the first RBMPs have been produced to learn from the experience of how SEA and other Directives (e.g. Habitats and AA) have been addressed.**

## 6.7 Forthcoming legislation – Floods Directive

In order to take account of its likely implications as early as possible during the implementation of the WFD and in revisions to CDPs and RPG, further research along similar lines to this study is needed. As the proposed Floods Directive advances through the European Parliament and Council, the text can be compared to those Directives studied here to highlight potential areas of overlap, similarities and differences. The first application of SEA to the Flood Risk Management Plan of the Lee Catchment (late in 2006) will provide an important opportunity to review this process.

### Recommendation 13

**As the proposed Floods Directive progresses, the EPA should undertake further research to examine the potential interactions of the proposed Floods Directive with the six Directives examined in this research.**



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## Appendix 1 Detailed analysis of linkages between the Directives

Figure 2.1 is reproduced here and is followed by the detailed explanations for the links identified in the flow diagram, taking specific articles of the Directives in turn.

The flow diagram (Figure 2.1) identifies numerous linkages between the various Directives and provides the key diagram around which the analysis of linkages revolves. Brief explanations of the Article references are included in the tabulated index below. Keeping the WFD as the focus of this study, it is important to first examine its direct and indirect linkages/interactions with other Directives. These are explored in Appendix 1 (Boxes 1-4). Text relating specifically to the WFD and its Articles is provided in boxes on the left hand side, with key words and text highlighted in yellow. Explanatory text is provided in the middle of the page, while text relating to specific connections to other Directives is provided in the boxes on the right hand side. Specific issues are highlighted in red boxes. The coloured text relates to the colour used for the specific Directive in the flow diagram.

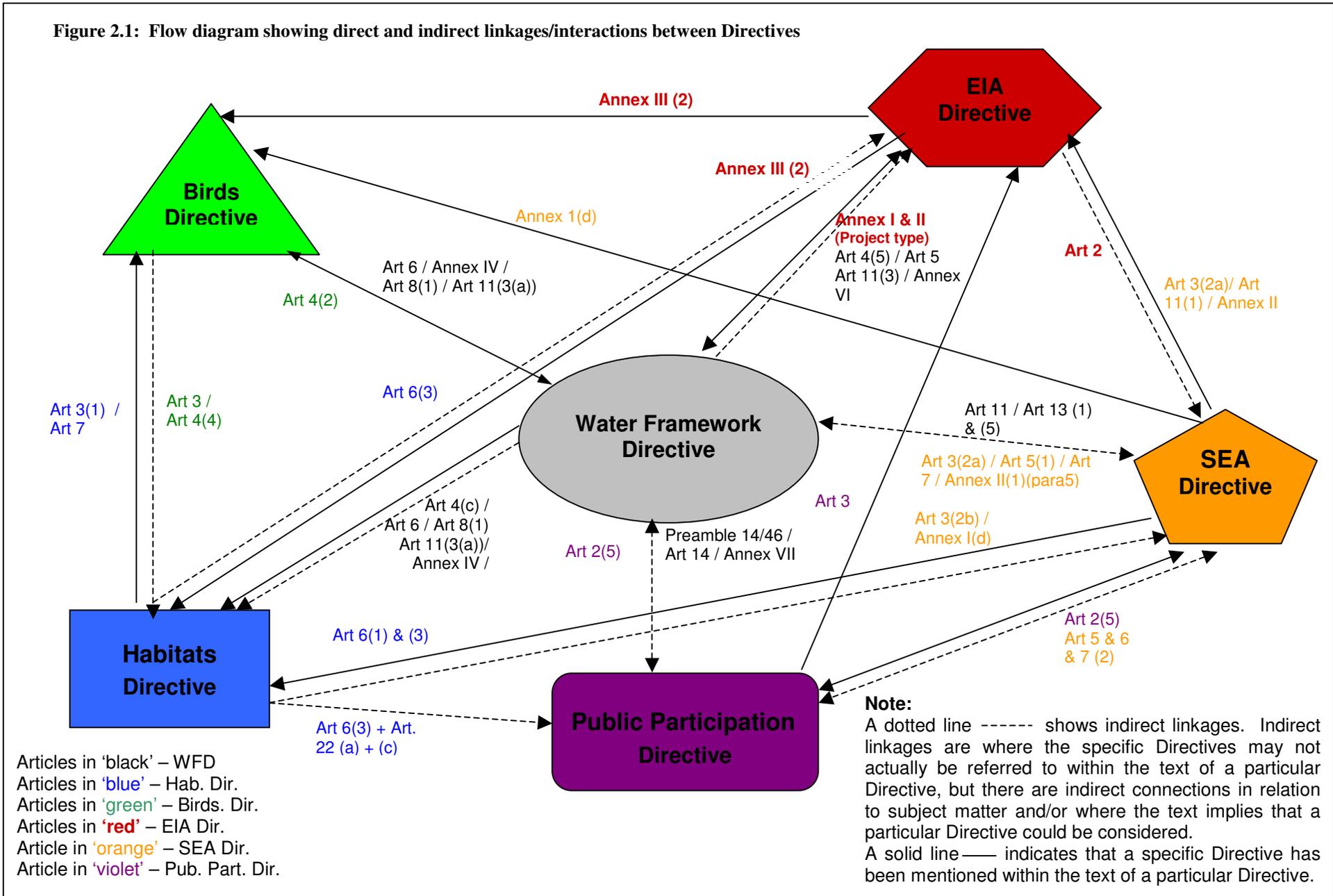
As well as having links/connections solely with the WFD, the EIA, SEA, Birds, Habitats and Public Participation Directives also interrelate. The connections between these various Directives are also examined in more detail in Appendix 1 (Boxes 5-9), looking at individual Directives and highlighting specific areas/issues, which may have influence on the implementation of the WFD. The text of the relevant Directive is provided in the left hand boxes.

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### Key to boxes:-

- Bold solid border **——** Directive article under analysis  
 No border – commentary  
 Dashed border/line **-----** potential link back from other Directives  
 Solid border/line **——** explicit link back from other Directives  
**Yellow highlighting** – highlights specific text in key articles  
**Red text** – questions or uncertainty regarding likely links
-

Figure 2.1: Flow diagram showing direct and indirect linkages/interactions between Directives



**Box 1: Direct/indirect connections of Water Framework Directive with the Habitats Directive 92/43/EEC and Birds Directive 79/409/EEC**

**WFD**

**Article 1 – Purpose**

The purpose of this Directive is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater which:  
 (a) prevents further deterioration and protects and enhances the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly depending on the aquatic ecosystems;"

Although no direct reference is made to the Birds Directive in Article 1(a) it does, however, highlight a link between the WFD and wetlands. Since wetlands are significant havens for conservation of some wild bird species, as mentioned in Article 4(2) of Directive 79/409/EEC, this presents a relevant link between the WFD and the Birds Directive.

**Article 4(c) for protected areas:**

"Member States shall achieve compliance with any standards and objectives at the latest 15 years after the date of entry into force of this Directive, unless otherwise specified in the Community legislation under which the individual protected areas have been established".

No direct reference is made to the Habitats Directive in this Article, but it does refer to 'protected areas' including "individual protected areas" established in [other] Community legislation, therefore, implying a connection with Directive 92/43/EEC. [The Habitats Directive involves the establishment of an ecological network of special areas of conservation, set up under the title Natura 2000.]

**Article 6 - Register of protected areas**

"1. Member States shall ensure the establishment of a register or registers of all areas lying within each river basin district which have been designated as requiring special protection under specific Community legislation for the protection of their surface water and groundwater or for the conservation of habitats and species directly depending on water. They shall ensure that the register is completed at the latest four years after the dates of entry into force of this Directive.  
 2. The register or registers shall include all bodies of water identified under Article 7(1) and all protected areas covered by Annex IV.  
 3. For each river basin district, the register or registers of protected areas shall be kept under review and up to date.

A direct link is made within this Article to both Directive 92/43/EEC and Directive 79/409/EEC, with specific reference to "areas...requiring special protection under specific Community legislation". These 'protected areas' are specified in Annex IV (1)(v) of the WFD which refers directly to the two Directives. [The Birds Directive involves, amongst other things, the creation of protected areas and establishment of special conservation measures.]

**Annex IV (1):**

(v) "areas designated for the protection of habitats or species where the maintenance or improvement of the status of water is an important factor in their protection, including relevant Natura 2000 sites designated under Directive 92/43/EEC and Directive 79/409/EEC".

There is a possible indirect link between Directive 74/409/EEC and the WFD with regards migratory species of birds, which are not subject to special conservation measures. In this case the Birds Directive requires that particular attention is paid, by Member States, to the protection of wetlands.

**Birds Directive 79/409/EEC - Article 4**

"2. ...To this end, Member States shall pay particular attention to the protection of wetlands and particularly to wetlands of international importance."

**Box 1 (contd)**

**WFD**

**Article 8 – Monitoring of surface water status, groundwater status and protected areas**

1. Member States shall ensure the establishment of programmes for the monitoring of water status in order to establish a coherent and comprehensive overview of water status within each river basin district:

- For surface waters such programmes shall cover...
- For groundwaters such programmes shall cover monitoring for the chemical and quantitative status.
- For protected areas the above programmes shall be supplemented by those specifications contained in Community legislation under which the individual protected areas have been established.

Although Directives 92/43/EEC and 79/409/EEC are not specifically mentioned in this Article, there is a requirement for monitoring programmes established under the WFD, specifically for ‘protected areas’, to be supplemented by the monitoring requirements contained in [relevant] Community legislation. Therefore implying a connection with both the Habitats and Birds Directives.

There are no specific monitoring requirements within the Birds Directive. The Habitats Directive 92/43/EEC requires that ‘surveillance’ be carried out, which could be interpreted as a form of ‘monitoring’. Article 11 of Habitats Directive requires ‘surveillance’ to be carried out.

**Habitats Directive 92/43/EEC – Article 11**

“Member States shall undertake surveillance of the conservation status of the natural habitats and species referred to in Article 2 with particular regard to priority natural habitat types and priority species”.

**Article 11 – Programme of measures**

3. ‘Basic measures’ are the minimum requirements to be complied with and shall consist of:

(a) those measures required to implement Community legislation for the protection of water, including measures required under the legislation specified in Article 10 and in part A of Annex VI;”

**Annex VI – Lists of Measures to be Included within the Programme of Measures – Part A**

“Measures required under the following Directives:

- (ii) The Birds Directive (79/409/EEC)
- (v) The Environmental Impact Assessment Directive (85/337/EEC)
- (x) The Habitats Directive (92/43/EEC)”

**Part B**

“The following is a non-exclusive list of supplementary measures which Member States within each river basin district may choose to adopt as part of the programme of measures required under Article 11(4):

- (vii) recreation and restoration of wetlands areas”

Direct links are made, within Article 11, to Directives 79/409/EEC, 85/337/EEC, and 92/43/EEC. This Article makes reference to the programme of measures (referred to in this report as POMs) that needs to be established in order to fulfil the objectives of the WFD. As a minimum the POM should include those measures required to implement the legislation for the protection of water within the Birds, Habitats and EIA Directives (as specified in Annex VI).

‘Measures for the protection of water’ within Directive 74/409/EEC are not very specific, but would probably relate mainly to the ‘habitats’ of species, including water-related habitats. However, as noted previously, the Directive requires that particular attention be paid, by Member States, to the protection of wetlands:

**Birds Directive 79/409/EEC - Article 4**

“2. ...To this end, Member States shall pay particular attention to the protection of wetlands and particularly to wetlands of international importance.”

Although the Birds Directive is not specifically mentioned in Part B of Annex VI, a direct link is made to wetlands which are significant havens for conservation of some wild bird species as mentioned in Article 4(2) of Directive 79/409/EEC.

Directive 92/43/EEC concerns the conservation of natural habitats, and requires the establishment of conservation measures (involving if necessary management plans [possible link to SEA] of specific natural habitat types (Art. 6). These habitat types are listed in Annex I which include:

**Habitats Directive 92/43/EEC – Annex 1**

“1. Coastal and Halophytic Habitats / 3. Freshwater Habitats”

Possible overlaps between the different measures for water protection if all should apply at same time?

Possible overlaps if SEA is applied to POMs or RBMPs and also to management plans under the Habitats Directive?

**Box 2: Direct/indirect connections of the Water Framework Directive with the Environmental Impact Assessment (EIA) Directive 85/337/EEC**

**Article 4 – Environmental objectives**  
 “5. Member States may aim to achieve less stringent environmental objectives than those required under paragraph 1 for specific bodies of water when they are so **affected by human activity**, as determined in accordance with Article 5(1), or their natural condition is such that achievement of these objectives would be infeasible or disproportionately expensive...”

The mention of ‘bodies of water affected by *human activity*’ could indirectly suggest that an EIA under Directive 85/337/EEC may be required for such activities.

The main link between the EIA Directive and the WFD is in relation to the ‘list of projects’ (could be considered types of human activity). Projects listed in Annex I requiring mandatory environmental assessment and those listed in Annex II requiring environmental assessment only if determined necessary through a case-by-case examination or by use of thresholds/criteria. All projects could be considered to have impacts on the ‘status of surface waters and on groundwaters’, however, specific types of project would/could have significant environmental impacts (see below for examples).

**WFD**

**Article 5 – Characteristics of the river basin district, review of the environmental impact of human activity and economic analysis of water use**  
 “1. Each Member State shall ensure that for each river basin district or for the portion of an international river basin district falling within its territory:  
 - an analysis of its characteristics  
 - **a review of the impact of human activity on the status of surface waters and on groundwater**, and  
 - an economic analysis of water use...”

The requirement for ‘*a review of the [environmental] impact of human activity*’, may indirectly suggest that an assessment such as EIA may be carried out.

**EIA Directive 85/337/EEC – Annex I**  
 “11. Groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.  
 12. (a) Works for the transfer of water resources between river basins where this transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres/year...”

**Annex II**  
 “1. Agriculture, silviculture and aquaculture  
 (c) Water management projects for agriculture, including irrigation and land drainage projects...  
 10. Infrastructure projects  
 (l) Groundwater abstraction and artificial groundwater recharge schemes not included in Annex I;  
 (m) Works the transfer to water resources between river basins not included in Annex I”.

**Article 11 – Programme of measures**  
 “3. ‘Basic measures’ are the **minimum requirement** to be complied with and shall consist of:  
 (a) those **measures required to implement Community legislation for the protection of water, including measures required under the legislation specified in Article 10 and in part A of Annex VI**.”

As with the Birds and Habitats Directives above, direct links are made, within Article 11, to Directive 85/337/EEC. This Article makes reference to the programme of measures (referred to in this report as POM) that needs to be established in order to fulfil the objectives of the WFD. As a minimum the POM should include those *measures* required to implement the legislation *for the protection of water* within the EIA Directives (as specified

**Annex VI – Lists of Measures to be Included within the Programme of Measures – Part A**  
 “Measures required under the following Directives:  
 (ii) The Birds Directive (79/409/EEC)  
 (v) **The Environmental Impact Assessment Directive (85/337/EEC)**”

When deciding whether EIA is required, selection criteria to be taken into consideration include ‘the absorption capacity of the natural environment including wetlands and coastal zones’ (Annex III) of Directive 85/337/EEC. For projects subject to environmental assessment within Directive 85/337/EEC, developers are required to provide a description of the aspects of the environment likely to be significantly affected by the proposed project, including a description of mitigation measures. Aspects of the environment include ‘water’ (Annex IV).

If EIA is carried out on a particular proposed development activity/project, which involves a specific body of water, does this mean that the environmental objectives of the WFD do not need to be carried out as stringently?

**Box 3: Direct/indirect connections of the Water Framework Directive with the Strategic Environmental Assessment (SEA) Directive 2001/42/EC**

**Article 11 – Programme of measures**

"1. Each Member State shall ensure the establishment for each river basin district, or for the part of an international river basin district within its territory, of a programme of measures, taking account of the results of the analyses required under Article 5, in order to achieve the objectives established under Article 4. Such programmes of measures may make reference to measures following from legislation adopted at national level and covering the whole of the territory of a Member State..."

Although the SEA Directive 2001/42/EC is not specifically mentioned in this Article, the fact that a 'programme' is required to be established could imply that an SEA be carried out on such programmes, especially if they are likely to have significant environmental effects and set the framework for subsequent project consents.

Directive 2001/42/EC requires that environmental assessments be carried out on certain plans and programmes, which are likely to have significant environmental effects. This includes those plans and programmes prepared in relation to water management.

**Directive 2001/42/EC – Article 3 - Scope**

"2. Subject to paragraph 3, an environmental assessment shall be carried out for all plans and programmes,  
(a) which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II to Directive 85/337/EEC, or  
(b) which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of Directive 92/43/EEC."

**WFD**

**Article 13 – River basin management plans**

"1. Member States shall ensure that a river basin management plan is produced for each river basin district lying entirely within their territory."  
"2. In the case of an international river basin district falling entirely within the Community, Member States shall ensure coordination with the aim of producing a single international river basin management plan..."  
"3. In the case of an international river basin district extending beyond the boundaries of the Community, Member States shall endeavour to produce a single river basin management plan..."  
"4. The river basin management plan shall include the information detailed in Annex VII"  
"5. River basin management plans may be supplemented by the production of more detailed programmes and management plans for sub-basins, sector, issue, or water type, to deal with particular aspects of water management. Implementation of these measures shall not exempt Member States from any of their obligations under the rest of this Directive."  
"7. River basin management plans shall be reviewed and updated at the latest 15 years after the date of entry into force of this Directive and every six years thereafter"

Again, Directive 2001/42/EC is not directly mentioned in this Article. However, because (a) management 'plan(s)' is/are required to be produced, including the possibility of more detailed 'programmes and plans', there is an increased possibility that an SEA would need to be carried out.

Plans or programmes (PPs) which are not listed under Article 3(2) but which set the framework for future development consent should be assessed by Member States to see if these PPs have significant environmental effects, to which SEA should/should not be applied. Criteria listed in Annex II should be taken into account when making this decision. Such criteria includes the "relevance of the plan or programme for the implementation of Community legislation on the environment (e.g. plans and programmes linked to waste management or water protection).

Article 13(4) of Directive 2001/42/EC required Member States to submit, to the Commission before 21 July 2004, information on the types of plans and programmes which would be subject to environmental assessment.

This would appear to imply that both RBMPs and POMs, which are both directly relevant to water protection, would, if they were likely to have significant environmental effects, be subject to SEA. Alternatively, Article 3(2) could be used as a way of avoiding SEA for plans and programmes relating to water protection if the Member State decides that a plan or programme has no significant effects - the Member State would appear to have discretion in this regard. In relation to POM/RBMP amendments, Article 3(3) allows another possible exemption in relation to SEA for small areas at local level and minor modification to plans and programmes referred to in sub paragraph 3(2).

Overlap between SEA of WFD RBMP/POMs and SEA of 'more detailed plans and programmes' if required?

**Box 4: Direct/indirect connections of the Water Framework Directive with the **Public Participation Directive 2003/35/EC****

**Preamble**

"14. The success of this Directive relies on close cooperation and coherent action at Community, Member State and local level as well as on information, consultation and **involvement of the public**, including users.  
46. To ensure the **participation of the general public including users of water** in the establishment and updating of river basin management plans..."

These preambles do not make direct reference to Directive **2003/35/EC**, although they do include a specific requirement to 'involve' the public and ensure 'participation'. The reference to involvement of the public during the development and updating of 'plans' would suggest an indirect link Directive 2003/35/EC.

**Article 14 – Public information and consultation**

"1. Member States shall **encourage the active involvement of all interested parties** in the implementation of this Directive, in particular the production, review and updating of the river basin management plans. Member States shall ensure that, for each river basin district, they publish and make available for comments to the public, including users..."

This Article does not make direct reference to Directive **2003/35/EC**, although it does include a specific requirement for the '*involvement of interested parties*' in the 'production, review and updating of the river basin *management plans*'. Indirectly this Article could be linked to Directive 2003/35/EC, in terms of the fact that it would appear to fulfil the requirements of the Aarhus Convention in providing for public participation concerning plans and programmes relating to the environment.

**Annex VII – River Basin Management Plans**

"A. River basin management plans shall cover the following elements:  
9. a summary of the **public information and consultation** taken, their results and the changes to the plan made as a consequence."

This Annex requires public information and consultation to be included in the river basin management plan. Although not directly linked to Directive 2003/35/EC it would suggest that the requirements of the Aarhus Convention are being addressed.

Possible overlap between public information and consultation on RBMPs and consultation /participation carried out for any relevant EIAs/SEAs? [in terms of method / timing etc.]

While the requirements of the Aarhus Convention are fulfilled through the implementation of the Public Participation Directive **2003/35/EC**, particularly Article 2 on 'public participation concerning plans and programmes', there are certain plans and programmes which are not covered by this Directive.

**Public Participation Directive 2003/35/EC – Article 2**  
"5. This Article shall not apply to plans and programmes set out in Annex I for which a public participation procedure is carried out under **Directive 2001/42/EC**...or under **Directive 2000/60/EC**..."

**Annex I**

- (a) Article 7(1) of Council Directive 75/442/EEC...on waste.
- (b) Article 6 of Council Directive 91/157/EEC...on batteries and accumulators containing certain dangerous substances.
- (c) Article 5(1) of Council Directive 91/676/EEC...concerning the protection of waters against pollution caused by nitrates from agricultural sources.
- (d) Article 6(1) of Council Directive 91/689/EEC...on hazardous waste.
- (e) Article 14 of Directive 94/64/EC...on packaging and packaging waste.
- (f) Article 8(3) of Council Directive 96/62/EC...on ambient air quality assessment and management."

WFD

**Box 5: The Habitats Directive 92/43/EEC – links to the other Directives**

**Preamble**  
 “10. “Whereas an appropriate assessment must be made of any plan or programme likely to have a significant effect on the conservation objectives of a site which has been designated or is designated in future;”  
 “12. “Whereas land-use planning and development policies should encourage the management of features of the landscape which are of major importance for wild fauna and flora.”

Preamble 10 indirectly implies the use of SEA (2001/42/EC).

Preamble 12 implies indirectly that SEA is the main tool for ensuring that land use plans and development policies account for the importance of flora and fauna. This paragraph also implies that project EIA (85/337/EEC) should address development proposals that take place pursuant to such land use plans.

**Article 3 – Conservation of natural habitats and habitats of species**  
 “1. A coherent European ecological network of special areas of conservation shall be set up under the title Natura 2000. This network, composed of sites hosting the natural habitat types listed in Annex I and habitats of species listed in Annex II, shall enable the natural habitat types and the species’ habitats concerned to be maintained or, where appropriate, restored at a favourable conservation status in their natural range.  
 The Natura 2000 network shall include the special protection areas classified by the Member States pursuant to Directive 79/409/EEC.”  
**Article 7**  
 “Obligations arising under Article 6(2), (3) and (4) of this Directive shall replace any obligations arising under the first sentence of Article 4(4) of Directive 79/409/EEC in respect of areas classified pursuant to Article 4(1) or similarly recognised under Article 4(2) thereof...”

These two Articles make direct reference to the Birds Directive 79/409/EEC. Firstly, Article 3 specifies that ‘special protection areas’ are to be included in the Natura 2000 network, which will help ensure that such species habitats are maintained or restored. Secondly, Article 7 makes amendments to the Birds Directive in relation to a) the avoidance of the deterioration of natural habitats and habitats of species and the disturbance of species (Art. 6(2)), b) the requirement for plans or projects not directly connected with the site but likely to have significant effect, either individually or in combination with other plans or projects, to be subject to appropriate assessment...(Art. 6(3)) [possible link to EIA and SEA], and c) the requirement for compensation measures be undertaken to ensure overall coherence of Natura 2000 is protected if plans and projects must be carried out in spite of a negative assessment of the implications for the site or lack of alternative solutions (Art. 6(4)).

Article 3(1) refers to Annex I, which provides an indirect link to the WFD (2000/60/EC). Annex I section 3 contains freshwater habitat types that may be part of a river basin. Protected areas are designated for special protection under the Habitats Directive. This includes conservation of habitats and species that directly depend on certain types of waters. Under WFD for each river basin district a register of protected areas must be drawn up to help ensure that water management contributes to achieving the objectives set for them and the species. There may be aquatic parts of the Natura 2000 Network, which come under the WFD. River Basin Management Plans have to describe protected areas. In this context the following Articles from the Habitats Directive are also relevant and link to the WFD: Article 4(1) and (4), Article 6(1-4) and Article 17(1).

The ‘special protection areas’ classified under Directive 79/409/EEC include ‘habitats for all the species of birds’ that are referred to in Annex I.

## Box 5 (contd)

**Article 6**

"3. Any plan or project not directly connected with or necessary to the management of the site but likely to have significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives..."

Although Article 6 does not directly mention the EIA Directive 85/337/EEC the fact 'project' is mentioned and the need for an 'appropriate assessment' of that project, if it is likely to have significant effect on a particular site, implies that for such projects the appropriate assessment could be an environmental impact assessment.

- \* Art. 6(3) refers to plans or projects *not directly connected with the site*, but which may have significant effects thereon – this is quite vague and could lead to confusion as to *which* plans and or projects would apply under this Article?
- \* The use of the term 'appropriate assessment' (AA), particularly when read in conjunction with the previous reference to plans or projects, implies that either EIA or SEA or some other assessment may be required, but leaves much discretion as to which is the appropriate assessment. EIA is required for 'projects' but some projects may be considered 'plans', and may therefore be subject to SEA and not EIA – possible confusion between SEA and EIA? It could be read as a "catch all" provision that is deliberately inclusive of call circumstances which might require EIA or SEA (on the basis that a potentially significant effect may arise) and thus is designed to ensure that environmental assessment takes place.
- \* Possible overlaps between SEA undertaken under Article 6(3) for relevant management plans and SEA undertaken on RBMP under the WFD?

**Article 6**

"1. For special areas of conservation, Member States shall establish the necessary conservation measures involving, it need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat type in Annex I and the species in Annex II present on the sites.

The SEA Directive 2001/42/EC is not specifically referred to in Article 6. However, there is a possibility that the appropriate management plans that may be established or the other development plans, may be subject to SEA.

As with the EIA Directive above, the fact that 'plan' is mentioned in Article 6(3) and the need for an 'appropriate assessment' of that plan, implies that for such plans the appropriate assessment could be SEA.

"3. Any plan or project not directly connected with or necessary to the management of the site but likely to have significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives..."

SEA Directive Article 3(2) requires SEA for all plans and programmes prepared in relation to water management. If the conservation/designation of habitats includes areas of water management is there a possibility of overlap between SEAs undertaken for relevant plans and programmes or duplication of the number of plans or programmes being undertaken?

**Box 5 (contd)**

**Article 6**

"3. ...the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having **obtained the opinion of the general public.**"

**Article 22 – Supplementary provisions**

"In implementing the provisions of this Directive, Member States shall:

(a) study the desirability of re-introducing species in Annex IV that are native to their territory where this might contribute to their conservation, provided that an investigation, also taking into account experience in other Member States or elsewhere, has established that such re-introduction contributes effectively to re-establishing these species at a favourable conservation status and that it takes place only after **proper consultation of the public concerned.**"

(c) promote education and general information on the need to protect species of wild fauna and flora and to conserve their habitats and natural habitats."

The Habitats Directive does not make direct reference to the Public Participation Directive **2003/35/EC**, but the fact that the '*opinions of the general public*' and '*proper consultation of the public*' is required under these two Articles, suggests that a certain amount of public input should place.

Note: only subsections (a) and (c) are relevant in the context of public participation.

The public information and consultation measures carried out under the WFD for RBMPs should help to strengthen public input for relevant plans in relation to Habitats.

**Article 10**

"Member States shall endeavour, where they consider it necessary, in their **land-use planning** and development policies and, in particular, with a view to improving the ecological coherence of the Natura 2000 network, to encourage the management of features of the landscape which are of major importance for wild fauna and flora..."

This Article refers to land-use planning obligations. Since SEA (**2001/42/EC**) and EIA (**85/337/EEC**) are implemented in the context of land-use planning, Article 10 may act as a trigger to the application of EIA and SEA in relation to encouraging management of features of the landscape which are of major importance for wild flora and fauna.

**Annex I**

3. FRESHWATER HABITATS

It is likely that some River Basins will come under this Annex I section and therefore will come under the scope of Article 3(1) of **92/43/EC** (see above). This, therefore, implies an indirect link with the WFD (**2000/60/EC**).

### Box 6: The Birds Directive 79/409/EEC – links to the other Directives

#### Article 3

"1. In the light of the requirements referred to in Article 2, Member States shall take the requisite measures to **preserve, maintain or re-establish** a sufficient diversity and **area of habitats** for all the species of birds referred to in Article 1."

This Article does not refer directly to the Habitats Directive 92/43/EEC, but there is specific mention of 'areas of habitat', which would suggest that the provisions of Directive 92/43/EC would apply.

#### Article 4

"4. In respect of the protection areas referred to in paragraphs 1 and 2 above, Member States shall take appropriate steps to **avoid pollution or deterioration of habitats** or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. **Outside these protection areas, Member States shall also strive to avoid pollution or deterioration of habitats.**"

This Article makes explicit reference to habitats. It should be noted that Article 7 of the Habitats Directive 92/43/EEC replaces obligations arising under the first sentence of Article 4(4).

#### Article 9

"1. Member States may derogate from the provisions of Articles 5, 6, 7 and 8, where there is no other satisfactory solution, for the following reasons:

- (a) - in the interests of public health and safety,
- in the interests of air safety,
- to prevent serious damage to crops, livestock, forests, fisheries and **water**,
- for the protection of **flora and fauna**."

As derogations from the Birds Directive are permitted in order to protect "flora and fauna" there is a link with the Habitats Directive 92/43/EEC. Also, as derogations are also permitted from the Birds Directive in order to safeguard 'water', there are links to the WFD 2000/60/EC.

#### Article 11

"Member States shall see that any introduction of species of bird which do not occur naturally in the wild state in the European territory of the Member States does not prejudice the local **flora and fauna**. In this connection they shall consult the Commission."

There is a possible link with 92/43/EEC on the basis of potential adverse impact on habitats (fauna and flora), conservation, favourable status, maintenance of viable populations etc. through risks posed from alien species etc.,

**Box 6 (contd)**

**Annex V**

“(a) National lists of species in danger of extinction or particularly endangered species, taking into account their geographical distribution.

(b) Listing and ecological description of areas particularly important to migratory species on their migratory routes and as wintering and nesting grounds. [...]”

Annex V (a) & (b) are potentially relevant to the Habitats Directive (92/43/EEC) on the basis that geographical distribution is a Natura 2000 concern and that nesting grounds can be found in ‘habitats’ which can include wetland areas.

Annex V(b) is potentially relevant to the WFD on the basis that nesting grounds can be in ‘habitats’ which may include wetland areas.

**Box 7: The Environmental Impact Assessment Directive 85/337/EEC (as amended by Directive 97/11/EC) – links to the other Directives**

**Article 1, Article 2, Article 6, Article 7, Article 9, new Article 10a, Annex I and Annex II**

These Articles and Annexes within the EIA Directive were amended as a result of Article 3 of the Public Participation Directive 2003/35/EC. These amendments ensured that the Directive was fully compatible with the provisions of the Aarhus Convention. The amendments improve public participation and provide access to justice within the EIA Directive.

**Article 2**

“3. Without prejudice to Article 7, Member States may, in exceptional cases, exempt a specific project in whole or in part from the provisions laid down in this Directive. In this event, the Member State shall:  
(a) consider whether another form of assessment would be appropriate;”

This Article suggests that another form of assessment, other than EIA, could be carried out for a particular project. This other form of assessment is not specified.

Could this suggest that an SEA be carried out instead, particularly if the project was deemed to be rather large and would therefore be considered a programme/plan? The European Commission issued guidance to help clarify the provisions of Article 3(2). However, these guidelines are not clear on the specific form of assessment should any be carried out.

**Article 3**

“The environmental impact assessment shall identify, describe and assess an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 11, the direct and indirect effects of a project on the following factors:  
- human beings, fauna and flora;  
- soil, water, air, climate and the landscape;...”

The reference to fauna and flora in sub-point 1 in this Article provides an indirect link with both the Birds (79/409/EEC) and the Habitats (92/43/EEC) Directives.

The reference to water in sub-point 2 in this Article provides an indirect link with the WFD.

**Article 2(3(b)), Article 6 (2-6) and Article 7 (3) & (5)**

These Articles refer to public ‘information’ flows, which trigger public participation. This, therefore, presents an indirect link with the Public Participation Directive (2003/35/EC). Article 6 sub paragraphs (2)(g), (4-6) and Article 7(5) explicitly refer to “public participation”.

**Annex III – Selection criteria referred to in Article 4(3)**

“2. Location of projects  
The environmental sensitivity of geographical areas likely to be affected by projects must be considered, having regard, in particular, to:  
- the absorption capacity of the natural environment, paying particular attention to the following areas:  
(e) areas classified or protected under Member States’ legislation; special protection areas designated by Member States pursuant to Directive 79/409/EEC and 92/43/EEC.”

Direct reference is made to both the Birds (79/409/EEC) and Habitats (92/43/EEC) Directives. Annex III concerns the criteria to be taken into account when deciding whether an EIA is required for a proposed project. The sensitivity of geographical areas, particularly special protection areas, needs to be taken into consideration.

### Box 8: The Strategic Environmental Assessment Directive 2001/42/EC – links to the other Directives

#### Article 3 – Scope

"2. Subject to paragraph 3, an environmental assessment shall be carried out for all plans and programmes, b) which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of Directive 92/43/EEC."

#### Annex I – Information referred to in Article 5(1)

The information to be provided under Article 5(1), subject to Article 5(2) and (3), is the following:

(d) any existing environmental problems which are relevant to the plan or programme including, in particular, those relating to any areas of particular environmental importance, such as areas designated pursuant to Directives 79/409/EEC and 92/43/EEC."

(f) the likely significant effects on the environment, including on issues such as biodiversity, population, human health, fauna, flora, soil, water, air, climatic factors, material assets, cultural heritage including architectural and archaeological heritage, landscape and the interrelationship between the above factors;"

Direct reference is made to the Habitats Directive 92/43/EEC, firstly in the context of environmental assessment being required for plans and programmes under this Directive (either management plans/development plans or plans not directly connected with the management of the site but thought to have significant effects nonetheless), and secondly in the context of information to be contained in the SEA environmental report. Such information should include environmental problems relating to areas designated under Directive 92/43/EEC and the Birds Directive 92/43/EEC.

Although not directly referred to in Annex I (f), there are indirect links with both the Habitats and Birds Directive within this paragraph. The likely significant effects on biodiversity, fauna and flora give rise to a link with the requirements of Directive 92/42/EEC and Directive 79/409/EEC.

The likely significant effects on water also give rise to a link with considerations of Directive 2000/60/EC (WFD).

#### Article 3 – Scope

"2. Subject to paragraph 3, an environmental assessment shall be carried out for all plans and programmes, (a) which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II to Directive 85/337/EEC..."

#### Annex II – Criteria for determining the likely significance of effects referred to in Article 3(5)

"1. The characteristics of plans and programmes, having regard, in particular, to

- the degree to which the plan or programme sets a framework for projects and other activities, either with regard to the location, nature, size and operating conditions or by allocating resources..."

- the relevance of the plan or programme for the implementation of Community legislation on the environment (e.g. plans and programmes linked to waste-management or water protection)."

The EIA Directive 85/337/EEC is referred to in Article 3 with regards the plans and programmes which set the framework for development consent of projects. The degree to which a plan or programme sets such a framework is used as a criterion to determine the likely significant effects of plans and programmes.

Annex II (1) paragraph 5 makes explicitly mention of plans linked to water protection. This, therefore, implies a link with the WFD.

**Box 8 (contd)****Preamble**

"15. In order to contribute to more transparent decision-making and with the aim of ensuring that the information supplied for the assessment is comprehensive and reliable, it is necessary to provide that authorities with relevant environmental responsibilities and the **public are to be consulted** during the assessment of plans and programmes, and that appropriate time frames are set, allowing sufficient time for consultations, including the expression of opinion."

"16. Where the implementation of a plan or programme prepared in one Member State is likely to have a significant effect on the environment of other Member States, provision should be made for the Member States concerned to enter into **consultations** and for the relevant authorities and the public to be informed and enabled to express their opinion."

**Article 5 – Environmental report**

"4. The authorities referred to in Article 6(3) shall be **consulted** when deciding on the scope and level of detail of the information to be included in the environmental report."

**Article 6 – Consultation****Article 7**

"2. ... Where such consultations take place, the Member States concerned shall agree on detailed arrangements to ensure that the authorities referred to in Article 6(3) and the public referred to in Article 6(4) in the Member State likely to be significantly affected are informed and given an opportunity to **forward their opinion** within a reasonable time-frame."

Although no direct connection is made with the **Public Participation Directive 2003/35/EC**, there are clear references to consultation within the SEA Directive: Preambles 15 and 16 are linked to public participation; Article 5 refers to the consultation of authorities with regards scope and level of detail of information for the environmental report; and Article 6 which specifies the need for early and effective involvement. Emphasis is placed on making the draft plan or programme available to the public/authorities. Article 7(2) is also relevant as the opportunity to forward an opinion is a form of public participation.

**Box 9: The Public Participation Directive 2003/35/EC – links to the other Directives****Article 1 – Objective**

The objective of this Directive is to contribute to the implementation of the obligations arising under the Aarhus Convention, in particular by:

(a) providing for public participation in respect of the drawing up of certain **plans and programmes** relating to the environment;"

Article 1(a) provides an indirect link between the Public Participation Directive and the WFD (2000/60/EC). Although the Article does not explicitly refer to the WFD, it is relevant as it gives rise to obligations in relation to public participation in the drawing up of RBMPs as they relate to the environment

**Article 2 – Public Participation concerning plans and programmes**

"2. Member States shall ensure that the public is given early and effective opportunities to participate in the preparation and modification or review of the **plans and programmes** required to be drawn up under the provisions listed in Annex I."

"5. This Article shall not apply to plans and programmes set out in Annex I for which a public participation procedure is carried out under **Directive 2001/42/EC** of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (3) or **under Directive 2000/60/EC** of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy"

Annex I

- (a) Article 7(1) of Council Directive 75/442/EEC...on waste.
- (b) Article 6 of Council Directive 91/157/EEC...on batteries and accumulators containing certain dangerous substances.
- (c) Article 5(1) of Council Directive 91/676/EEC...concerning the protection of waters against pollution caused by nitrates from agricultural sources.
- (d) Article 6(1) of Council Directive 91/689/EEC...on hazardous waste.
- (e) Article 14 of Directive 94/64/EC...on packaging and packaging waste.
- (f) Article 8(3) of Council Directive 96/62/EC...on ambient air quality assessment and management."

Article 2 specifies that the public should participate early and effectively during the preparation, modification or review of plans and programmes which are drawn up under several Directives listed in Annex I. This would imply that SEA (**2001/42/EC**) would need to be applied to such plans and programmes. However, the Article also specifies that if a public participation procedure is already being carried out under the SEA Directive or the Water Framework Directive then the provisions of Article 2 no longer apply.

It would appear that Article 2(5) helps avoid duplication of procedures for public participation, as public participation should take place in relation to SEA or the application of the WFD for the relevant Annex I elements. For those Annex I elements which do not come under the scope of the SEA Directive or WFD then the provisions of PP Directive Article 2 may apply.

**Article 3 – Amendments to **Directive 85/337/EEC****

Makes amendments to Article 1, Article 2, Article 6, Article 7, Article 9, new Article 10a, Annex I and Annex II of Directive 85/337/EEC.

Article 3 makes specific amendments to the EIA Directive **85/337/EEC**. These amendments ensure that the Directive is compatible with the provisions of the Aarhus Convention. The amendments improve public participation and provide access to justice within EIA.