**Environmental Standards Scotland**
**Ìrean Àrainneachdail na h-Alba**

[redacted]
Principal Operations Manager
foi@environmentalstandards.scot
0808 1964000

[redacted]@Parliament.scot

04 November 2026

Dear [redacted],

**Information Request – partial disclosure**

**ESS Reference: ESS.IR.049**

I am writing in response to your email of 7 October 2026, requesting information under the Freedom of Information (Scotland) Act 2002 (FOISA).

The information you requested is as follows:

'In accordance with the Freedom of Information Act, I would be grateful if you could comply with the following request:

- Please provide a copy of all documents which discuss representations IESS.25.016, IESS.25.002 and IESS.25.046

Please include copies of all correspondence, documents, reports, minutes, letters and emails.'

We asked you to refine your request on 13 October 2026. You responded with the following on the same day:

'I am primarily looking to get more background information on each of these representations to begin with.

So, we could limit the scope of the request for each representation to:

- The initial submission from the person/organisation about their representation, i.e. any initial email or letter sent
- The representation form
- The suitability for pre-investigation reports if they exist'

As the information you have requested is 'environmental information' for the purposes of the Environmental Information (Scotland) Regulations 2004 (EIRs), we are required to deal with your request under those Regulations. We are applying the exemption at section 39(2) of the Freedom of Information (Scotland) Act 2002 (FOISA), so that we do not also have to deal with your request under FOISA.

This exemption is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption, because there is no public interest in dealing with the same request under two different regimes. This is essentially a technical point and has no material effect on the outcome of your request.

I can confirm that Environmental Standards Scotland holds information falling within the scope of your request, but that we have chosen not to disclose some of that that information at this stage.

The Environmental Information (Scotland) Regulations 2004 (the EIRs) allow(s) a Scottish public authority to withhold information in response to a request, where one or more exceptions listed in the EIRs apply(ies). In this case, ESS believes the following exceptions apply:

**Regulation 11(2) of the EIR – personal data**

An exception under regulation 11(2) of the EIRs (personal information) applies to some of the information requested because it is personal data of a third party and disclosing it would contravene the data protection principles in Article 5(1) of the General Data Protection Regulation and in section 34(1) of the Data Protection Act 2018. This exception is not

subject to the 'public interest test', so we are not required to consider if the public interest in disclosing the information outweighs the public interest in applying the exception.

The attached Schedule of information lists all the information we hold within the scope of your request, including documents which have been redacted to remove third party personal data.

**Regulation 10(4)(e) of the EIR – internal communications**

An exception under regulation 10(4)(e) of the EIRs (internal communications) applies to some of the information requested.

Regulation 10(4)(e) allows authorities to refuse to disclose internal communications. This is a class-based exception, meaning that there is no need to consider whether disclosure of the communication would cause harm before applying the exception. Provided the information is an internal communication, the exception will apply. This exception has been applied to the suitability for pre-investigation reports that you have asked for.

**Public interest test**

The exception in regulation 10(4)(e) is subject to the public interest test. We recognise that regulation 10(2)(b) of the EIRs builds in an explicit presumption in favour of disclosure, which makes it clear that where arguments are evenly balanced for withholding and disclosing the information, the information must be disclosed. We also recognise the public interest in transparency and accountability in the decision-making processes of public authorities and in understanding how particular decisions are reached. I can confirm that we have decided to release the suitability for pre-investigation reports.

The primary purpose of these reports is to set out officers' views on whether a representation should be taken forward by ESS. All three representations were taken forward and our work on them is still ongoing.

In parts of some of these reports, officers have set out provisional views on the evidence submitted, views on other ongoing casework and potential lines of enquiry. In ESS' view it is important that officers feel free to express such views and that a confidential space exists to explore and discuss options. If this kind of information were to be routinely released into the public domain – when ESS' consideration is ongoing – this could prejudice ongoing work.

This could also result in officers being less willing to be full and frank with their internal communications which would have a detrimental effect on the decision-making process.

Accordingly, we have found that, on balance, the public interest lies in favour of withholding parts of these reports. What this means is that parts of the reports you have asked for have been redacted.

**Right to seek a review**

If you are unhappy with this response to your request under EIRs, you may ask us to carry out an internal review of the response by writing to:

Chief Executive Officer
Environmental Standards Scotland
Thistle House
91 Haymarket Terrace Edinburgh
EH12 5HD
Email foi@environmentalstandards.scot

Your review request should explain why you are dissatisfied with this response and should be made within 40 working days from the date when you received this letter. We will complete the review and tell you the result within 20 working days from the date when we receive your review request.

If you are not satisfied with the result of the review, you then have the right to appeal to the Scottish Information Commissioner. More detailed information on your appeal rights is available on the Commissioner's website at: https://www.foi.scot/appeal

Yours sincerely

[redacted]

[redacted]

Principal Operations Manager
Environmental Standards Scotland

**Schedule of Information - EIR Reference Number: ESS.IR.049**

| Doc no. | Title | Release – wholly or in part | Exemptions/ exceptions applied | Public interest test |
|---|---|---|---|---|
| 1. | Representation form and paper apart – IESS.25.002 | In part | Reg 11(2) Personal Information | Not subject to public interest test |
| 2. | Internal briefing on move to pre-investigation – IESS.25.002 | In part | Reg 11(2) Personal Information<br><br>Reg 10(4)(e) - Internal communications | Not subject to public interest test<br><br>In favour of maintaining exception for parts of the report |
| 3. | Initial e-mail to ESS – IESS.25.016 | In part | Reg 11(2) Personal Information<br><br>Some information out of scope | Not subject to public interest test |
| 4. | Completed website representation form – IESS.25.016 | In part | Reg 11(2) Personal Information | Not subject to public interest test |
| 5. | ESS assessment of representation – IESS.25.016 | In part | Reg 11(2) Personal Information | Not subject to public interest test |
| 6. | Initial e-mail to ESS and representation form – IESS.25.046 | In part | Reg 11(2) Personal Information | Not subject to public interest test |
| 7. | Internal briefing on move to pre-investigation – IESS.25.046 | In part | Reg 11(2) Personal Information | Not subject to public interest test |

| | | | | |
|---|---|---|---|---|
| | | | Reg 10(4)(e) - Internal communications<br><br>Some information out of scope | In favour of maintaining exception for parts of the report |

ENVIRONMENTAL
Standards Scotland
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# Representation Form

## The purpose of this form

We can accept and will consider (free of charge) any representation which includes any instance of concern from anyone about how public authorities discharge their environmental law responsibilities or the effectiveness of environmental law itself.

The purpose of this form is to enable you to set out your representation in a structured way so that we can carry out an initial assessment and consider what steps, if any, should or can be taken. We may also wish to contact you to discuss your representation or seek further information from you. If you have any difficulties in using or completing this form, our staff are more than happy to assist and can be contacted at Representations@environmentalstandards.scot.

Please use this form to contact us if you have specific concerns:

- that a public authority isn't complying with an environmental law;
- that an environmental law isn't being implemented or applied properly; or
- that an environmental law isn't effective in protecting the environment.

In this context a public authority means a person carrying out any function of a public nature and environmental law means any law which is mainly about the environment.

Compliance relates to whether a public authority is failing to take proper account of environmental law when exercising its functions or is acting in a way that is contrary to (or incompatible with) environmental law.

Environmental law means any law which includes provisions mainly about the environment and environmental protection, with environmental protection including:

> (a) protecting, maintaining, restoring or improving the quality of the environment,
>
> (b) preventing, mitigating, minimising or remedying environmental harm caused by human activities; and
>
> (c) monitoring, considering, assessing, recording, reporting on or managing data on anything relating to paragraphs (a) and (b).

In practical terms, the effectiveness of environmental law relates to whether the law is achieving its intended effect in protecting the environment and contributing to our international obligations relating to environmental protections.

## Next steps

It is important to explain that, before considering what action should be taken, we normally expect that you will have given the relevant public authority the opportunity to respond to the issue or that you have tried to resolve your concerns through other available mechanisms. Whatever action we do take, we will write to you setting out the reasons for this and provide as much further assistance as we can.

It is also important to understand that we are not an appeal or complaints body for individual decisions taken by public authorities in the exercise of their regulatory functions in relation to a particular person or case (for example, a decision on an application for a licence or a decision on regulatory enforcement in a specific case).

The ‘How to raise a concern’ and ‘Frequently Asked Questions’ pages on our website provide further information on our role and may assist you in completing this form.

By submitting this form you agree to our Data Privacy Notice. ESS may use the information you provide but we will not share your personal information without obtaining prior consent from you. You may tell us at any time if you wish to withdraw your representation.

When you have completed this form, please send it to Representations@environmentalstandards.scot.

## Section 1 – Your representation

1. Please tell us below the name of the public authority you are contacting us about.

| |
|---|
| Scottish Water |

2. What area of the environment does your representation relate to? (for example, air quality/pollution, water quality/pollution, contaminated land, nature conservation, protected sites, protected species, climate change environmental assessment and monitoring).

| |
|---|
| Water quality/pollution |

3. Have you already contacted the public authority about the matter?

Yes ☒ No ☐

Have you received a response?

Yes ☒ No ☐

If the answer to either of the above questions is 'no', please tell us in the box below why this is the case.

| |
|---|
| See attached paper apart. |

4. Does your representation relate to:

- A public authority not complying with an environmental law?

  Yes ☒ No ☐ Don't know ☐

- Environmental law not being implemented or applied properly?

  Yes ☒ No ☐ Don't know ☐

- An environmental law isn't effective in protecting the environment?

  Yes ☐ No ☐ Don't know ☒

5. If the answer to the above questions is 'no', ESS may not be able to help you. If you have answered 'yes' or 'don't know' to any of the questions above, please tell us in the box below what the background to your representation is, including the key dates when decisions/actions were taken, and specifically what you feel has gone wrong. If possible, please include below the details of the environmental law(s) your concerns relate to and, whether there any related public authority policies, guidance and/or decisions.

It would also be of assistance if you could also provide copies of the public authority's response to you and any supporting information you have.

| |
|---|
| See attached paper apart. |

6. What outcome are you seeking through bringing your representation to ESS?

| |
|---|
| See relevant paper apart. |

7. How did you hear about ESS?

| |
|---|
| Previous representations. |

## Section 2 – Your details

The person who identified the problem should normally fill in this form. If you are acting on behalf of someone else, please check and confirm that they are content for you to do so.

| | |
|---|---|
| First Name | 1 |
| Last Name | 1 |
| Your Organisation's name (if applicable) | Environmental Rights Centre for Scotland |
| Telephone Number | 1 |
| Email address | 1 @ercs.scot |
| Address Line 1 | c/o Scottish Environment LINK |
| Address Line 2 | Dolphin House, 4 Hunter Square |
| Town/City | Edinbugh |
| Post Code | EH1 1QW |
| Preferred contact method | Email |

To investigate your concerns, or make further enquiries, we normally need to contact the public authority to confirm that you have tried to

resolve your concerns with them first. We may also need to discuss with the public authority the nature of your concerns. This means that we may need to share with the public authority personal information related to your case.

## Diversity Monitoring

ESS would appreciate if you could assist us to ensure we are reaching as many people as possible and preventing barriers from using our service. To support this, we have a Diversity Monitoring Form available on our website at https://www.environmentalstandards.scot/wp-content/uploads/2023/02/ESS-Diversity-Monitoring-Form.docx
Filling in this form is voluntary and will not affect our investigation of your representation.

Your completed Diversity Monitoring Form will be stored anonymously in a secure database, separate from your representation. You may submit the form along with your representation or separately.

## Declaration

By completing and signing this form, I confirm that the information given is accurate and that I provide my consent for ESS to share information about me with the public authority/authorities subject to the representation **(if you have any concerns about us sharing your information with the public authority please contact us to discuss)**.

I also understand that ESS may access and review information about my concerns held by the public authority and that, depending on the nature of the representation, this may include sensitive personal information. I also understand that my personal information will be retained by ESS as set out in our privacy notice.

| | | | |
|---|---|---|---|
| **Signature**<br><br>*(Click image to add a digital signature file)* | Click or tap here to enter text. | **Date** | Click or tap here to enter text. |

Key:
1 - Regulation 11(2) - Personal Data
2 - Regulation 10(4)(e) - Internal Communications
3 - Out of Scope

## Section 3 – Checklist

- Have you fully completed all sections of the form that apply to you?

  Yes ☒ No ☐

- Have you included copies of all your supporting paperwork (in particular any response you have received from the public authority)?

  Yes ☒ No ☐

- Please do not send us original documents. To help protect your information we do not hold original documents on our files. Any original documents you send will be returned. Also, when our involvement with your representation comes to an end, the documents we hold on our files will be destroyed in line with our records retention policy.

- If you plan to send us large amounts of documents, please put your documents in date order, putting the most recent document at the front and oldest at the back.

**ERCS representation to ESS**
**Paper apart**
**Scottish Water breach of statutory duty**
**Sewerage (Scotland) Act 1968**
**13 January 2024**

## Introduction

1. This paper apart sets out the background to a representation from ERCS to ESS in respect a breach by Scottish Water ('SW') of its Section 1(1) of the Sewerage (Scotland) Act 1968 duty "to make such provision, by means of sewage treatment works or otherwise, as may be necessary for effectually dealing with the contents of its sewers and SUD systems".

2. The purpose of this representation is to request that ESS carries out an investigation into the matters raised in this representation, with a view to ESS taking enforcement action against SW.

## Background

3. In 2021 we were contacted by the River Almond Action Group ('RAAG') regarding their longstanding concerns over water pollution at the River Almond in West Lothian. Of particular concern is the pollution arising from the East Calder, Whitburn and Blackburn wastewater treatment works ('the WWTWs').

4. RAAG informed us that there is often clear visual evidence of sewage pollution in the River in the vicinity of the above WWTWs. We have been told that this problem is longstanding and ongoing.

5. In 2022, we submitted a representation to ESS regarding the lack of enforcement action by SEPA (your reference: IESS.22.027). We alleged that that SEPA had failed to enforce the licences issued under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 for the WWTWs operations.

6. In April 2024, we asked SW for information in respect of the discharges at the three WWTWs (document 1). The response from SW (document 2) explained that the WWTWs are operated on SW's behalf by Veolia PFI operators. The relevant licence requires the reporting of overflow event and flow information.

7. The response to our FOI request included information on untreated wastewater discharged into the River Almond from the WWTWs in 2023 (document 3). The



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response called this the 'overflow data'. That data indicates that there were substantial wastewater discharges in the year 2023.

8. The data provided by SW indicated that there were:

    a. 101 recorded discharges of untreated wastewater from Blackburn WWTW in 2023.

    b. 140 recorded discharges of untreated wastewater from Whitburn WWTW in 2023.

    c. 65 recorded discharges of untreated wastewater from East Calder WWTW in 2023.

    d. An uninterrupted continuous discharge of untreated wastewater from East Calder WWTW from 1 to 7 January 2023.

    e. Daily significant intermittent discharges of untreated wastewater from East Calder WWTW from 7 to 16 January 2023.

**Complaint to SW**

9. On 17 July 2024 we submitted a stage 1 complaint to SW (document 4). The complaint alleged that SW was in breach of its statutory duty under Section 1(1) of the Sewerage (Scotland) Act 1968 to "to make such provision, by means of sewage treatment works or otherwise, as may be necessary for effectually dealing with the contents of its sewers and SUD systems".

10. The complaint referred to the decision in *Dobson and others v Thames Water Utilities Ltd* [2007] EWHC 2021 (TCC) (document 5). *Dobson* considered the equivalent legal duty which applies to 'sewerage undertakers' in England[1] and the interpretation of the phrase "effectually dealing with". According to the opinion of Ramsey J in *Dobson*:

    > *One of the purposes of the requirement for effectually dealing with the contents is therefore to treat the sewage in such a way as to render it reasonably harmless and inoffensive.*[2]

[1] Section 94(1)(b) of the Water Industry Act 1991 ('the 1991 Act').
[2] *Dobson*, para 74.



Key:
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11. Our complaint explained that, in light of *Dobson,* SW's duty under Section 1(1) of the Sewerage (Scotland) Act 1968 requires that sewage must be treated in such a way as to render it reasonably harmless and inoffensive, before it can be discharged into the environment.

12. The data provided in the FOI response demonstrates that SW is failing to effectually deal with the contents of its sewers due to untreated wastewater being discharged regularly into the River Almond.

13. We requested that SW accept its breach of Section 1(1) of the 1968 Act, take the necessary steps towards remediation, and provide appropriate timescales for taking remedial action.

**Scottish Water's response**

14. SW responded to our complaint on 3 October 2024 (document 6). SW did not uphold our complaint. Their position is that they have not breached their statutory duty under Section 1(1) of the 1968 Act.

15. SW argued that the discharges from the WWTWs are not untreated - and that the Dobson case is irrelevant to the interpretation of SW's duty. We outline and respond to those arguments below.

*SW argument 1 - discharges are not untreated*

16. SW claimed that our complaint "appears to arise due to a mistaken understanding that the discharges referred to were "untreated" wastewater". Their response explained that:

> *Discharges from CSOs and SSOs are not untreated, as discharges from CSOs are screened and discharges from SSOs are both screened and settled. Discharges from CSOs are also more than six times dry weather flow, meaning they are highly dilute. The discharges referred to in this data set are in accordance with the SEPA licence conditions and in line with contractual obligations.*

17. Whether wastewater which has been screened and settled is 'treated' or 'untreated' has little bearing on the duty set out in Section 1(1) of the 1968 Act. Compliance with that duty turns on whether SW has made provision for effectually dealing with the contents of its sewers. Wastewater which has been screened only - or screened and settled only - cannot be said to be reasonably harmless and inoffensive, which is effectively what *Dobson* requires.



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*SW argument 2 - Dobson is irrelevant*

18. SW did not accept that *Dobson* was relevant when considering the provisions in the 1968 Act, because the provisions of the 1991 Act are not identical to those in the 1968 Act. SW highlighted the following differences between the two Acts:

    a. Section 94 of the 1991 Act contains duties to ensure that the area is and continues to be effectually drained. There is no such duty under Section 1 of the 1968 Act.

    b. The duties under Section 1 of the 1968 Act are not absolute. Section 1(1) of the 1968 Act does not require SW to do anything which is not practicable at a reasonable cost. SW is not aware of a similar provision in the 1991 Act.

    c. The provision for emptying sewers in Section 94(1)(b) of the 1991 Act by dealing by means of sewage disposal is different. "Disposal" is defined under s.219 of the 1991 Act which in relation to sewage, includes treatment. There is no equivalent provision in the 1968 Act.

19. With respect to point a above, the duties in the 1991 Act and the 1968 Act relating to 'effectual drainage' have no obvious relevance to the interpretation of duties in those Acts relating to 'effectually dealing with' the contents of sewers. The duty set out in Section 94(1)(a) of the 1991 Act on sewerage undertakers to ensure that their area is and continues to be effectually drained is not considered in any detail in *Dobson*. In any event, SW's claim that there is no similar duty under Section 1 of the 1968 Act is incorrect – Section 1(1) of the 1968 Act imposes a duty on SW to "…provide such public sewers and public SUD systems as may be necessary for effectually draining its area of domestic sewage, surface water and trade effluent…".

20. Regarding point b above, SW is correct to point out that the 1968 Act does not require SW effectually deal with the contents of sewers which is not practicable at a reasonable cost, and that the 1991 Act does not appear to have a similar qualification relating to cost. The cost qualification which is set out in Section 1(3) of the 1968 Act appears to limit the expenditure required by SW to meet its Section 1(1) duty. However, Section 1(3) is irrelevant when interpreting the phrase 'effectually dealing with the contents of its sewers'.

21. In relation to point c above, SW is correct that the 1991 Act defines the term 'disposal' as including 'treatment' in relation to sewage. Section 1 of the 1968 Act does not use the term 'disposal'. The equivalent phrase in Section 1(1) is 'sewage treatment works'. There are some small differences between the wording of Section 1 of the 1968 Act

and Section 94(1)(b) of the 1991 Act. However, in the context of the means that is prescribed in both pieces of legislation by which SW and the sewerage undertakers are to effectually deal with the contents of their sewers, the statutory provisions are near-identical. The 1968 Act refers to "by means of sewage treatment works or otherwise", whereas the 1991 Act refers to "by means of sewage disposal works or otherwise".

22. Overall, SW's arguments reflect some minor distinctions between the two Acts but they are not fatal to the argument that *Dobson* is a persuasive authority for the interpretation of SW's duty in Section 1(1) of the 1968 Act.

23. Contrary to SW's position, it is not necessary for the provisions of the two acts to be identical in order for the judicial interpretation of one act to be relevant to the interpretation of the other act.

24. The similarities between Section 1 of the 1968 Act and Section 94 of the 1991 Act mean that it is reasonable to use *Dobson* to interpret the 1968 Act. The purposes of Section 1 of the 1968 Act and Section 94 of the 1991 Act are similar. Both Sections create legal duties for certain entities to provide sewerage systems. Both Sections require those entities to make provision for 'effectually dealing with' the contents of their sewers. The titles of both Sections reflect their similarities, Section 1 of the 1968 Act is titled 'Duty of local authority to provide for sewerage of their area' and Section 94 of the 1991 Act is titled 'General duty to provide sewerage system'.

**Outcome requested as a result of this representation**

25. Our position remains that SW is in breach of its duty under S1(1) of the 1968 Act, "to make such provision, by means of sewage treatment works or otherwise, as may be necessary for effectually dealing with the contents of its sewers and SUD systems". River Almond is polluted on a regular and ongoing basis by discharges of untreated sewage from the WWTWs. SW has failed (and continues to fail) to make such provision as is necessary for effectually dealing with the contents of its sewers vis-à-vis the WWTWs on the River Almond.

26. We request that ESS investigates SW's breach of duty and takes enforcement action to remedy that breach of duty.



Key:
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Environmental Standards Scotland

# Internal Briefing Note:

# Scottish Water's compliance with duty to effectually deal with sewage.

# Suitability for pre-investigation IESS.25.002

5 Feb 2025

Key:
1 - Regulation 11(2) - Personal Data
2 - Regulation 10(4)(e) - Internal Communications
3 - Out of Scope

## 1. Purpose

1.1. Further to receiving a representation and supporting information from the Environmental Rights Centre for Scotland on 13/01/2025, this note provides a preliminary review of the information submitted and an assessment of the remit and significance tests, to determine whether the case is suitable to be progressed to pre-investigation. This review has been carried out in line with the Investigations Operational Guidance.

## 2. Summary of representation

2.1. ERCS allege that Scottish Water is non-compliant with its statutory duty (Section 1(1) of Sewerage (Scotland) Act 1968) to make provision by means of sewage treatment works or otherwise to effectually deal with contents of sewers and Sustainable Urban Drainage Systems (SUDS).

2.2. The representation leans on interpretation of the term 'effectually deal with' from a judgement ('Dobson judgement') on a comparable provision in English regulations (Section 94(1)(b) of The Water Industry Act 1991). This sets out that determining what is considered 'effectually dealing with' sewage is a matter of degree but is expected as a general principle to include treatment to render it reasonably harmless and inoffensive.

2.3. The representation has analysed sewage overflow data associated with three waste water treatment works on the River Almond, finding 65, 101 and 140 recorded discharges from the works respectively. Given the number and regularity of these recorded overflow events, the representation alleges that Scottish Water are failing to effectually deal with sewage.

2.4. The outcome sought is for ESS to investigate this alleged breach of duty and to take enforcement action to remedy it.

## 3. Legislative background

3.1. Section 1(1) of the Sewerage Scotland Act 1968 (as amended) imposes the duty in question on Scottish Water:

'1(1): *Subject to the provisions of this Act, it shall be the duty of [Scottish Water]…to make such provision, by means of sewage treatment works or*

*otherwise, as may be necessary for effectually dealing with the contents of [its] sewers [ and SUD systems]'.*

3.2. Section 1(3) of the 1968 Act sets out that the duty imposed by Section 1(1) does not require Scottish Water to do anything which is not practicable at reasonable cost:

'1(3): *The duties imposed by the foregoing subsections shall not require [Scottish Water] to do anything which is not practicable at a reasonable cost.'*

3.3. Lastly, Section 1(7) sets out that the duty imposed by Section 1(1) shall not require Scottish Water to do anything which is prejudicial to its compliance with specific objectives or policy (principles for charging for water and sewage) set by Scottish Ministers.

'*1(7): The duties imposed by subsections (1) and (2) above shall not require Scottish Water to do anything which is prejudicial to its compliance with—*

*(a)any directions given to it under section 56 of the Water Industry (Scotland) Act 2002 (asp 3) so far as setting objectives of a type referred to in section 56A of that Act, or*

*(b)a statement of policy issued under section 29D of that Act'*

3.4. The Urban Waste Water Treatment (Scotland) Regulations 1994 ('UWWT Regulations') set more specific requirements on the collection and treatment of sewage. The interaction and effect of these more prescriptive requirements with the overarching duty in question should be determined during pre-investigation.

Regulation 4(1) requires that Scottish Water ensure collecting systems which satisfy the requirements of Schedule 2 are provided. These requirements include ensuring the collecting systems take into account waste water treatment requirements and are designed, constructed and maintained in accordance with the best technical knowledge not entailing excessive costs.

Regulation 5 sets the required treatment standards for WWTW, based on the size of the population they serve.

Regulation 6 requires that discharges from WWTW, which fall under the scope of Reg 5, meet the relevant requirements of Part 1 of Sch. 3. These

include allowing samples to be taken, discharge limits for key pollutants and the positioning of outfalls to minimise impact.

## 4. Scottish Water's position

4.1. ERCS submitted a stage one complaint to Scottish Water setting out the alleged non-compliance. Scottish Water did not uphold the complaint, setting out its position that they are compliant with Section 1(1) of 1968 Act.

4.2. 2 [redacted].

## 5. Preliminary assessment of the representation to ESS remit

5.1. The table below provides a preliminary assessment of whether the content of the representation falls within ESS's remit.

| | |
|---|---|
| Does the representation relate to a public authority? | Yes – Scottish Water. |
| Does the representation relate to environmental law? | Yes<br>Section 1(1) of the Sewerage (Scotland) Act 1968 (as amended). |
| Do the issues raised by the representation relate to a failure to comply with environmental law? | Yes<br>Representation alleges Scottish Water have failed to comply with duty to effectually deal with sewer contents. |
| Do the issues raised by the representation relate to the effectiveness of environmental law? | Potentially<br>Representation itself does not allege ineffectiveness. However, given potential role of Urban Waste Water Treatment Regulations in this case, it is possible that the issues re. the effectiveness of them found by ESS' Sewage |

| | |
|---|---|
| | Overflows analytical report may be applicable in this case also. |
| Do the issues raised by the representation relate to the effectiveness of implementation or application of environmental law? | Potentially – as above. |
| Does the representation pertain to any legislative provisions excluded from ESS's remit, per the 2021 Act? | No |
| Is the representation premature? | No |
| Have any alternate remedies been identified? | Potentially<br><br>Recommendations were made by ESS (under S.20 of Continuity Act) to Scottish Government and SEPA as part of Sewage Overflows analytical report that may be of relevance. No response has yet been received on the acceptance and / or delivery of these recommendations. |

5.2. Given the above, it is concluded the case is within our remit.

## 6. Preliminary assessment of the representation to ESS investigation criteria

6.1. The table below provides a summary of the representation against ESS's criteria for investigation.

| | |
|---|---|
| Does the matter arise from a significant or potentially significant incident concerning the environment? | Yes<br><br>Sewage discharges contain a wide range of contaminants, which can pose a risk to the environment. Additionally, sewage discharges can elevate nutrient levels and affect water quality and ecology. The failure to treat sewage to the required legal standard has the potential to cause significant harm to the environment. The representation |

| | |
|---|---|
| | provides evidence which alleges significant impact on the environment. |
| Does the matter raise public health concerns? | Yes<br><br>Sewage discharges contain pathogens and viruses that can cause illness, typically through exposure from undertaking recreational activities in affected waters. |
| Is the matter something which seriously affected (or could seriously affect) the welfare of any member of the public? | Potentially<br><br>Poor water quality because of sewage related impacts has the potential to affect the ability of individuals to partake in water-based recreational activities. Additionally, poor water quality can negatively impact individuals enjoyment of and access to the environment. |
| Does the matter concern significant alleged neglect or systemic non-compliance? | Potentially<br><br>If case is indicative of a systemic issue that Scottish Water apply to managing and treating sewage across Scotland. |
| Could the matter undermine public confidence? | Yes<br><br>Sewage spills are currently a topic of acute public interest. If it is found that there is systemic non-compliance, public confidence could be undermined. |
| Does the matter concern a failure to meet international obligations? | No |

6.2. Following on the above, the case is considered to meet ESS' criteria for pre-investigation.

## 7. Assessment and conclusion

7.1. The case meets ESS' remit and significance criteria and therefore it is proposed that the case be moved to pre-investigation to allow further examination of the

key areas identified that require clarification and elaboration. These are set out below:

A. Effect of Urban Waste Water Treatment Regulations:

As set out, the UWWT Regulations set out more prescriptive requirements for the collection and treatment of sewage. This includes the criteria establishing what is considered a 'permissible' spill of sewage from an overflow and the standard to which sewage much be treated before being discharged. 2

B. Application and effect of Dobson Judgement:

The representation sets out that the Dobson judgement provides interpretation of the term 'effectually deal with'. 2

2 [redacted]

C. Effect of ‘exemptions’ to overarching duty:

As set out, the 1968 Act sets out that the duty ‘effectually deal with’ sewage does not require Scottish Water to do anything which is not practicable at reasonable cost nor is prejudicial to its compliance with specific objectives or policy (principles for charging for water and sewage) set by Scottish Ministers. The objectives and charging principles referred to set out additional requirements that Scottish Water must comply with. 2 [redacted]

[redacted]

D. Evidencing Impact:

As set out, the evidence provided in the representation to substantiate environmental harm consists of data on the number of spills from overflows associated with 3 treatment works. The representation alleges that the frequency of these spills (which are untreated) is causing significant impact. 2 [redacted]

Key:
1 - Regulation 11(2) - Personal Data
2 - Regulation 10(4)(e) - Internal Communications
3 - Out of Scope

2 [redacted]

[redacted]

[redacted]




**From:** 1 @gmail.com>
**Sent:** 22 March 2025 19:39
**To:** Environmental Standards Scotland Enquiries <enquiries@environmentalstandards.scot>
**Subject:** Fwd: River Tyne (East Lothian) Pollution issues

Hi
I am reaching out to you in the hope that you can help. Please see my email.below and related attachments, sent a week ago, no response from anyone!
We are getting nowhere with ELC, SW and SEPA.
Meanwhile our river in parts is dying.
Can you help please
Regards
1

---------- Forwarded message ---------
From: 1 @gmail.com>
Date: Fri, 14 Mar 2025, 19:22
Subject: River Tyne (East Lothian) Pollution issues
To: CB Edinburgh Lothian & Borders 1 @sepa.org.uk>,
<1 @scottishwater.co.uk>, <a1 @scottishwater.co.uk>,
<1 @sepa.org.uk>
Cc: 1 @eastlothian.gov.uk>,
<1 @knightfrank.com>, 1 @outlook.com>

To whom it concerns

**EAST SOULTON SEWAGE EVENT**

You will hopefully be aware of the issue at East Saltoun on the River Tyne East Lothian which has now been identified as coming from a Scottish Water (SW) septic tank asset, which is not fit for purpose due to the increased housing.

This was confirmed by SW through conversations with 1 East Lothian Council (ELC) Coastal and Flooding Team. However SW informed ELC that more investigation was required. This sewage event was raised in circa 2018 by the East Lothian Angling Association (ELAA) and assurances were received around that time that it would be fixed in the SW's planning window which is 2021-2027. To date there has been no action or indication of a remedy.

ELC (1 ) advised raising directly with SW. Which I did yesterday via their online portal reporting mechanism yesterday, (case reference below) to which 1 Raine (SW) responded that an "immediate fix" was being put in place today Friday 14 March. I'm assuming that 1 may not have been fully aware of the causes! Nor the history.

SEPA and SW have been unable to provide timelines or assurances that work is planned to fix this issue. Merely saying further investigation is needed!
ELC (1 ) has confirmed that its an issue for SW and SEPA to deal with not ELC.

We have all known what the issue was in 2018 and it's taken 7 years for SW to confirm what the cause was and it is their asset which is to blame, but only to say more investigation is needed!

Meanwhile raw sewage is flooding out into the river where people walk their dogs, on farm land and is obviously visibly impacting the river life.

**HADDINGTON SEWAGE INCIDENT**

Another sewage issue, further downstream above Haddington was reported in 2022 by Friends of the River Tyne (FotRT) and again in the last day or two. You can view images of this Sewage incident on the Friends of the river Tyne and ELAA Facebook pages. This is a popular area next to children's play area and 3g pitch.

To say both bodies are extremely dissatisfied with the lack of urgency and assurances at these events is putting it mildly.

We have been unable to get firm and guaranteed responses from SEPA (1 ) and

SW. [redacted] at ELC has helped but even the pressure of our local council still bore no fruit.

Please see videos and image attached.

For a final request:

- We expect SW to cease urgently both events of sewage and to be notified.
- We expect SEPA to apply pressure for this and future incidents to be actioned more effectively and to monitor actions.
- We expect the identified monitoring areas on the Tyne to be brought up to date and applied at regular intervals. Recent FOI has indicated SEPAs own monitoring intervals and locations are not being followed. Data to support this can be provided.
- We expect urgent action, not more investigations, sampling or reports!

Looking forward to your response.

Regards
[redacted]

For reference recent SW incident regarding East Saltoun
CAS-2785078-D9Y2X

**From:** [redacted] via Smartsheet
**To:** ESS Representations
**Subject:** New Representation Submitted via Smartsheet
**Date:** 10 June 2025 14:09:00

<!--[if !mso]--> <!--[endif]-->

## New Representation Submitted via Smartsheet

A new representation has been submitted via Smartsheet.

Investigations - Representation Web Submissions

### Details

Changes since 10/06/2025, 13:06

**1** row added , **1** row changed
**7** attachments added

**1** row added or updated (shown in yellow)

Row 15

| | |
|---|---|
| **Date logged** | 10/06/2025, 13:08 |
| **Environmental Area Category** | Water Quality/Pollution |
| **Geographic location(s)** | East Lothian Council |
| **Public authority/authorities** | Scottish Water and SEPA |
| **Named contact on enquiry/ representation** | [redacted] |
| **Organisation(s)** | East Lothian Angling Association |
| **Email address** | [redacted]@gmail.com |
| **Telephone Number** | [redacted] |
| **Postal address** | [redacted] |
| **Preferred contact method** | Email<br>Phone |
| **Has contacted PA?** | Yes |

Key:
1 - Regulation 11(2) - Personal Data
2 - Regulation 10(4)(e) - Internal Communications
3 - Out of Scope

| | |
|---|---|
| **Received response from PA?** | Yes |
| **Reason for no PA contact or response** | |
| **Relates to PA compliance?** | Yes |
| **Relates to env law implementation/application?** | Yes |
| **Relates to env law effectiveness?** | Yes |
| **Background to representation** | There are two Key issues to raise: 1. SEPAS MONITORING COMPLIANCE AND REGULARITY Firstly, SEPAs' monitoring procedure is not applied to as they state. Please see the uploaded Excel Files (x4), which were obtained via FOI. SEPA FOI Chemistry Sampling data.xlsx SEPA FOI Ecology Data.xlsx SEPA water clasification Data 2023.xlsx Water Classification Hub - Classification data by water body (2) 2. SCOTTISH WATERS ADHERENCE TO CAR LICENCE Related to CAR ref CAR-L-1001370, East Saltoun There has been ongoing significant pollution release, first reported to SEPA in 2018 and again in 2024 and 2025. SEPAs initial response was to say they were investigating if it was a SW asset, which it clearly is. SEPA proposed to address with SW and keep me/us updated. This did not happen. I tried a different route and received an email from Scottish Water, which confirmed that the asset is SW and has the CAR license referenced above. They also indicate in the same email that it is operating within the CAR licence parameters and that it has an "Excellent" status. On searching for this reference, I find that the last monitor was in 2019. keeping in mind that this was viewed as a serious pollution incident. The issues are, namely: 1. Why did SEPA delay an enquiry into whether it was a SW asset, when their data would have shown it was? It is a Sceptic tank which is not fit for purpose due to the new housing development in the area 2. Why is there no CAR licence registered on SEPA website 3. Why is there no ability to view the parameters of this CAR licence 4. Why have the multiple reporters not been updated with any planned works to address? 5. Why did SW/SEPA not inform the builders of new development that the septic tank would need to be upgraded? Please note that I have significant emails related to the above. Please let me know if you would need these, and I can forward them as a Word document. Files uploaded in reference are: VID-202.....WA0009 VID-202.....WA0010 |
| **Outcome sought** | 1. Challenge SEPA and SW and ensure they will repair or address the issue with the septic tank and inform a definitive timeframe for doing this. 2. Explain why there are gaps in the water quality monitoring and how they aim to address this. |
| **Agrees with terms?** | ☐ |

Key:
1 - Regulation 11(2) - Personal Data
2 - Regulation 10(4)(e) - Internal Communications
3 - Out of Scope

| | |
|---|---|
| **How did you hear about ESS?** | word of mouth |

Changes made by web-form@smartsheet.com, automation@smartsheet.com

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**7 attachments added**

- VID-20240908-WA0009.mp4 (9M) added by web-form@smartsheet.com on Row 15
- Mapping for ESS Representation Web Submission.pdf (1M) added by automation@smartsheet.com on Row 15
- SEPA FOI Ecology Data.xlsx (47k) added by web-form@smartsheet.com on Row 15
- Water Classification Hub - Classification data by water body (2).xlsx (25k) added by web-form@smartsheet.com on Row 15
- VID-20240908-WA0010.mp4 (4M) added by web-form@smartsheet.com on Row 15
- SEPA FOI Chemistry Sampling data.xlsx (3M) added by web-form@smartsheet.com on Row 15
- SEPA water clasification Data 2023.xlsx (15k) added by web-form@smartsheet.com on Row 15

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You are receiving this email because you are subscribed to a workflow "New Representation Notification" (ID# 2605763538511748) on sheet Investigations - Representation Web Submissions
Exclude your changes from all notifications | Unsubscribe
Powered by Smartsheet Inc. | Privacy Policy | Report Abuse/Spam

ENVIRONMENTAL
Standards Scotland
Ìrean Àrainneachdail na h-Alba

# standard assessment template

| Last Updated (Date) | 25/06/2025 | By (Initials) | 1 |
|---|---|---|---|

## Case Details

| | |
|---|---|
| Case Reference | ESS.25.016 |
| Assigned Officer | 1 |
| Enquiry/representation Raised by | 1 – East Lothian Angling Association |
| Area of Concern | Water Quality / Sewage pollution. |

## Assessment of enquiry/representation to ESS remit

5 key issues have been identified from the information contained within the representation:

1. Monitoring of compliance with CAR licence discharge limit conditions.
2. Monitoring of water quality within waterbodies.
3. Efficacy of SEPA's response to pollution incidents
4. System of governance for 'approval' of new connections to existing sewer network / treatment works
5. Inability to access CAR licence information on public register.

Issues, 3, 4 and 5 are considered duplicative of issues pursued through other casework and therefore have been 'screened out' of remit assessment at this stage:

Issue 3 has already been scrutinised under case 24.022 (EPIs) with potential issues in this system identified. It is therefore proposed to collapse this representation into the existing case.

Issue 4 is currently being scrutinised under case 24.024 (Gullane network capacity). It is therefore proposed to collapse this representation into the existing case.

Issue 5 has previously been resolved through case 23.032 (SEPA public registers), with remedial actions agreed and in progress to ensure that all necessary CAR associated documents (as stipulated within the CAR regs) are made available on the public register. No further action is proposed on this issue.

Issues 1 and 2 have been assessed for remit, as set out overleaf:

| Area of Remit | Evaluation |
|---|---|
| Does the representation relate to a public authority? | Yes - SEPA |
| Does the representation relate to environmental law? | Yes<br><br>Section 8 of The Water Environment & Water Services (Scotland) Act<br><br>Reg 31 of The Water Environment (Controlled Activities) (Scotland) Regulations 2011 (as amended) |
| Do the issues raised by the representation relate to a failure to comply with environmental law? | Potentially – the representation alleges that SEPA have not monitored compliance with discharge limit conditions from a small-scale sewage treatment works since 1995. If true, this could indicate non-compliance with Reg 31 of CAR, which imposes a duty on SEPA to monitor compliance with and enforce provisions of the Regs. Evidence has been provided demonstrating impact on the water environment but it is challenging to ascertain the true severity / extent of impact from the evidence provided. Regardless, further enquiries are necessary to determine if this is a one-off failing at the location in question, or indicative of more systemic non-compliance. |
| Do the issues raised by the representation relate to the effectiveness of environmental law? | No. |
| Do the issues raised by the representation relate to the effectiveness of implementation or application of environmental law? | Potentially, the representation includes information pertaining to water quality monitoring undertaken as part of River Basin Management Planning. The representation alleges that monitoring is not undertaken as stipulated, however the evidence provided indicates that water quality monitoring has been undertaken but indicates that some results have been 'rolled over' from previous years. This could constitute potential ineffective implementation / application of environmental law if results are systemically 'rolled over' and contemporary monitoring is lacking. Section 8 of WEWS Act 2003 requires that SEPA carry out monitoring of the status of the water environment in accordance with a prepared monitoring program. |
| Does the representation pertain to any legislative provisions excluded from ESS's remit, per the 2021 Act? | No. |
| Is the representation premature? | The representation contact states that SEPA have been contacted, but no evidence / commentary of this provided. Propose to confirm this during pre-investigation. |

| | |
|---|---|
| Have any alternate remedies been identified? | Yes, the RBMP (Rural Diffuse Pollution) S&A project proposes to analyse the monitoring regime and therefore could overlap with issue 2 (monitoring of water quality). During pre-investigation engagement with the project lead is proposed to determine the likelihood of overlap. |

## Assessment of enquiry/representation to ESS investigation criteria

Provide a remit assessment in the table below.

| Investigation Criteria | Evaluation |
|---|---|
| Does the matter arise from a significant or potentially significant incident concerning the environment? | Yes<br><br>Sewage discharges contain a wide range of contaminants, which can pose a risk to the environment. Additionally, sewage discharges can elevate nutrient levels and significantly affect water quality and ecology. |
| Does the matter raise public health concerns? | Yes<br><br>Sewage discharges contain pathogens and viruses that can cause illness, typically through exposure from undertaking recreational activities in affected waters. |
| Is the matter something which seriously affected (or could seriously affect) the welfare of any member of the public? | Potentially<br><br>Poor water quality because of sewage related impacts has the potential to affect the ability of individuals to partake in water-based recreational activities. Additionally, poor water quality can negatively impact individuals enjoyment of and access to the environment. |
| Does the matter concern significant alleged neglect or systemic non-compliance? | Potentially<br><br>If case is indicative of a systemic issue regarding SEPA's monitoring approach across Scotland. |
| Could the matter undermine public confidence? | Yes<br><br>Sewage spills are currently a topic of acute public interest. If it is found that there is systemic non-compliance, public confidence could be undermined. |
| Does the matter concern a failure to | No |

| | |
|---|---|
| meet international obligations? | |

## Case actions

Provide a summary of identified actions and associated target dates in the table below.

| Action | Target Date | Complete? (Yes/No) |
|---|---|---|
| 1 review and screening of representation | 8/7/2025 | Yes |
| | | |
| | | |
| | | |
| | | |

## Information requests

Provide a summary of information requests in the table below.

| Contact | Information Requested | Date of Request | Required Date of Return | Date Received |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

## Outcome

Please tick the relevant outcome and enter the date of the final issue.

| Tick | Outcome | Date of Decision / Final Report |
|---|---|---|
| ☐ | Closed before becoming active case (e.g. outwith ESS remit or does not meet investigation criteria/eligibility for informal resolution) | |
| ☐ | Informal Resolution | |
| ☐ | Compliance Notice | |
| ☐ | Improvement Report | |
| ☐ | Judicial Review | |
| ☐ | Closed without enforcement after active investigation | |
| ☐ | Keep under review / monitoring | |

For cases with informal or formal resolution, provide a summary of conclusions, actions taken, requirements, and/or other relevant details below:

| |
|---|
| |

Key:
1 - Regulation 11(2) - Personal Data
2 - Regulation 10(4)(e) - Internal Communications
3 - Out of Scope

# Post Investigation Monitoring Requirements

The post-investigation requirements are as follows:

☐ No monitoring or further review required

☐ The following post-investigation monitoring programme should be carried out:

| |
|---|
| |

☐ Case is to be kept under review – provide a summary and target dates below:

| |
|---|
| |

# Additional Information / Notes for Record

Any additional notes may be placed in the box below.

| |
|---|
| |

TEMPLATE VERSION: 1.3
LAST UPDATED BY: 1
DATE: April 2022




**From:** 1 @yahoo.co.uk>
**Sent:** 16 October 2025 16:52
**To:** ESS Representations <representations@environmentalstandards.scot>
**Cc:** 1
**Subject:** Representation Form Submission - Failure of SWPA Implementation

Dear Sir / Madam,

Please find attached a representation form submitted by the Association of Scottish Shellfish Growers with reference to the failure of Shellfish Waters Protected Areas legislation to be appropriately implemented within Scotland.

Initial supporting evidence attached includes the position outlined by SEPA in discussions with industry in June and July 2025 meetings in response to industry questioning the actions of SEPA in terms of known failures of water quality at various shellfish production sites.

In addition the response from the ASSG to the recent public consultation on SWPAs is attached as this identifies the range of issues for which the industry has expressed concerns with regard to the failures of the SWPA designations to protect the water quality in shellfish production areas.

This submission is also supported by Seafood Shetland (CEO 1 copied above) who also has made a submission to the 2025 SWPA public consultation and is content for this submission to also be used for information.

Given the nature of the long standing issues of the failure of the SWPA and WFD monitoring and pollution prevention measures to be adequately implemented by the Scottish Government and it's agencies, we hold significant amounts of e-mail correspondence. We will of course be happy to supply this if requested - but would note as small trade associations our resources

are limited and adequate time will be required to compile such additional evidence.

We will be happy to discuss any aspects of the issues arising and look forward to hearing from you if further information is required at this stage.

All the best

1
http://www.assg.org.uk

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# Representation Form

## The purpose of this form

We can accept and will consider (free of charge) any representation which includes any instance of concern from anyone about how public authorities discharge their environmental law responsibilities or the effectiveness of environmental law itself.

The purpose of this form is to enable you to set out your representation in a structured way so that we can carry out an initial assessment and consider what steps, if any, should or can be taken. We may also wish to contact you to discuss your representation or seek further information from you. If you have any difficulties in using or completing this form, our staff are more than happy to assist and can be contacted at Representations@environmentalstandards.scot.

Please use this form to contact us if you have specific concerns:

- that a public authority isn't complying with an environmental law;
- that an environmental law isn't being implemented or applied properly; or
- that an environmental law isn't effective in protecting the environment.

In this context a public authority means a person carrying out any function of a public nature and environmental law means any law which is mainly about the environment.

Compliance relates to whether a public authority is failing to take proper account of environmental law when exercising its functions or is acting in a way that is contrary to (or incompatible with) environmental law.

Environmental law means any law which includes provisions mainly about the environment and environmental protection, with environmental protection including:

> (a) protecting, maintaining, restoring or improving the quality of the environment,
>
> (b) preventing, mitigating, minimising or remedying environmental harm caused by human activities; and
>
> (c) monitoring, considering, assessing, recording, reporting on or managing data on anything relating to paragraphs (a) and (b).

In practical terms, the effectiveness of environmental law relates to whether the law is achieving its intended effect in protecting the environment and contributing to our international obligations relating to environmental protections.

## Next steps

It is important to explain that, before considering what action should be taken, we normally expect that you will have given the relevant public authority the opportunity to respond to the issue or that you have tried to resolve your concerns through other available mechanisms. Whatever action we do take, we will write to you setting out the reasons for this and provide as much further assistance as we can.

It is also important to understand that we are not an appeal or complaints body for individual decisions taken by public authorities in the exercise of their regulatory functions in relation to a particular person or case (for example, a decision on an application for a licence or a decision on regulatory enforcement in a specific case).

The ‘How to raise a concern’ and ‘Frequently Asked Questions’ pages on our website provide further information on our role and may assist you in completing this form.

By submitting this form you agree to our Data Privacy Notice. ESS may use the information you provide but we will not share your personal information without obtaining prior consent from you. You may tell us at any time if you wish to withdraw your representation.

When you have completed this form, please send it to Representations@environmentalstandards.scot.

## Section 1 – Your representation

1. Please tell us below the name of the public authority you are contacting us about.

The Scottish Government, Environment Directorate and Scottish Environmental Protection Agency

2. What area of the environment does your representation relate to? (for example, air quality/pollution, water quality/pollution, contaminated land, nature conservation, protected sites, protected species, climate change environmental assessment and monitoring).

Marine water quality / pollution and the implementation of the Shellfish Waters Protected Areas legislation

3. Have you already contacted the public authority about the matter?

Yes ☒ No ☐

Have you received a response?

Yes ☒ No ☐

If the answer to either of the above questions is 'no', please tell us in the box below why this is the case.

Click or tap here to enter text.

4. Does your representation relate to:

- A public authority not complying with an environmental law?

  Yes ☒ No ☐ Don't know ☐

- Environmental law not being implemented or applied properly?

  Yes ☒ No ☐ Don't know ☐

- An environmental law isn't effective in protecting the environment?

  Yes ☒ No ☐ Don't know ☐

5. If the answer to the above questions is 'no', ESS may not be able to help you. If you have answered 'yes' or 'don't know' to any of the questions above, please tell us in the box below what the background to your representation is, including the key dates when decisions/actions were taken, and specifically what you feel has gone wrong. If possible, please include below the details of the environmental law(s) your concerns relate to and, whether there any related public authority policies, guidance and/or decisions.

It would also be of assistance if you could also provide copies of the public authority's response to you and any supporting information you have.

The Association of Scottish Shellfish Growers is a trade representative body established in 1986, together with Seafood Shetland we represent the views of the cultivated shellfish industry within Scotland.

The introduction of the Shellfish Waters Protected Areas (SWPA) legislation was intended to provide protection against designated areas being degraded by pollutants which would harm the production of shellfish.

Under EU legislation (79/923EEC The Shellfish Growing Waters Directive) a range of determinands were monitored to ensure the water quality within such designated areas was regularly assessed and where deficient, action taken to remedy and maintain the health of the shellfish stocks. This legislation was subsumed within the implementation of the Water Framework Directive and River Basin Management Plans within Scotland on the basis that equivalent levels of

protection would be maintained. The introduction of specific areas (SWPAs) which contained shellfish production sites for a range of species cultivated by registered shellfish production businesses, was intended to safeguard the water quality within such areas.

Since the introduction of SWPAs there has been an ongoing lack of activity to both monitor appropriately the status of the water quality within such sites and also a shift in the emphasis from maintaining water quality for the health of the shellfish stocks, to a reliance on public health data produced by Food Standards Scotland (FSS).

Where sites are deficient in FSS data this has resulted in the Scottish Government seeking to declassify the SWPA sites without regard to the potential underlying water quality conditions which may have arisen.

The review of the SWPA designations in Scotland is required to be undertaken on a 6 yearly basis. No such review was undertaken in 2019 with no explanation given by the Scottish Government.

The current (2025) review has revealed a desire to declassify a large number of SWPAs on the basis that there is no FSS data in order to be able to assesses the water quality conditions. SEPA has confirmed (documents attached) that they have failed to undertake any water quality monitoring in the marine environment under the Water Framework Directive provisions "since 2018 - or possibly before".

Hence there has been a failure to undertake any water quality monitoring within SWPAs despite ongoing requests from industry based on declining water quality conditions in many areas. In some areas due to CSO discharges and failures to regulate discharges under the CAR licence conditions, shellfish businesses have been forced to cease to produce shellfish due to the decline in water quality.

The full details of the ongoing work since 2013 that the industry has had to engage in to try and ensure the Scottish Government treats appropriately the decline in coastal water quality is lengthy and is available in the form of an e-mail trail which can be detailed for you. However, our response to the recent SWPA consultation issued by the Scottish Government Environment Directorate gives a concise overview of the deficiencies we have identified and continue to seek to address. This has been appended to this form submission. Given the technical nature of many of the issues raised we would be happy to discuss the full details as appropriate. We would note that the responses to the SWPA public consultation by the ASSG and Seafood Shetland have both been identified to be appropriate to be placed on the open public register of responses for the consultation process.

6. What outcome are you seeking through bringing your representation to ESS?

| |
|---|
| We would like to ensure that the appropriate environmental safeguards for water quality within the marine coastal environment are enforced on the basis of the original provisions of the SWPA/WFD legislation in Scotland |

7. How did you hear about ESS?

| |
|---|
| Through the media following the formation of the organisation |

## Section 2 – Your details

The person who identified the problem should normally fill in this form. If you are acting on behalf of someone else, please check and confirm that they are content for you to do so.

| | |
|---|---|
| First Name | 1 [redacted] |
| Last Name | 1 [redacted] |
| Your Organisation's name (if applicable) | Association of Scottish Shellfish Growers |
| Telephone Number | 1 [redacted] |
| Email address | 1 [redacted]@yahoo.co.uk |
| Address Line 1 | 1 [redacted] |
| Address Line 2 | 1 [redacted] |
| Town/City | 1 [redacted] |
| Post Code | 1 [redacted] |
| Preferred contact method | e-mail |

To investigate your concerns, or make further enquiries, we normally need to contact the public authority to confirm that you have tried to

resolve your concerns with them first. We may also need to discuss with the public authority the nature of your concerns. This means that we may need to share with the public authority personal information related to your case.

## Diversity Monitoring

ESS would appreciate if you could assist us to ensure we are reaching as many people as possible and preventing barriers from using our service. To support this, we have an Equality and Diversity Monitoring Form available to all who submit a representation.

We understand that this information is particularly personal and sensitive, and you may not want to share it with us. So whilst we would encourage you to share your details, please note filling in this form is voluntary and will not affect our investigation of your representation.

All information shared will be confidentially held in a secure database, separate from your representation.

## Declaration

By completing and signing this form, I confirm that the information given is accurate and that I provide my consent for ESS to share information about me with the public authority/authorities subject to the representation **(if you have any concerns about us sharing your information with the public authority please contact us to discuss)**.

I also understand that ESS may access and review information about my concerns held by the public authority and that, depending on the nature of the representation, this may include sensitive personal information. I also understand that my personal information will be retained by ESS as set out in our privacy notice.

| | | | |
|---|---|---|---|
| **Signature**<br>*(Click image to add a digital signature file)* | 1 [redacted]<br>Click or tap here to enter text. | **Date** | 16/10/2025 |

Key:
1 - Regulation 11(2) - Personal Data
2 - Regulation 10(4)(e) - Internal Communications
3 - Out of Scope

## Section 3 – Checklist

- Have you fully completed all sections of the form that apply to you?

  Yes ☒ No ☐

- Have you included copies of all your supporting paperwork (in particular any response you have received from the public authority)?

  Yes ☒ No ☐

- Please do not send us original documents. To help protect your information we do not hold original documents on our files. Any original documents you send will be returned. Also, when our involvement with your representation comes to an end, the documents we hold on our files will be destroyed in line with our records retention policy.

- If you plan to send us large amounts of documents, please put your documents in date order, putting the most recent document at the front and oldest at the back.

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For the future of our environment

# Monitoring of Shellfish Water Protected Areas

## SEPA – Industry Discussion

## July 2025

Key:
1 - Regulation 11(2) - Personal Data
2 - Regulation 10(4)(e) - Internal Communications
3 - Out of Scope

## Overview of SEPA's approach to protect Shellfish Waters

# Legislative Background/ SEPA's duty

The Water Environment (Shellfish Water Protected Areas: Environmental Objectives etc.) (Scotland) Regulations 2013

### SEPA Set Environmental Objectives for SWPAs

- Prevent deterioration of SWPAs
- Protect and Improve SWPAs with the aim of achieving good shellfish water quality
- Identify any Less Stringent Objectives

### SEPA Prepare a monitoring programme

SEPA prepare a monitoring programme to classify water quality in reference to Directions and measure improvements against objectives

DIRECTIONS

Quality of Shellfish Water Protected Areas (Scotland) Directions 2021 (*Ecoli in shellfish classification*)

**Also Relevant:** The Scotland River Basin District (Standards) Directions 2024 (*includes Water Quality elements previously covered by Shellfish Water Directive*)

### SEPA Prepare a programme of measures

SEPA to prepare a programme of measures to achieve environmental objectives:

- Investigate cause of failures
- Examine relevant permits and authorisations
- Review and adjust the monitoring programme as needed
- include any additional measures needed

### Include in River Basin Management Plans

- SWPA Objectives
- Summary of measures

Monitoring should be able to:

- Assess condition and classify
- Identify Deterioration and improvement

Key:
1 - Regulation 11(2) - Personal Data
2 - Regulation 10(4)(e) - Internal Communications
3 - Out of Scope

# Review of Environmental Monitoring in SWPAs

**SWPA Classification:**

- SEPA rely on FSS monitoring data of active production areas to classify SWPAs. As a result of some SWPAs having no active production, It was found during the 2024 SWPA classification exercise that 30 out of 85 SWPAs had insufficient data to be classified with confidence.

*Note: The majority of these SWPAs (29/30) have now been proposed for de-designation (as a direct result of not having active production over the last 3 years).*

**WFD Classification:**

- In recent years SEPA's marine monitoring resource has been focused on the finfish aquaculture sector. For the majority of WFD waterbodies associated with SWPAs therefore, there has been no classification monitoring since 2018 or earlier (applies to 82/85 SWPAs).
- For classification, the accepted approach is to group waterbodies of similar pressures and typology and monitor a subset of those waterbodies. For this reason, there is no monitoring on the actual waterbody for the majority of WFD waterbodies associated with SWPAs (applies to 57/85 SWPAs).
- Coastal waterbodies are often larger than the associated SWPA. This means that the WFD monitoring location may not be within the SWPA. Of the 28 WFD waterbodies associated with SWPAs which had monitoring within them, only 19 of these had monitoring within the SWPA.

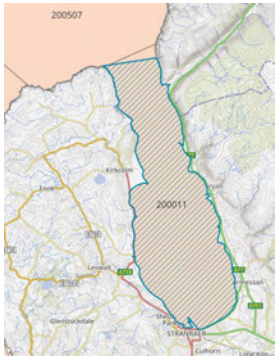
SWPA monitoring and classification: Ecoli in shellfish

**Typical WFD monitored and classified parameters in coastal and transitional waters:**

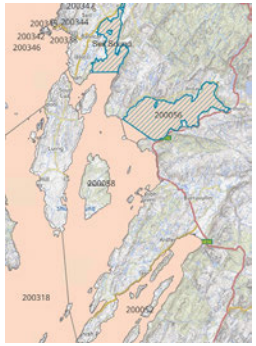
- Dissolved Oxygen
- Dissolved Inorganic Nitrogen
- Benthic Invertebrates
- Macroalgae
- Phytoplankton
- Unionised Ammonia
- Imposex
- Metals

**SEPA recognise the monitoring issues identified in this review. These will be considered as part of a planned comprehensive evidence review which will include monitoring of shellfish waters.**

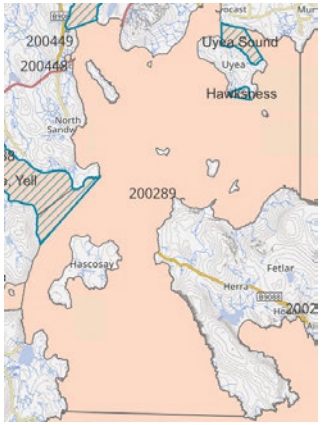
# Overlap between SWPAs and associated coastal waterbodies



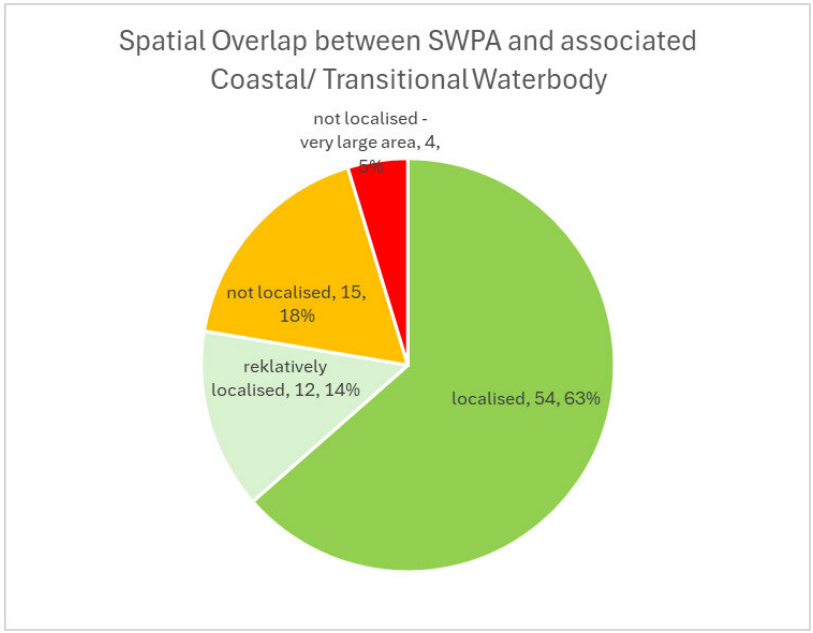

**Most** have good overlap (localised)



Some have poor overlap (not localised)




Some have very poor overlap (WFD wb >>SWPA)




Key:
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# Which Parameters are important to monitor?

## Shellfish Water Directive Parameters (pre-2013)

| | Parameter | | Minimum sampling and measuring frequency |
|---|---|---|---|
| 1 | pH | | Quarterly |
| 2 | Temperature °C | | Quarterly |
| 3 | Coloration (after filtration) mg Pt/l | | Quarterly |
| 4 | Suspended solids mg/l | | Quarterly |
| 5 | Salinity ‰ | | Monthly |
| 6 | Dissolved oxygen | | Monthly, with a minimum of one sample representative of low oxygen conditions on the day of sampling. However, where major daily variations are suspected, a minimum of two samples in one day shall be taken |
| 7 | Petroleum hydrocarbons | | Quarterly |
| 8 | Organohalogenated substances | | Half-yearly |
| 9 | Silver | Ag | Half-yearly |
| | Arsenic | As | |
| | Cadmium | Cd | |
| | Chromium | Cr | |
| | Copper | Cu | |
| | Mercury | Hg | |
| | Nickel | Ni | |
| | Lead | Pb | |
| | Zinc | Zn | |
| | mg/l | | |
| 10 | Faecal coliforms/100 ml | | Quarterly |
| 11 | Substances affecting the taste of the shellfish | | |
| 12 | Saxitoxin (produced by dinoflagellates) | | |

## SEPA WFD Classification Parameters (2024)

| COASTAL CLASSIFICATION PARAMETERS 2024 |
|---|
| Hexachlorobenzene |
| Lead |
| Nickel |
| pp-DDT |
| Mercury |
| Hexachlorobutadiene |
| Cadmium |
| Dissolved Oxygen |
| Dissolved inorganic nitrogen |
| Imposex assessment |
| Benthic invertebrates (IQI) |
| Alien species |
| Macroalgae (FSL) |
| Macroalgae (RSL) |
| Phytoplankton |
| Unionised ammonia |
| Benzyl butyl phthalate |
| Arsenic |
| Copper |
| Zinc |
| Morphology |

| TRANSITIONAL CLASSIFICATION PARAMETERS 2024 |
|---|
| Benzo-a-pyrene |
| Hexachlorobenzene |
| Lead |
| Nickel |
| Mercury |
| Hexachlorobutadiene |
| Cadmium |
| DO (lab. salinity) |
| DO (field salinity) |
| Dissolved inorganic nitrogen |
| Invertebrate animals |
| Alien species |
| Fish |
| Macroalgae |
| Phytoplankton |
| Seagrass |
| Toluene |
| Unionised ammonia |
| Chromium |
| Benzyl butyl phthalate |
| Arsenic |
| Copper |
| Zinc |
| Morphology |

pH, temperature, **suspended solids**, salinity, petroleum hydrocarbons?

Key:
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# UKTAG review of SWD vs WFD Monitoring (2010)

## UKTAG

**Water Framework Directive: An approach to the Revoked Directives: – the Freshwater Fish Directive, the Shellfish Directive and the Dangerous substances Directive (2010)**

We conclude that most of the chemical and physical water quality standards for the Shellfish Waters Directive are covered by the standards and procedures of the Water Framework Directive (apart from Silver, Parathion, pH, total hydrocarbons, colour and suspended solids)

- It is recommended that pH and suspended solids should continue to be monitored due to the ecological significance of these parameters. (*Note: these parameters are not in the 2024 Classification Directions for coastal/ transitional waterbodies*)
- Silver is already being addressed as a specific pollutant.
- Individual hydrocarbons are included in WFD therefore total hydrocarbons can be dropped.
- Levels of parathion are likely to fall in the environment since the pesticide has been taken out of use. Monitoring data should be reviewed to assess whether or not this is the case and if so the parameter can be dropped.
- Colour can be dropped.

# Suggested discussion points:

## SWPA Classification

1. **From an industry perspective:** Where there is no production in an SWPA (and therefore no data from FSS to classify), how important is it to maintain a monitoring programme to classify SWPA? (May require wild shellfish collection). Would an acceptable compromise be to assume no change in condition if there was no change in discharges within the catchment, or we had full confidence that any new discharges were sufficiently controlled to cause no deterioration? (**e.g. use other forms of evidence** – new permitted discharges, operator compliance, compliance with strict permitting standards)

## WFD classification of associated coastal and transitional waters

1. Which water quality parameters are most important to monitor and classify from a shellfish perspective?
2. Which of these parameters are contained within the 2024 Directions, and which are not? 2024 Standards Directions
3. What monitoring frequency for these parameters is needed to report on status and identify potential deterioration? What is feasible?
4. Is use of grouped data suitable for assessing the condition/ risk in a SWPA? (i.e. how site specific are pressures and pathways?) Is monitoring every SWPA feasible?
5. Is the condition of the SWPA accurately assessed through monitoring of a larger associated coastal waterbody? Is there scope to place monitoring locations within the SWPA?

# Thank you

**Contact details**

1
Senior Environmental Quality Officer

sepa.org.uk





Key:
1 - Regulation 11(2) - Personal Data
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ESS.IR.049
Item 6
Attachment 2

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# Shellfish Improvement Plan - Progress update

## June 2025

Key:
1 - Regulation 11(2) - Personal Data
2 - Regulation 10(4)(e) - Internal Communications
3 - Out of Scope

# Agenda

1. Overview of SEPA's approach to protect Shellfish Waters, as directed by Legislation and Shellfish Improvement Framework.
2. Priority Production Areas: Identification of any new priority production areas arising from the April 2025 FSS Classification (Oyster and Mussel production areas < Class A in SWPAs) for pressure investigation and improvement planning
3. Priority Production Areas: Progress with previously agreed priority production areas (including Input into the Scottish Water Investment Programme 2027 – 2033)
4. Review of Environmental Monitoring in Shellfish Water Protected Areas
5. Review of Operator compliance verification for discharges to SWPAs
6. Proactive reporting to industry of pollution incidents: *While we now have the ability to log into the SW website and look for STW overflows this does not give widescale coverage or indeed the crucial determination of the volume of the overflow.* **How can this group help/ influence?**
7. Input into potential Scottish Government funding to address livestock risks
8. More detailed Inclusion of Shellfish Water impacts, pressures and improvement actions in the next River Basin Management Plan 2027 – 2033.
9. Update on SWPA Review



Key:
1 - Regulation 11(2) - Personal Data
2 - Regulation 10(4)(e) - Internal Communications
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# Legislative Background/ SEPA's duty

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DIRECTIONS

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**Also Relevant:** The Scotland River Basin District (Standards) Directions 2024 (*includes Water Quality elements previously covered by Shellfish Water Directive*)

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SEPA to prepare a programme of measures to achieve environmental objectives:

- Investigate cause of failures
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- include any additional measures needed

**Include in River Basin Management Plans**

- SWPA Objectives
- Summary of measures

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Key:
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# Refined approach to targeting measures in SWPAs

## Proposed improvement framework 2019 (SG, SEPA)

- The Classification Directions for SWPAs will be changed to align better with FSS Production Area Classifications
- **SEPA will take account of the FSS classifications of SPAs directly (alongside our general overall SWPA classifications) to inform where improvement measures are required at the production site, with the aim of identifying specific and localised pollution issues.** SEPA will then prepare improvement plans for any downgraded SWPAs and downgraded SPA sites.
- even if a SWPA were classified as 'excellent' if any SPA within that area were to receive a B class or less from FSS, then it would come forward for investigation by SEPA.
- **The planning of our RBMP improvement programme will continue to work within the sector agreed priority waterbodies and production sites**

## Revised SG Directions to SEPA, 2021

Mr T A'Hearn
Chief Executive
Scottish Environment Protection Agency
Strathallan House
Castle Business Park
Stirling
FK9 4TR

4 March 2021

Dear Terry

**Updated Directions regarding the classification of Shellfish Water Protected Areas**

I am pleased to enclose the Scotland River Basin District (Quality of Shellfish Water Protected Areas) (Scotland) Directions 2021 and the Water Environment (Shellfish Water Protected Areas: Objectives and Classification etc.) (Solway Tweed) Directions 2021. As required by the Environment Act 1995 we have consulted SEPA on these Directions, the contents of which have been agreed by your staff.

These now direct SEPA to assess and classify the quality of each designated shellfish water protected area as either excellent, good, or insufficient, by reference to specified criteria and standards.

We welcome SEPA's work with Food Standards Scotland (FSS), to improve the use of data in Shellfish Water Protection Area (SWPA) classification, and with the Scottish Government to develop a water quality improvement framework for shellfish growers. SEPA can now aim to target its efforts within SWPAs, in consultation with the shellfish sector, to focus on prioritised Shellfish Production Areas that require improvements to help secure a consistent FSS 'A' class, as set out in the third draft River Basin Management Plan.

We propose to publish these Directions on the Scottish Government website and put a notice in the Edinburgh Gazette announcing their publication.

Please convey my thanks to your staff for their assistance with the development of these Directions.

Key:
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# Agenda Item 1: Overview of SEPA's approach to protect Shellfish Waters

## SEPA Set Environmental Objectives for SWPAs

The RBMP3 Plan presented current condition but not future objectives.

Rather than default to "Good" for all SWPAs, for the prevention of deterioration a check should be made that no SWPAs were previously "excellent". In such cases, the objective should be set to "excellent" unless a Less Stringent Objective is justified. This should be carried out in time for the RBMP4 plan.

*Known deterioration measures should be covered if all <Class A production areas in SWPAs are included for measures - check*

***What have we done, and what needs to be done?***

## SEPA Prepare a monitoring programme

**Reliance on FSS collected data** for Production Area Classification means that we have insufficient data to classify 30 out of 85 SWPAs[1]

Monitoring of Coastal and Transitional waterbodies (which was intended to offer same level of protection as the repealed SWD) has generally not been carried out since 2018, relied heavily on grouped data and very few monitoring locations within SWPAs.

Recommendations/ options for monitoring to be drafted and presented to EREG for consideration in 2026+ SEPA monitoring programme

*Note 1: Ongoing SWPA Review has identified 29 SWPAS for potential de-designation (no production). Unlikely to fully address issue, however.*

## SEPA Prepare a programme of measures

SEPA has been reviewing FSS classifications and consulting with industry to identify priority PAs

SEPA has undertaken pressure investigations for priority areas

SEPA currently has 11 Shellfish Water Improvement Plans produced for priority production areas

SEPA focus has been to assess compliance with relevant authorisations

SEPA issued new permitting guidance for sewage discharges to shellfish waters, tightening discharge standards

SEPA trialled a campaign style approach to address private sewage risk

SEPA working with Scottish Government to provide funding options for reducing livestock risk

SEPA has identified ScW assets for potential Q&S Investment

## Include in River Basin Management Plans

2021 – 2027 RBMP only detailed one insufficient SWPA. No detail of ongoing work in impacted production areas.

All Oyster and Mussel Production Areas, within SWPAs and failing to achieve consistent Class A have now been entered into the RBMP database

Intention is to include details of known pressures and identified improvement actions for Impacted Production Areas in RBMP4 Plan

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Key:
1 - Regulation 11(2) - Personal Data
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# Agenda Item 2: Identification of any new priority production areas

## PRIORITY SHORTLIST – MUSSELS & OYSTERS, < CLASS A, IN A SWPA

## CHANGES FROM 2024 – **AREAS NO LONGER CONSIDERED PRIORITY**

| Production Area | Species | 2023/2024 | 2024/2025 | 2025/2026 | Shortlisting 2024 (27) | Shortlisting 2025 (23) | Recommended amended action for 2025 |
|---|---|---|---|---|---|---|---|
| **Islay** | Pacific oysters | 2023 = B - April to December<br>2024 = B - January to March | 2024 = B - April to December<br>2025 = B - January to March | 2025 = A - April to December<br>2026 = A - January to March | Yes | **(No longer priority for 2025)** | should we require 2 consecutive "A" classifications before pressure is resolved/ requirement for measures is removed?<br>**KEEP PRESSURE AND ACTIONS UNTIL IMPROVEMENT CAN BE VERIFIED** |
| **Loch A Chumhainn: Inner Deep Site** | Pacific oysters | 2023 = A - April & May<br>B - June to September<br>A - October to December<br>2024 = A January to March | 2024 = A - April & May<br>B - June to September<br>A - October to December<br>2025 = A January to March | 2025 = A - April to December<br>2026 = A - January to March | Yes | **(No longer priority for 2025)** | should we require 2 consecutive "A" classifications before pressure is resolved/ requirement for measures is removed?<br>**KEEP PRESSURE AND ACTIONS UNTIL IMPROVEMENT CAN BE VERIFIED** |
| **Loch Harport: Inner** | Pacific oysters | DORMANT<br>2023= B : April to December<br>2024= B : January to March | DORMANT<br>2024 = B : April to December<br>2025 = B : January to March | Declassified 2025 | Yes | **(No longer priority for 2025)** | **ACTION NEEDED: DECLASSIFIED - REMOVE PRESSURE AND ACTIONS** |
| **Lynn of Lorn: Sgeir Liath** | Pacific oysters | 2023 = A - April & May<br>B - June to November<br>A - December<br>2024 = A - January to March | 2024 = A - April to June<br>B - July to November<br>A - December<br>2025 = A - January to March | 2025 = A - April to December<br>2026 = A - January to March | Yes | **(No longer priority for 2025)** | should we require 2 consecutive "A" classifications before pressure is resolved/ requirement for measures is removed?<br>**KEEP PRESSURE AND ACTIONS UNTIL IMPROVEMENT CAN BE VERIFIED** |
| **Seil Point** | Pacific oysters | 2023 = A - April<br>B - May to October<br>A - November & December<br>2024 = A - January to March | 2024 = A - April<br>B - May to October<br>A - November to December<br>2025 = A - January to March | 2025 = A - April to December<br>2026 = A - January to March | Yes | **(No longer priority for 2025)** | should we require 2 consecutive "A" classifications before pressure is resolved/ requirement for measures is removed?<br>**KEEP PRESSURE AND ACTIONS UNTIL IMPROVEMENT CAN BE VERIFIED** |
| **Seil Sound North** | Pacific oysters | 2023 = A - April to December<br>2024 = A - January to March | 2024 = B - April to December 2025 = B - January to March | Declassified 2025 | Yes | **(No longer priority for 2025)** | **ACTION NEEDED: DECLASSIFIED - REMOVE PRESSURE AND ACTIONS** |

Recommendation:

Once we identify and record pressures on priority production areas, we retain pressures on active sites until there are 2 consecutive FSS "A" classifications

Key:
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3 - Out of Scope

# Agenda Item 2: Identification of any new priority production areas

## PRIORITY SHORTLIST – MUSSELS & OYSTERS, < CLASS A, IN A SWPA

## CHANGES FROM 2024 – **NEW PRIORITY PRODUCTION AREAS**

| Production Area | Species | 2023/2024 | 2024/2025 | 2025/2026 | Shortlisting 2024 (27) | Shortlisting 2025 (23) | Recommended amended action for 2025 |
|---|---|---|---|---|---|---|---|
| Kyle of Tongue | Pacific oysters | 2023 = A - April to June<br>B - July to October<br>A - November & December<br>2024 = A - January to March | 2024 = A - April to December 2025 = A - January to March | 2025 = A - April to June<br>B - July to October<br>A - November to December<br>2026 = A - January to March | | **Yes** | **ACTION NEEDED:** add to list of Shellfish Production Areas with impact - requires investigation (2026) |
| Loch Striven | Common mussels | Pre-classification | Provisional 2024= B - April to December 2025= B - January to March | 2025 = A - April to June<br>B - July to September<br>A - October to December<br>2026 = A - January to | | **Yes** | **ACTION NEEDED:** add to list of Shellfish Production Areas with impact - requires investigation (2026) |

Note: We are currently working on 13 priority production areas (still in progress, factored into 2025 resource planning). Suggest we review all changes to shortlisted production areas at end of year (December 2025) to agree investigation/ improvement workplan for 2026.

Key:
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# Agenda Item 3: Progress with previously agreed priority production areas

| | | | | INVESTIGATION | | | | ACTIONS IDENTIFIED | IMPROVEMENT ACTIONS CARRIED OUT/ IN PROGRESS | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| PRODUCTION AREA | SPECIES | SWPA | 2024 SEPA & INDUSTRY AGREED PRIORITIES | Desk Based Investigation of Pressures | Investigative Monitoring | Tracer Study | Dispersion Modelling (SEPA) | Pressures identified and improvement plan produced (Live Document) | Authorisation and Compliance Check | Compliance - Corrective Actions Completed | Proposals submitted for ScW Investment Programme | Private Sewage Campaign - authorisation and complaince |
| Cromarty Firth Mussels | Common mussels | Cromarty Bay | Yes | YES | YES (Previous monitoring and 2025 planned) | NO | NO | YES | YES | | Make ScW aware: Further investment may be required | |
| Fairlie | Pacific oysters | Fairlie | Yes | IN PROGRESS | YES (2025 plan) | NO | NO | NO - awaiting ScW data | YES | | Make ScW aware: Further investment may be required | |
| Little Loch Broom Pacific Oysters | Pacific oysters | Little Loch Broom | Yes | YES | YES (2025 plan) | NO | NO | YES | YES | | | |
| Loch A Chumhainn: Inner Deep Site | Pacific oysters | Loch a Chumhainn | Yes | YES | YES (Previous monitoring and 2025 planned) | Bacteriophage Tracer Study Completed (Scottish Water) | YES | YES | YES | YES | Make ScW aware: Potential Priority for improvement in 2027-2033 | YES |
| Loch Fyne: Otter Ferry | Pacific oysters | Loch Fyne | Yes | YES | NO | NO | NO | YES | YES | | | |
| Loch Leurbost: Crosbost | Pacific oysters | Loch Leurbost | Yes | YES | NO | NO | NO | YES | YES | | Make ScW aware: Further investment may be required | |
| Loch Ryan | Native oysters | Loch Ryan | Yes | YES | YES (Previous monitoring and 2025 planned) | NO | NO | YES | YES | | On hold while SEPA assess CSO discharge data and address other known risks | |
| Oitir Mhor Bay | Pacific oysters | Kerrera | Yes - SWPA classification - impact/ RBMP commitment | YES | NO | NO | NO | YES | YES | | | |
| Seil Sound North | Pacific oysters | Seil Sound | Yes | YES | YES (monitoring completed) | Bacteriophage Tracer Study Completed (SEPA) | YES - in development | YES | YES | | Make ScW aware: Potential Priority for improvement in 2027-2033 | |
| South of Houss Holm | Common mussels | Clift Sound | Yes | YES | NO | NO | NO | YES - draft | YES | | | |
| South Voe Mussels | Common mussels | Clift Sound | Yes | YES | NO | NO | NO | YES - draft | YES | | | |
| Mid-Noost pacific oysters | Pacific oysters | NOT IN SWPA | Yes - Industry suggested addition | IN PROGRESS | YES (2025 plan) | NO | NO | NO - Scheduled Oct 2025 | YES | | | |
| Lang Sound | Common mussels | Clift Sound | 2022 Priority carried forward | YES | YES (Previous monitoring and 2025 planned) | NO | NO | YES | YES | | Make ScW aware: Potential Priority for improvement in 2027-2033 | |

Key:
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# Agenda Item 4: Review of Environmental Monitoring in SWPAs

**SWPA Classification:**

- SEPA rely on FSS monitoring data of active production areas to classify SWPAs. As a result of some SWPAs having no active production, It was found during the 2024 SWPA classification exercise that 30 out of 85 SWPAs had insufficient data to be classified with confidence.

*Note: The majority of these SWPAs (29/30) have now been proposed for de-designation (as a direct result of not having active production over the last 3 years).*

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- In recent years SEPA's marine monitoring resource has been focused on the finfish aquaculture sector. For the majority of WFD waterbodies associated with SWPAs therefore, there has been no classification monitoring since 2018 or earlier (applies to 82/85 SWPAs).
- For classification, the accepted approach is to group waterbodies of similar pressures and typology and monitor a subset of those waterbodies. For this reason, there is no monitoring on the actual waterbody for the majority of WFD waterbodies associated with SWPAs (applies to 57/85 SWPAs).
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SWPA monitoring and classification: Ecoli in shellfish

**Typical WFD monitored and classified parameters in coastal and transitional waters:**

- Dissolved Oxygen
- Dissolved Inorganic Nitrogen
- Benthic Invertebrates
- Macroalgae
- Phytoplankton
- Unionised Ammonia
- Imposex
- Metals

**SEPA recognise the monitoring issues identified in this review. These will be considered as part of a planned comprehensive evidence review which will include monitoring of shellfish waters.**

# Agenda item 5: Review of Operator compliance verification for discharges to SWPAs

[redacted] *(Association of Scottish Shellfish Growers) asked SEPA:*

*"It would also be useful to understand what monitoring and audit process SEPA has in place with regards to consents to discharge into these waters under already issued CAR licences and what evidence has been collected to independently substantiate that the licence conditions are being adhered to?"*

**Summary of SEPA Response dated 18/6/2025**:

For point source discharges we undertake the following compliance verification activities:

- Site inspections (planned)
- Site inspections (reactive e.g. in response to a reported incident)
- Undertaking a national compliance monitoring programme
- Assessment of operator compliance monitoring data
- Assessment of operator incident response

From 2009 – 2019 we publicly reported compliance information under our **Compliance Assessment Scheme.** During Covid the Compliance Assessment Scheme was suspended as the national restrictions meant it was not possible to ensure fair application. Prior to this there was the intention to replace the scheme and two consultations had taken place in 2015 and 2017. In 2021, after the cyber-attack, we took the decision not to reinstate and instead focus efforts on developing our **Environmental Performance Assessment Scheme.**

The consultation on the new scheme opened on 31 March and closes 30 June 2025 and is available here: Environmental Performance Assessment Scheme (EPAS) - a fair way to report performance - Scottish Environment Protection Agency - Citizen Space

## Agenda item 6: Proactive reporting to industry of pollution incidents

*Coverage? Real time alerts to shellfish farmers? Volume Discharged?*

[SW Urban Waters Route Map.pdf]

**Improving Monitoring**

We will:

- Install monitoring on network and treatment works CSOs discharging to the highest priority waters (including all designated shellfish and bathing waters), representing approximately 1,000 CSOs. This will improve our understanding of how these are operating and will provide transparent information on their performance. The improved monitoring activities are currently estimated to cost around £50m - £70m to deliver.

**Customer, Community and Business Engagement**

We will:

- By 2024, we will provide alerts direct to bathing water users when there are sewer spills and support SEPA in incorporating these into bathing water signage as appropriate.

**Coverage:** By December 2024: All CSO discharges to SWPAs should now be monitored and deliver real time spill data – *any issues known to be raised with Scottish Water?*

**Real time alerts:** Providing alerts to *bathing water* users was on route map – has any contact/ discussion been had between Scottish Water and Shellfish Industry to provide similar service?

**Volume:** No commitment in route map to report volumes.

**Discussion: Is it possible to encourage Scottish Water to trial a flow estimation and real time alert system for shellfish farmers? Should this be driven by SEPA, Scottish Government or the Shellfish Industry?**

**Agenda item 7: Input into potential Scottish Government funding to address livestock risks**

## Discussion points

- Of 11 pressure investigations carried out to date, livestock sources of ecoli have been considered highly or moderately significant in 7 production areas.
- Due to the nature of extensive sheep farming, it is unlikely that this risk is due to GBR non-compliance
- In-field measures in the wider catchment may not be feasible but potentially measures aimed at steadings/ lower sheep pens may help to reduce risk of runoff/ contaminated discharge to watercourses.

Is it possible to target Government funding for measures at farms within priority shellfish production area catchments?

Can we define which specific measures should be eligible for funding?

# Agenda item 8: More detailed Inclusion of Shellfish Water impacts, pressures and improvement actions in the 6 next River Basin Management Plan 2027 – 2033

## SUMMARY OF CURRENT UNDERSTANDING OF MAIN PRESSURES in PRIORITY PRODUCTION AREAS (tbc)

| | | | | IDENTIFIED PRESSURES | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| **PRODUCTION AREA** | **SPECIES** | **SWPA** | **2024 SEPA & INDUSTRY AGREED PRIORITIES** | ScW Treated Sewage Discharge | ScW CSO Discharge | Private sewage (Hotels/ Community Centres, Caravan Parks, etc) | Private Sewage (Domestic) | Livestock (predominantly sheep) | Wildlife | Boats |
| Cromarty Firth Mussels | Common mussels | Cromarty Bay | Yes | LOW | MODERATE | n/a | HIGH | LOW | UNKNOWN - POTENTIALLY SIGNIFICANT (BIRDS) | Low/ Unknown |
| Fairlie | Pacific oysters | Fairlie | Yes | tbc | tbc | tbc | tbc | tbc | tbc | tbc |
| Little Loch Broom Pacific Oysters | Pacific oysters | Little Loch Broom | Yes | LOW | n/a | HIGH | HIGH | HIGH | MODERATE | Low/ Unknown |
| Loch A Chumhainn: Inner Deep Site | Pacific oysters | Loch a Chumhainn | Yes | LOW | MODERATE | MODERATE | MODERATE | LOW | LOW | LOW |
| Loch Fyne: Otter Ferry | Pacific oysters | Loch Fyne | Yes | n/a | n/a | HIGH | HIGH | HIGH | MODERATE | Low/ Unknown |
| Loch Leurbost: Crosbost | Pacific oysters | Loch Leurbost | Yes | LOW | HIGH | n/a | Low/ Unknown | HIGH | Low/ Unknown | Low/ Unknown |
| Loch Ryan | Native oysters | Loch Ryan | Yes | n/a | Low/ Unknown | HIGH | MODERATE | MODERATE | LOW | Low/ Unknown |
| Oitir Mhor Bay | Pacific oysters | Kerrera | Yes - SWPA classification - impact/ RBMP commitment | n/a | n/a | n/a | LOW | Low/ Unknown | Low/ Unknown | Low/ Unknown |
| Seil Sound North | Pacific oysters | Seil Sound | Yes | LOW | HIGH | n/a | HIGH | HIGH | Low/ Unknown | Low/ Unknown |
| South of Houss Holm | Common mussels | Clift Sound | Yes | LOW | LOW | HIGH | HIGH | HIGH | UNKNOWN - POTENTIALLY SIGNIFICANT (SEALS) | Low/ Unknown |
| South Voe Mussels | Common mussels | Clift Sound | Yes | LOW | n/a | HIGH | HIGH | HIGH | UNKNOWN - POTENTIALLY SIGNIFICANT (SEALS) | Low/ Unknown |
| Mid-Noost pacific oysters | Pacific oysters | NOT IN SWPA | Yes - Industry suggested addition | tbc | tbc | tbc | tbc | tbc | tbc | tbc |
| Lang Sound | Common mussels | Clift Sound | 2022 Priority carried forward | HIGH | n/a | n/a | LOW | LOW | Low/ Unknown | Low/ Unknown |

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# Thank you

**Contact details**

1 [redacted]
Senior Environmental Quality Officer

sepa.org.uk



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3 - Out of Scope

Mendoza
25 High Street
Rosemarkie
Black Isle
Ross-shire
IV10 8UF

Water Environment Team
3H South
Victoria Quay
Edinburgh, EH6 6QQ

27th September 2025

To whom it may concern:

The Association of Scottish Shellfish Growers (ASSG) response;

**Re: Scottish Government – A review of Scotland's shellfish water protected area (SWPA) designations: Consultation July 2025**

This response is accompanied by the Respondents Information Form identifying that the ASSG are content with the contents being made publicly available.

*(Text shown in italics in this response is taken directly from the above consultation document)*

The ASSG Ltd is a trade representative body formed in 1986 by member businesses primarily concerned with the cultivation, distribution and processing of bivalve shellfish in Scotland. Funded by its members it represents in partnership with Seafood Shetland in excess of 85% of the annual output of farmed Scottish bivalve shellfish. Currently the primary species cultivated are the Rock oyster and Blue mussel along with the Native oyster which has also become the subject of stock conservation initiatives.

The ASSG has a published Code of Practice for sustainable shellfish cultivation activities.

Individual shellfish cultivation businesses in Scotland are subject to registration as an aquaculture production business for biosecurity and monitoring purposes, there is a requirement for shellfish production sites to be consented. These are operated in perpetuity under the provisions of the Town and Country Planning Act, and are the subject of provisions within the Marine (Scotland) Act 2010 for Marine Licencing. In the majority of instances shellfish sites are subject to lease conditions implemented for periods of 25 years by Crown Estate Scotland.

***2. Background and Rationale for Reviewing Shellfish Water Protected Areas***
*Protecting the condition of our water in shellfish production areas is particularly important to producing high-quality, safe shellfish for consumption and to support the shellfish production industry. The Scottish Government is committed to managing Scotland's seas sustainably, ensuring both environmental and economic benefits.*



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It is important to recognise that the siting of shellfish production sites and associated activities in Scotland occurs both within and out with any SWPAs for a variety of biological, hydrographic, logistical and economic reasons.

Historically SWPAs were initially identified and subsequently designated within the vicinity of the location of existing consented shellfish cultivation sites being utilised for bivalve shellfish production. These included sites used for the production of scallops which were not subject to Food Standards Scotland (FSS) Official Control (OC) classifications.

More recently it has been determined by the Scottish Government that in order for such individual SWPA designations to be made within a locality, there is a requirement for a consented production site to be in existence and classified under the OC programme by FSS for food production/placing on the market of bivalve shellfish.

It should be recognised that the current success of the Blue mussel cultivation sector is solely dependent on accessing supplies of seed (spat) from areas of larval distribution associated with wild native mussel stocks. Such spat collection areas may consequently be located both within or out-with any SWPAs and there is no requirement that such areas are classified under the OC programme by FSS.

Hence the stated consultation background rationale of protecting the condition of the waters in shellfish production areas in distinction to simply SWPAs, is an important distinction.

*To support this vision, the Scottish Government introduced a revised framework for the protection of shellfish waters in Scotland following the repeal of the Shellfish Waters Directive in 2013.*

*The Water Environment (Shellfish Water Protected Areas: Designation) (Scotland) Orders 2013 and 2016, which set out the current SWPA designations, and The Water Environment (Shellfish Water Protected Areas: Environmental Objectives etc) (Scotland) Regulations 2013, which aim to protect shellfish waters to support shellfish life and growth, contributing to high-quality edible shellfish; and prevent pollution and establish necessary programmes to reduce contamination.*

It is important to recognise that within the 2013 regulations the term “pollution” is defined as including pollution - by any substance or heat (thermal pollution) liable to cause pollution, and for the purpose of the definition “substance” includes any bacteria and other pathogens. The context being the control of pollution or pollutants which could adversely impact shellfish life and or growth as noted.

*Shellfish Water Protected Areas (SWPAs) are designated zones aimed at safeguarding shellfish waters from pollution, ensuring the sustainable development of economically significant shellfish production. Section 5A of WEWS (Water Environment and Water Services (Scotland) Act) provides Ministers with powers to designate (or de-designate SWPAs) if they consider it necessary or desirable to do so for the protection or development of economically significant shellfish production.*

This confirms the ability of Ministers to designate areas without existing shellfish production but which are regarded to have potential to be developed for economically significant



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shellfish production, on the basis the area will be maintained free from pollution or pollutants.

*Where SWPAs are designated, the Scottish Environment Protection Agency (SEPA) assesses and classifies each SWPA, working closely with Food Standards Scotland (FSS). FSS conducts year-round monitoring and assesses shellfish harvesting areas based on E.coli levels in the shellfish flesh, categorising them as A (highest classification), B, or C (lowest classification). At the end of each year, FSS provides SEPA with this data, which is then used to classify the broader SWPA. This classification is used to identify trends in water quality and where necessary to inform potential additional actions to protect and improve water quality, including through River Basin Management Planning for example.*

This appears to be an overly simplistic interpretation presumably to aid the current consultation process and desired outcomes? The ability for the water quality status within any SWPA to be determined by public agencies with differing statutes and objectives has been conflated. Determining E.coli levels in shellfish flesh does not equate to "water quality" per se.

It is important to recognise that the information on the status of the water quality collected by FSS for an individual production site is for the purpose of food safety and categorising the health risk status and actions required, before the shellfish can be placed on the market for human consumption. The shellfish production businesses themselves undertake a series of End Product Testing (EPT) including for microbial contaminants and biotoxins in order to ensure due diligence and the safety of the food products produced.

In distinction to any geographically wider SWPA designation each shellfish production site or pod of closely related shellfish production sites, will be assigned with a single representative monitoring point (RMP). One sample of shellfish per month will be taken from this RMP and assessed for simply E.coli levels in the shellfish flesh. Ten samples with results below the appropriate level are required for an A classification, while 8 samples would be a minimum for a B classification. Hence shellfish production sites can be classified on as little as 8 individual samples taken once per month over 8 separate months.

Importantly E.coli is used as an indicator organism with the intent of elevated levels indicating an advanced risk of associated viral contamination where the source of pollution is from an anthropogenic input. It is the potential viral contamination risk that FSS sampling is seeking to determine and **not** by itself any general pollutants within the shellfish.

This single determination of E.coli is not by necessity an indicator of water quality pollution in itself as the E.coli may be generated from a range of sources such as wild or domesticated animals rather than human waste. Animal waste of itself does not currently represent a food safety risk with respect to potential harmful human viral contaminants. In addition, many sources of pollution which can materially impact the growth and survival of bivalve shellfish are in themselves not necessarily associated with microbiological waste streams or their sources.

Extremely importantly - the information gathered for FSS classification purposes is a completely inadequate representation of the conditions pertaining within the far larger physical expanse of any SWPA designation. Equally this approach makes no attempt to


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identify or monitor any other types of pollutants as defined within the 2013 SWPA regulations and the definition of "pollution".

SEPA does not proactively assess and classify any SWPA other than when water quality conditions (as defined by FSS routine monitoring) are noted to be failing at an individual or multiple production sites within the wider SWPA. Assessment and classification by SEPA of failing water quality does-not in itself mean that SEPA will instigate any investigation to establish the source of any pollution or to determine if the SWPA is impacted by pollution or by any other known pollutants.

In addition, if any production sites are not operating on the basis of needing, or at a level to attain, an FSS OC classification or are not potentially within an area of the SWPA where the water quality conditions are failing, there will be no assessment undertaken by SEPA as it does not independently undertake any routine monitoring of the SWPAs for any parameters.

It should be noted that where water quality conditions fail to the extent that an FSS OC classification of Class C is assigned by the FSS, no shellfish can be placed on the market from the site. If such conditions persist for more than one year (and more likely greater than 3 months) it is highly unlikely that a shellfish production business would view the site as desirable for operations or indeed economically viable. Once such a business decision is taken no further shellfish samples would be available and consequently no more sampling would be undertaken by FSS in order to classify the site.

Hence with the current approach of SEPA failing to undertake any pollution monitoring or assessment based on deploying their own resources within SWPAs, the impacted site would be considered unproductive based on the lack of economic activity. The fact that the site had been rendered unproductive due to the level of water pollution encountered would not feature in any pollution assessment, investigation or ongoing monitoring.

Regrettably a similar scenario can also occur even when FSS B classification occurs as such conditions do not permit the shellfish to be exported directly to the EU, or placed directly on the market. Production on the site if the source of pollution is not addressed, may become economically unsustainable. Again, economic activity ceasing due to the occurrence of pollution does not currently oblige SEPA to undertake any assessment, monitoring or environmental protection interventions.

It should also be recognised that any stated initial assessment by SEPA, typically refers to a desk-based consideration of the information collected by FSS through industry food safety sampling. Where a sanitary survey for the shellfish production site may be available this should form part of any initial assessment. However, sanitary surveys are commissioned as part of the risk assessment process for the Official Classification of shellfish harvesting waters rather than SWPAs and are unlikely to extend to the physical limits of any individual SWPA.

Sanitary surveys seek to identify the potential sources of E.coli contamination from the surroundings. These include identification of both public and private waste water systems within the immediate surroundings of any shellfish production site. However, while the registration and recording of all private waste water systems in Scotland is a duty of SEPA no comprehensive register currently exists.



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Hence, any initial assessment and the resultant need to identify issues in a timely way before the economic activity of shellfish production is materially impacted, and potentially forced to terminate, is currently severely constrained through lack of SEPAs knowledge of potential waste water discharges and sources of pollutants.

Where public waste water treatment assets discharge to the environment these are licensed by SEPA under the Controlled Activities Regulations (CAR) and as such should have specific licence conditions set for key determinants. They may also have required reporting responsibilities where there are known occurrences (Combined Sewer Overflow and Emergency SO) or system failures of known exceedance of their licence conditions.

However, the majority of those public works currently discharging into or close to any identified SWPAs have not historically as a requirement had limits set on the levels of E.coli which can be routinely discharged. While SEPA has the ability to set or revise consent to discharge licence conditions they have chosen not to do so.

It has been reported that only 3 public waste water treatment plants which discharge into SWPAs currently have E.coli limits set as part of their licence conditions. Consequently, when seeking to initially assess if a public waste water treatment works may be responsible for any elevated E.coli levels within a SWPA, there is likely to be limited audited monitoring and discharge information immediately available.

This situation is exacerbated by the lack of SEPA implementing any independent monitoring or auditing process for any CAR licences issued and as such many CAR licences are effectively operated on a voluntary reporting basis. This situation has been known to lead to the failure to report in some circumstances and specifically where emergency discharges are made there is likely to be little evidence or audit trail if or when SEPA seek to establish the decline in water quality in a SWPA initial (desk based) investigation.

SEPA has identified to businesses impacted by declining water quality within SWPAs that it has severely limited capacity to progress any assessment or field monitoring of any such waters. Annual discussions with industry have been recently established to seek to identify priority areas where industry would wish SEPA to focus its efforts with respect to improving SWPA water quality. In recent years, the target set by SEPA has been to try to improve water quality conditions within at least two SWPA areas per year. It has been acknowledged by SEPA that at observed rates of progress in could take in excess of 10 years to investigate but not necessarily resolve all the current issues – assuming additional water quality declines did not arise?

*Ministers have a duty to review SWPA designations and a review of the current designations is required to ensure they continue to achieve their aim of safeguarding shellfish waters and supporting the sustainable development of economically significant shellfish production, without disproportionate costs to other stakeholders.*

It should be noted that Ministers failed in their duty to review the designation of SWPAs in 2019 when no 6 yearly review was undertaken by officials. Industry and those impacted by this failure were not advised as to the reasons for this. This was despite shellfish production businesses reporting failures with regard to OC classifications within SWPA and other pollution incidents being regularly reported.


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The issue of any potential disproportionate costs being borne by stakeholders other than shellfish production businesses features strongly throughout this consultation document, and the associated partial business and regulatory impact assessment.

The safeguarding of shellfish waters appears to be supported only on the basis that the "polluter pays" principle can be simply over ridden at the expense of the general degradation of coastal waters where shellfish production occurs, or could be developed. It is understood that the "polluter pays" principle is an environmental policy commitment of the Scottish Government and it is difficult to understand why it would not apply in the instance of SWPA designations?

***8. Potential benefits and negative impacts of new SWPA designations***

*Ministers have an obligation when deciding on SWPA designations to consider whether the designations of the proposed SWPAs are proportionate to any potential impacts (e.g. costs) of the designations.*

*The information will support the continued development of a Business and Regulatory Impact Assessment. We have published a partial BRIA which begins to set out some of these benefits and negative impacts.*

It is unclear whether the publication of the partial BRIA is intended to allow the designation and de-designation decisions to be made as a result of this consultation or whether a more thorough appraisal in a full BRIA is intended before Ministerial decisions are made?

The ASSG will comment later in this response on the partial BRIA as part of this consultation process.

*There may be other impacts, including financial for stakeholders. While investment in wastewater treatment assets is not always a requirement, for Scottish Water there is likely to be financial impacts if assets require investment to protect water quality. Scottish Water has invested over £72.7 million in relation to SWPA drivers since 2002 on actions to protect SWPAs.*

It is difficult to determine the relevance of this statement given the Scottish Government policy of ensuring the "polluter pays" principle is paramount within their environmental protection aspirations?

Whether Scottish Water has made this investment (equating to a little over £3M per year since 2002) in order to protect specific SWPAs shown to have failing water quality, or to simply act as emergency investment to meet CAR licence requirements and prevention of gross pollution within transitional and coastal waters is not clear. However, the evidence would suggest with the number of degraded SWPAs recorded and that are currently evident, it is considered that the "polluter pays" principle is failing to be applied by the appropriate authorities.

It has been stated by Scottish Water that there is a requirement for between £5 - £8 Billion pounds of investment needed if the Scottish water and waste water systems are to be made climate change resilient by 2040. Assuming that a large percentage of this anticipated budget would need to be targeted at the out-of-date public waste water infrastructure in many


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locations around the Scottish coast, the investment made to date in seeking to address these issues is clearly inadequate.

The stakeholder (other than the general public) with potentially the greatest financial impact relating to the Scottish Government failing to adequately address the inherent issues of coastal water quality and specifically anthropogenic inputs, is the shellfish cultivation industry. Areas of the Scottish coastline are already known to be too polluted for economic shellfish cultivation activities to take place.

Individual businesses are faced with the prospect of seeking to determine the underlying water quality conditions within any area prior to the extremely expensive and time-consuming site consenting process being entered into. The existence of a designated SWPA does not of itself indicate the year-round quality of the waters or the potential pollution threats from anthropogenic sources. Seasonal impacts resulting in a B classification would present additional costs to industry for depuration facilities or in the case of mussels prevent harvesting for placing on the market. Such constraining issues have the potential to make a shellfish cultivation business economically unviable in the long term.

The Scottish shellfish cultivation sector has undoubtedly been constrained in terms of its ability to secure locations where water quality considerations meet the high demands of the industry. The additional costs incurred by industry in terms of self-monitoring to ensure the suitability of sites and ongoing comprehensive End Product Testing (EPT) places our rural enterprises at a financial disadvantage compared to other nations.

However, the financial burdens on industry associated with safeguarding against water quality issues are of secondary importance compared to the reputational damage that can occur following gross anthropogenic pollution incidents.

There is a real risk emerging that due to the lack of pollution monitoring and controls within Scottish coastal waters the nation faces the risk of being regarded by the UK and wider public as having poor water quality conditions. Allowing such a situation to arise will impact not just the shellfish cultivation industry but the wider Scottish seafood sector.

There is also a more fundamental risk of the coastal habitats failing to support self-sustaining wild shellfish populations. Such a risk has already been recognised by Scottish Government and its agencies with a range of Priority Marine Features regarded to need additional protection and management. If the actual medium (sea water) which supports such populations cannot be maintained in an unpolluted state, conservation, biodiversity and restocking initiatives – all undertaken at considerable public cost – are likely to be severely compromised. Any such impact on the marine natural capital of Scotland would have an enormous and potentially long-lasting socioeconomic impact in rural areas and throughout the country.

*There could also be impacts on SEPA. Five of the proposed areas have been recently and consistently classified as less than Class A, and it is unclear if all of these sites can achieve Class A. If these sites are designated as SWPAs, SEPA may need to undertake additional investigations to identify sources of pollution and potential solutions to mitigate the pollution, if possible. An alternative would be to not designate sites where it is unclear if they can achieve Class A since we want to encourage shellfish production in areas of the highest water quality.*



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This is an argument that appears to have been promoted by Scottish Government officials across Directorates and agencies and has even been put forward as a policy position within the draft NMP2 discussions.

There is clearly a need for Scottish Government Ministers to consider the implications of what officials are intent on introducing on the basis of preconceived and irrational thinking.

It would appear to suggest that officials are of the opinion that SEPA would be placed in the position of having to undertake duties laid down by the Scottish Parliament seeking to ensure environmental protection legislation was fulfilled?

To the general public surely this is an assumed role of SEPA if it is to be considered and publicly funded to be a credible environmental regulator?

Fundamentally the position being put forward through this SWPA consultation appears to be that the Scottish Government only wishes to see anthropogenic and human activity generated pollution, managed and prevented within specific areas of the Scottish coastline and coastal water environment?

It can only be assumed that this is with a view for all other coastal water areas to be subject to a degree of human derived pollution and pollutants on the basis of the perceived and assumed disproportionate costs to monitor and rectify such inputs?

**ASSG Overview of the Current Failure by the Scottish Government to Protect Shellfish Production Waters**

**Genesis of the SWPA Environmental Objectives**

The repeal of the Shellfish Waters Directive in 2013 (Termed by the EU the Shellfish Growing Waters Directive EC79/923) was strongly opposed by the ASSG.

The Directive which is still in place with revisions as part of the Water Framework Directive throughout the EU, contained provisions for the year-round monitoring of the waters which sustained bivalve shellfish populations.

Such populations were those of economic and environmental significance and which could be considered beneficial for coastal communities through hand gathering, fishing or aquaculture activities. The species of shellfish included mussels and oysters, together with clams, razor shells, cockles etc whether as exploited wild stocks or cultivated.

The Directive specifically identified a range of potential chemical pollutants including heavy metals and hydrocarbons, some oceanographic determinants such as pH, salinity, dissolved oxygen and temperature, together with suspended solids and faecal coliforms. In addition, substances affecting the taste of the shellfish and saxitoxin levels were included in the annual assessment of the status of the designated areas supporting economically active shellfish production.

Scottish Government officials assured the industry at the time that the repeal of EC79/923 would see SEPA set equally stringent environmental objectives for the proposed SWPAs and



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that through the provisions of the Water Framework Directive (which extends out to 3nm in Scotland) and the River Basin Management Plans, that monitoring and remedial actions would be undertaken. It was stressed at the time that the provisions under the Water Framework Directive would provide a higher level of monitoring and prevention of pollution activities than had previously been able to be delivered.

There have been numerous discussions with Scottish Government Environment Directorate officials in the intervening period since 2013.The primary objective being to seek to establish an appropriate monitoring programme for pollutants and securing action to address failing water quality in many SWPAs.

In 2016 this problem was administratively resolved by officials gaining Ministerial approval for a simple reclassification of the SWPA grading terminology with “Poor” reclassified as “Good” and previously recorded “Good” reclassified as “Excellent”. No other actions were undertaken and water quality of less than good was simply deemed “unclassified”.

Policy provisions within the Scottish National Marine Plan (NMP) established under the Marine (Scotland) Act 2010 and published in 2014 state that “Planning Policies - Aquaculture 5: Shellfish waters will be protected in a proportionate manner by designation. Once shellfish waters are designated there will be a presumption that future expansion of the sector should be located in designated areas.”

This policy statement has been challenged by the ASSG and the industry at each subsequent review of the National Marine Plan.

Given that it was stated by Scottish Government officials at the time of the first NMP review that 47 of the 85 SWPAs were of “degraded” water quality status, the national planning presumption that any future expansion of the sector should be located in such areas, was deemed by industry to be at odds with their requirements for access to a wider range of productive and unpolluted waters. It was considered by industry that limiting the locations for development of the sector would seriously damage any future growth potential in Scotland and would be economically unviable for individual businesses. In planning and consenting terms, it was extremely important that industry had the potential to select sites free of pollution and best suited to production based on the full range of decisions for the successful establishment of such cultivation activities.

In recent NMP2 discussions the position of wanting shellfish cultivation activities to be constrained within designated SWPAs was promoted by Scottish Government officials. This was on the basis that location in other areas may further increase the cost to the public sector in the designation, monitoring and potential pollution prevention associated with the introduction of shellfish production sites out with any SWPAs? The inference being that the cost to public agencies of ensuring coastal waters were not impacted by anthropogenic waste and pollutants was not proportionate to the socioeconomic value of Scottish shellfish cultivation activities?

Clearly if taken at face value this undermines many of the Scottish Government’s stated policies regarding environmental protection, the polluter pays principle, biodiversity recovery, climate change remediation and nature conservation initiatives including natural capital and wildlife restoration initiatives within the Scottish coastal environment. In economic terms the majority of such activities are public sector funded on the basis of public



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3 - Out of Scope

good and so would likely be undermined by any such Scottish Government sanctioned pollution.

Scottish Ministers have a statutory duty to review the SWPA designations at six yearly intervals in line with section 5 of the Water Environment and Water Services (Scotland) Act.

No such review was undertaken in 2019 and the industry were not given the opportunity to register concerns regarding the apparent lack of monitoring or progress with pollution prevention at locations where known incidents were occurring – primarily from anthropogenic discharges.

Directions issued by Scottish Ministers to SEPA to prepare a monitoring programme for SWPAs to classify water quality (Quality of Shellfish Water Protected Areas (Scotland) 2021) has resulted in SEPA setting the single relevant environmental standard as E.coli. It is presumed that such a determination is made with respect to shellfish flesh levels rather than monitoring the water body levels?

Such directions devised by Scottish Government officials are not subject to public scrutiny and so the Scottish shellfish cultivation industry (nor any other interest groups?) were able to make representations as to the adequacy of such an approach. The issue of the protection of shellfish life or growth as envisaged within the 2013 regulations appears to have been lost in this further weakening of the SWPA provisions.

Based on this sole determinant, SEPA has set environmental objectives for SWPAs namely to prevent deterioration of waters from the A classification awarded by the FSS, and to protect and improve SWPAs with the aim of achieving good shellfish water quality (as measured by FSS OC classification). The environmental objectives set for SWPAs by SEPA are accepted as a constituent part of the River Basin Management Planning process under the Water Framework Directive.

**Water Framework Directive / River Basin Management Plans**

The selection of E.coli as a food safety monitor acting as the sole determinant of SWPA assessment differentiates such waters from the wider Water Framework Directive (WFD) approach. River Basin Management Plans (RBMPs) implement the WFD provisions in Scotland under the WEWS Act out to 3 NM.

There is no requirement for bacterial monitoring under the WEWS provisions as impact on human health is not regarded as an assessment criterion – only the health of the water environment.

Where food for human consumption is grown in the water environment there would appear to be a strong case to be made for monitoring bacterial loads from anthropogenic sources as an indicator of potential harmful contaminants both for potential impacts on shellfish growth and survival and on the natural habitats. Food safety issues would be assumed to still be dealt with by FSS.

It should be acknowledged that SEPA, Scottish Ministers and the responsible authorities (including Scottish Water, NatureScot, and Scottish Government agencies including the


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3 - Out of Scope

Environment and Marine Directorates) all should have regard to specific statutory duties for the water environment under the WEWS Act.

However, with regard to actions for implementation, the regulatory work of SEPA with respect to the CAR licensing of discharges to the marine environment is linked to the RBMP legislation. This means that SEPA is only able to enforce limits to pollutants which have been listed in statute and as directed by Ministers. Consequently, despite a wide range of pollutants being known to adversely impact marine life and ecosystems including bivalve shellfish at all life history stages, SEPA have no authority to investigate.

It has been confirmed by Scottish Government officials that SEPA cannot regulate for a range of pollutants including 24 newly identified substances of concern, Poly and Per Alkyl Substances (PFAS or "Forever Chemicals"), microplastics, or antimicrobial resistance (AMR) bacteria due to the current absence of Ministerial directions.

In recent years through independent academic research there has been considerable evidence generated that the discharge of waste water from public treatment works can contain high levels of many of the above known contaminants. There has been limited investment made in the potential to remove such substances from waste water streams and SEPA are unable to determine what impact these licensed discharges may be having on the receiving waters. SWPAs with a requirement to protect the growth and survival of shellfish appear equally vulnerable to the unregulated discharges of such potential contaminants.

The river basin management plan for Scotland, 2021 to 2027 simply states;

"Shellfish Waters: SEPA has worked with Food Standards Scotland (FSS), to improve the use of data in Shellfish Water Protection Area (SWPA) classification, and with the Scottish Government to develop a water quality improvement framework for shellfish growers. The aim is to target efforts within SWPAs, in consultation with the sector, to focus on prioritised Shellfish Production Areas that require improvements to help secure a consistent FSS 'A' class."

With the repeal of the Shellfish Growing Waters Directive (79/923EC) and the introduction of the 2013 regulations implementing the Water Framework Directive, the Scottish shellfish cultivation industry was assured by officials that SWPAs would deliver a higher degree of monitoring and actions to improve and maintain the water quality for shellfish production in coastal waters.

However, SEPA has recently confirmed that the Water Framework Monitoring programme implemented in Scotland under the WEWS Act was in fact never envisaged at the outset to be appropriate for the determination of SWPA water quality.

The coastal classification parameters determined for the WFD are not considered to be specific for the protection of bivalve shellfish – rather they are intended to inform the determination of Good Environmental Status of wider water bodies.

While some parameters monitored under the WFD directly relate to those within the repealed Shellfish Growing Waters Directive (79/923EEC), the WFD monitoring programme is intended to operate at a geographic scale which is so generalised as to make it of little value for protecting specific sites, species and habitats.


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WFD monitoring relies on the designation of large-scale coastal water bodies with those considered to be of the same type and subject to similar pressures grouped to allow sampling of a subset, and the extrapolation of the results to create a generalised picture.

It has been stated by officials that the WFD coastal waterbodies identified are often larger than the associated SWPAs. This signifies that the WFD monitoring location may not be within any specific SWPA. There are 28 WFD waterbodies which are identified to have monitoring points and which are associated with SWPA designations. In only 19 of the SWPA designations is it considered that the WFD monitoring points coincide.

In order to classify waters under the RBMP process the official approach is to group waterbodies of similar pressures and typology and monitor a representative subset of the total. Consequently, this leads to the position that there is no monitoring on the actual waterbody for the majority of the WFD waterbodies associated with the currently designated SWPAs. Such a lack of monitoring relates to 57 of the currently designated 85 SWPAs.

In discussions with SEPA officials it has not been possible to identify where the detailed designated monitoring points are located for the WFD sampling programme for coastal or transitional waters? Consequently, it is difficult to assess based on firm evidence how deficient the current WFD monitoring programme is within Scotland in terms of defining the water quality status of our coastal waters even at “waterbody” scale.

However, seeking to establish the necessary detail in order to understand more fully the lack of specific monitoring provisions as they relate to water quality assessments within SWPAs, has been rendered largely meaningless.

**It has recently been stated by SEPA that “In recent years SEPA’s marine monitoring resource has been focused on the finfish aquaculture sector. For the majority of WFD waterbodies associated with SWPAs therefore, there has been NO classification monitoring since 2018 or earlier” (this applies to 82 of the currently designated 85 SWPAs).**

This fact has only now come to light in 2025 and illustrates the complete lack of adherence by Scottish Government officials to uphold the statutory requirements to monitor, assess and protect in any meaningful way the water quality within Scottish coastal waters.

Where the blame for this total failure rests within the public administrative system is not an issue for the shellfish cultivation industry to address. However, it does raise the question as to the credibility of all the agencies involved and the desire by the Scottish Government to remedy the situation. Clearly this situation undermines a whole raft of Scottish Government stated objectives for environmental management and improvements within the coastal environment including nature conservation and biodiversity policies.

Development of the Scottish shellfish cultivation industry has undoubtedly suffered through the lack of importance given to the issues of coastal water quality and the requirements for access to a healthy and productive marine ecosystem. This issue has been high on the agenda of the ASSG since the 2013 repeal of the Shellfish Growing Waters Directive.


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In the current context of this consultation by Scottish Government it remains unclear whether there is any recognition by officials of the failures of the current system or commitment to rectify key issues in order to protect the existence of economically significant shellfish production?

It is pertinent to note that: *The Scottish Government is committed to managing Scotland's seas sustainably, ensuring both environmental and economic benefits. The Scottish Government's Vision for Sustainable Aquaculture sets out our aspirations for the shellfish farming sector, recognising the considerable social and economic benefits that aquaculture delivers today and can deliver in the future.*

***9. Questions on potential new SWPA sites and impacts***

***Q1.*** *Do you agree with the proposed designations of new Shellfish Water Protected Areas (SWPAs) and the proposed boundaries?*

Agree. However, given that the implementation of SWPAs Regulations by the Scottish Government has largely degenerated into a simple bureaucratic process Scottish shellfish cultivation businesses will be required to continue to independently identify areas where water quality and associated conditions will sustain production.

The very process being consulted upon simply identifies such areas where businesses have already determined to be appropriate to establish shellfish cultivation operations. Under the current Scottish Government interpretation only with such industry investment does this allow a duplicate food safety assessment to be made as to the suitability of the area containing the production site, and for it to be identified as a SWPA. The designation as a SWPA does not in itself protect the water quality within an area nor does it lead to monitoring to detect any pollutants as defined under the 2013 Regulations.

The suggestion that; *These criteria used to identify potential areas for designation and de-designation are consistent with those used in previous reviews. We intend to reconsider this methodology ahead of the next SWPA review before 2031.* Clearly indicates both the bureaucratic nature of this procedural exercise and in reality, exemplifies the ethos of the Scottish Government in this field with regard to the practical delivery of environmental protection policies.

The reference to "*previous reviews*" is clearly a typing mistake as the required review in 2019 did not occur. There has been no public explanation why this statutory requirement was not undertaken by officials? It may equally be optimistic to assume that a SWPA review will be undertaken in 2031?

There has been no explanation given by the Environment Directorate officials as to why the methodology which they acknowledge requires to be reconsidered, has not previously been attempted? This is despite since 2013 the Scottish shellfish cultivation industry having to routinely advise of the problems being caused to shellfish production activities by water quality issues, and the damaging impacts on both businesses and the environment in which they operate.

The shellfish cultivation industry will continue to need to independently identify suitable production locations within Scotland if it is to maintain outputs, and hopefully sustain


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existing business investments aimed at developing and expanding the sector. In terms of the consenting process and particularly in relation to planning policy guidance contained within the NMP, and which planning authorities are required to acknowledge, there is a need for the proposed NMP2 policy linkage between SWPA designations and a presumption of future sole expansion of the shellfish cultivation industry in such areas to be removed.

There is clear evidence that the location of shellfish production sites within SWPAs does not in itself assure that the water quality conditions are protected from pollution or that appropriate monitoring will be undertaken to certify the pollution status of the production waters. In addition, there is currently no process in place to address the causes of anthropogenic pollution within a timescale which is likely to allow the cultivation activities to be economically sustained.

***Q2**. Are you aware of additional sites, not included above, that would meet the proposed criteria for designation?*

Given that the current criteria for designation rests solely on the generation by FSS of OC classification food safety monitoring of E.coli levels there are a range of other bivalve shellfish which qualify. These include Razor Shell clams, Surf Clams and Cockles. These all sustain economic activities within the Scottish 3nm limit and for which the FSS undertakes the same food safety OC classification monitoring as for mussels and oysters.

It is unclear under whose direction the decision to limit the scope of the 2013 SWPA Regulations has been taken? The original shellfish growing waters Directive (EC79/923) did not limit the scope of the assessment specifically to the Blue mussel, Native oyster and Rock oyster and the monitoring of other relevant species does allow a wider range of pollutants to potentially be detected given the differing life history characteristics of these species.

In many instances the protection of such shellfish within the habitats under which they are naturally found provides direct ecosystem services to the wider environment including where they are co-located with shellfish cultivation activities. Consequently, it is considered that all such sites having FSS OC Classification data and supporting economic activity should be considered for monitoring and protected from sources of man-made pollution.

It is also pertinent to note that a number of the existing SWPA designations were determined on the basis of scallop cultivation activities. However, there has never been a requirement for the FSS OC classification process to be applied to scallops within Scotland. It is unclear under whose direction the decision was taken to exclude scallop production sites from application to be protected by the SWPA regulations?

Importantly some such SWPAs now have sites with alternative primary production activities such as for seaweed within them. Given that seaweed production does not of itself require OC Classification to place products on the market the SWPA designation itself has been regarded as an identifier of water quality conditions. Again, monitoring and actions to address pollution and pollutants in areas of regenerative aquaculture have the potential to improve the overall water quality conditions found within Scottish coastal waters.

***Q3**. Do you foresee any benefits from the proposed changes to SWPA?*


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The proposals for the designation of potential new SWPAs highlights the failing of the process since the 2013 regulations were introduced.

If this leads to the Scottish Government and associated agencies reconsidering whether the application of the regulations as currently implemented as being effective in monitoring and addressing coastal water quality issues – that would be a significant benefit to assist the development of the Scottish shellfish cultivation industry.

***Q4**. Do you foresee any negative impacts from the proposed changes to SWPA?*

The only negative impact would occur if policy within the NMP regarding the presumption in favour of new sites being solely located within existing SWPAs and the transfer over into the NMP2 of the same ideology is not corrected and restated.

***10. Potential sites for de-designation of existing SWPAs***

*The initial review identified 29 existing SWPAs that met the criteria for proposed de-designation i.e. sites where there has been no production of shellfish for three consecutive years.*

*The initial review gathered feedback from the Association of Scottish Shellfish Growers, SEPA and Scottish Water on the potential impact of any de-designations and further feedback is welcome.*

The ASSG together with Seafood Shetland have repeatedly made our position quite clear in terms of the potential failures of the criteria used for the classification of SWPAs. The fact that such criteria can potentially lead to proposed de-designation of SWPAs raises far wider concerns regarding the protection of Scottish coastal waters, and the associated nature conservation and biodiversity policy issues associated with Scottish Government environmental protection policies. Further clarification follows to avoid any official doubt.

The first and primary industry consideration is in determining what the de-designation of SWPAs is seeking to achieve given that there are no costs involved for government agencies outside of those necessary to fulfil their statutory duties?

Given that there are no FSS OC classification requirements for the 29 areas identified for de-classification based on blue mussel or oyster production over the last 3 years – there is no immediate cost to FSS.

On the basis that SEPA do not conduct any independent monitoring of SWPAs relying solely on FSS data – there would be no immediate or ongoing cost to SEPA.

Consequently, there would appear to be no apparent costs to the Scottish Government in maintaining the designations as areas identified for the production of cultivated shellfish with the aim that any future developments seeking to locate within the areas would be contributing to economically significant shellfish production. This of course being the stated policy of the Scottish Government with respect to such areas.


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3 - Out of Scope

However, given that the 29 areas were only initially designated as SWPAs on the basis that they contained active shellfish farm sites – they must have at least initially been regarded as capable of supporting economically significant shellfish production.

For what ever reason, it has been assumed that such production does not now exist or does not require FSS OC classification in order to operate. There may be a range of reasons for this and the current consultation document makes no attempt to identify what these reasons may be? Either collectively or individually.

The overriding concern of the Scottish shellfish cultivation industry is that within certain of these SWPAs the water quality has been allowed to degenerate to such an extent that bivalve shellfish production is no longer economically viable.

It would be expected that SEPA as the Scottish environmental regulator tasked to have processes in place to both monitor and react to any such failing water quality standards would have done so? It has become painfully obvious that SEPA has not been undertaking any relevant monitoring in these SWPAs and consequently is not able to confirm the water quality status within any one of them.

The proposal to de-designate these 29 SWPAs simply illustrates the extent of the failure of Scottish Government water quality and environmental protection policy.

Secondary concerns of the Scottish shellfish cultivation industry are with regard to those areas classified as SWPAs and still capable of supporting economically significant shellfish production.

There are numerous SWPAs identified for de-designation which originally were designated on the basis of active shellfish production. In the case of the scallop cultivation sector this entered into a period of decline for purely economic reasons. However, the shellfish activities undertaken on such sites are capable of being adapted for other species and specifically the Blue mussel on long line systems. Hence the de-designation of specific SWPAs will remove the opportunity to re-invigorate historic production opportunities and constrain potentially suitable areas for existing species developments.

In the context of oyster production, the sector has historically operated within certain of the SWPAs identified for de-designation. There are economic and logistical reasons why some of the SWPAs identified are currently not producing stock for the table. Hence no FSS data is being generated. However, some sites are known to be productive areas for nursery or seed production and these may well be capable of supplying restoration projects such as those involving the native oyster as part grown stock.

The issue of mussel spat recruitment areas has been identified within the consultation document – but it remains unclear how officials intend to deal with this issue at the present time?

The importance of wild stocks of the Blue mussel as a vital resource for supply of seed to the shellfish production industry necessitates that such areas are given adequate protection from sources of pollution. The SWPA selection criteria are not currently capable of addressing this concern and it is considered that this needs to be resolved urgently. It is certainly not a decision which can be delayed until 2031 as Blue mussel habitat is already acknowledged as


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2 - Regulation 10(4)(e) - Internal Communications
3 - Out of Scope

a Priority Marine Feature in urgent need of management and protection to avoid further declines in Scotland.

Overall, the implication from the consultation options identified appears to be that Scottish Government officials wish to de-classify the 29 SWPAs on the basis that this would free up the identified areas of the coastal environment, without maintaining the need to undertake any additional monitoring or remediation of waste streams being discharged from a range of sources.

Without the requirement for adequate monitoring or remediation of such waste streams and with no FSS OC classification process in place to record any failing water quality conditions, this could facilitate a reduction of any future additional public sector need to invest in adequate infrastructure or waste treatment facilities.

While such an approach may well protect public finances in the short term the damage caused to the marine environment may well see both the demise of shellfish production in areas of Scotland and severe consequences for wider scale environmental degradation. Such a position would appear to be contrary to a range of Scottish Government policies regarding biodiversity loss, environmental protection and nature conservation.

***11. Benefits and impacts of de-designating SWPAs***

*There are potential benefits of the de-designation of SWPAs. For example, Scottish Water currently applies additional treatment, such as UV disinfection, to some wastewater treatment plants where it is found to be necessary to protect SWPAs. While the costs of this are likely to be modest, there are also carbon costs as UV treatment is energy intensive.*

This is a clearly tragic statement to be made by Scottish Government officials in the defence of allowing human derived wastes to be dumped into the marine environment.

On a purely pragmatic level of course it would be expected that Scottish Water would be prioritising the use of green renewable energy as the public advice from government is that there is a relatively minor carbon footprint associated with such energy supplies?

It would appear that this ethos has permeated through the Scottish Government Environment Directorate and SEPA as the environmental regulator, where water quality in the coastal and marine environment is seen to be readily sacrificed to prevent Scottish Water's assets being compromised in the face of a lack of public investment.

Given that waste water streams from treatment works have been specified as requiring tertiary treatment to reduce microbial loadings, to simply remove these as a result of the administrative removal of a SWPA designation fails to take account of environmental and public health risks.

It is the viral contamination risk which is being assessed through E.coli monitoring. This is a public health consideration for those who both use the marine environment for leisure activities and those who have the right to fish for or gather shellfish.

If waste water streams are entering the marine environment with high microbial loadings the existence or otherwise of a designated SWPA should not be the primary consideration as to


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whether tertiary waste water treatment is required. It has been acknowledged that only 3 waste water treatment facilities that discharge into the existing 85 SWPA have microbial loadings specified under their CAR licence conditions.

This would appear to be a serious oversight in terms of protection of public health and undoubtedly has placed additional economic burdens on the Scottish shellfish cultivation industry. The "polluter pays" principle would appear to not apply to public waste water systems within Scotland.

***12. Questions on the proposed sites for de-designations***

***Q5.*** *Do you agree with the proposed de-designations of the 29 existing SWPAs based on the outlined criteria?*

No, the ASSG do not agree with this proposal in its entirety.

SWPAs where the following can be shown to be evident **should not be the subject of de-designation:**

- SWPAs containing known mussel spat collection sites
- SWPAs containing consented sites under development for shellfish production
- SWPAs containing sites with established CES lease agreements for shellfish
- SWPAs containing nursery production of shellfish including the Native oyster
- SWPAs containing public or private biodiversity restoration initiatives
- SWPAs containing sites for Scallop production
- SWPAs containing sites for regenerative aquaculture production
- SWPAs containing habitats which serve to maintain shellfish production
- SWPAs which have become grossly polluted since initial designation

***Q6.*** *Are you aware of any additional sites that should be considered for de-designation based on the relevant criteria?*

No.

***Q7.*** *Can you provide evidence of any potential benefits from the proposed de-designation of the existing SWPAs?*

None.

***Q8****. Can you provide evidence of any potential negative impacts from the proposed de-designation of the existing SWPAs?*

The removal of SWPAs would mean that regardless of whether shellfish production sites were established or were planned to be developed within the coastal water areas SEPA would have no statutory requirement to monitor coastal water quality other than through the WFD / River Basin Management Plans provisions.

It has already been acknowledged that the WFD process is not designed to evaluate pollution and pollutants potentially impacting shellfish production or the health of the ecosystem upon which such growth and survival depend.



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SEPA has also acknowledged that it has failed to undertake any such monitoring since 2018 or likely before and so the relevance of such monitoring has been effectively rendered immaterial. Despite this being a statutory responsibility laid down by the Scottish Parliament it appears that Scottish Government officials have simply chosen to ignore this failure by SEPA to act?

***RE: Proposals for Amending Shellfish Water Protected Area Designations in Scotland – Partial Business and Regulatory Impact Assessment***

It is unclear as to the purpose of this partial BRIA?

*A review is being conducted and this partial Business Regulatory Impact Assessment (BRIA) is published alongside a public consultation to gather input on proposals for new designations and de-designations of SWPAs. The review uses a methodology based on shellfish production (see accompanying consultation for additional information), which suggests the need to designate 14 new, expand 1, and de-designate the removal of 29 designations. The exact number will depend on feedback on the consultation and an updated BRIA to ensure any potential benefits to changing the current designations are proportionate.*

Will a full BRIA be undertaken and consulted upon following feed back from the consultation and before decisions on the designations and de-designations are confirmed? Or will a full BRIA be presented without consultation after the decisions regarding designations and de-designations are announced by the Minister?

***5.2 Business***
*Representatives of the Association of Scottish Shellfish Growers were engaged through a short-term working group to support discussions on the review of SWPA designations.*

Given the level of erroneous statements contained within this partial BRIA including industry profit margins, markets and export opportunities and the values to industry attributed to the provision of the current SWPA designations, the ASSG would not wish to be attributed as the reference source.

There are a considerable number of assumptions considered to be completely fictitious and without basis in fact contained within the costs associated with shellfish production businesses, Scottish Water, SEPA and Food Standards Scotland. Many are conflated with statutory duties as part of existing responsibilities for organisations. There also appears to be a lack of recognition of the stated policy position of the Scottish Government with respect to “ensuring the sustainable development of economically significant shellfish production”.

Equally importantly no assessment of natural capital benefits, biodiversity gains, climate change remediation, food security considerations, nature restoration benefits etc are part of the considerations put forward.

This partial BRIA is considered to be far from a balanced approach to determining the potential benefits of monitoring and ensuring water quality within Scottish coastal waters is capable of sustaining bivalve shellfish populations.


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***14. Declaration and publication***
***Sign-off for Partial Stage BRIAs:***

*I have read the Business and Regulatory Impact Assessment, and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.*

It is considered that if the Cabinet Secretary had considered the available evidence as presented by the industry in contrast to Scottish Government officials, the satisfaction that business impact had been assessed would likely be considerably diminished. Certainly, the current partial BRIA assessment has not been realised by engaging with the potential support which could be secured from those already impacted Scottish businesses.

The Association of Scottish Shellfish Growers would welcome further discussions on the appropriate implementation of water quality provisions and legislation within the Scottish marine coastal environment.

1 [redacted]
CEO

www.assg.org.uk


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ENVIRONMENTAL
Standards Scotland
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Environmental Standards Scotland

# Internal Briefing Note: Shellfish Water Protection Areas Suitability for pre-investigation IESS.25.046

November 2025



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## 1. Purpose

1.1. Further to receiving a representation and supporting information from [redacted] on 16 October 2025, this note provides a preliminary review of the information submitted and an assessment of the remit and significance tests, to determine whether the case is suitable to be progressed to pre-investigation. This review has been carried out in line with the Investigations Operational Guidance.

## 2. Summary of representation

2.1. The introduction of the Shellfish Waters Protected Areas (SWPA) legislation was intended to provide protection against designated areas being degraded by pollutants which would harm the production of shellfish.

2.2. Under EU legislation (79/923EEC The Shellfish Growing Waters Directive) a range of indicators were monitored to ensure the water quality within such designated areas was regularly assessed and where deficient, action taken to remedy and maintain the health of the shellfish stocks. This legislation was subsumed within the implementation of the Water Framework Directive and River Basin Management Plans within Scotland on the basis that equivalent levels of protection would be maintained. The introduction of specific areas (SWPAs) which contained shellfish production sites for a range of species cultivated by registered shellfish production businesses, was intended to safeguard the water quality within such areas.

2.3. Since the introduction of SWPAs there has been an ongoing lack of activity to both monitor appropriately the status of the water quality within such sites and also a shift in the emphasis from maintaining water quality for the health of the shellfish stocks, to a reliance on public health data produced by Food Standards Scotland (FSS).

2.4. Where sites are deficient in FSS data this has resulted in the Scottish Government seeking to declassify the SWPA sites without regard to the potential underlying water quality conditions which may have arisen.

2.5. The review of the SWPA designations in Scotland is required to be undertaken on a 6 yearly basis. No such review was undertaken in 2019 with no explanation given by the Scottish Government.

2.6. The current (2025) review has revealed a desire to declassify a large number of SWPAs on the basis that there is no FSS data in order to be able to assesses the water quality conditions. SEPA has confirmed to the representation contact that they have failed to undertake any water quality monitoring in the marine environment under the Water Framework Directive provisions "since 2018 - or possibly before".

2.7. Hence there has been a failure to undertake any water quality monitoring within SWPAs despite ongoing requests from industry based on declining water quality conditions in many areas. In some areas due to CSO

discharges and failures to regulate discharges under the CAR licence conditions, shellfish businesses have been forced to cease to produce shellfish due to the decline in water quality.

## 3. Legislative background

3.1. **Water Environment and Water Services (Scotland) Act 2003** and Shellfish Protected Areas legislation

3.2. The **Water Environment (Shellfish Water Protected Areas: Designation) (Scotland) Order 2013** identifies 84 coastal SWPAs.

3.3. **The Water Environment (Shellfish Water Protected Areas: Designation) (Scotland) Order 2016 (legislation.gov.uk)** designated the 85th SWPA, Loch Ryan. This legislation brought the protection and improvement of shellfish waters into the river basin management planning process via the **Water Environment (Shellfish Water Protected Areas: Environmental Objectives etc.) (Scotland) Regulations 2013**.

3.4. **The Scotland River Basin District (Quality of Shellfish protected Areas) (Scotland) Directions 2015**. The directions were updated following consultation by Scottish Government in 2021.

3.5. **The Scotland River Basin District (Quality of Shellfish Water Protected Areas) (Scotland) Directions 2021 - gov.scot (www.gov.scot)**, and The Water Environment (Shellfish Water Protected Areas: Objectives and Classification etc.) (Solway Tweed) Directions 2021.

## 4. SEPA and Scottish Government's position

4.1. The representation contact has included information in the form of presentations from SEPA regarding their shellfish improvement plan review. SEPA's response to the representation contact is recorded in one of these presentations in that they had not completed the required review and gave only a vague answer to the question regarding review of licensing and water quality monitoring. 2 [redacted]

4.2. There is no recorded response from SG.

## 5. Preliminary assessment of the representation to ESS remit

5.1. The table below provides a preliminary assessment of whether the content of the representation falls within ESS's remit.

| | |
|---|---|
| Does the representation relate to a public authority? | Yes - SEPA, Scottish Government |

| | |
|---|---|
| Does the representation relate to environmental law? | Yes – see above |
| Do the issues raised by the representation relate to a failure to comply with environmental law? | Yes – failure to monitor water quality for SWPA. Failure to review under the appropriate legislation |
| Do the issues raised by the representation relate to the effectiveness of environmental law? | Yes – failure of WEWS Act to provide an effective monitoring regime. Failure to provide sufficiently acceptable water quality to ensure shellfish health, resulting in de-designation of shellfish protected areas. |
| Do the issues raised by the representation relate to the effectiveness of implementation or application of environmental law? | Yes – Failure by SEPA to implement licence review under CAR. |
| Does the representation pertain to any legislative provisions excluded from ESS's remit, per the 2021 Act? | No |
| Is the representation premature? | No |
| Have any alternate remedies been identified? | No |

5.2. Given the above, it is concluded the case is within our remit.

## 6. Preliminary assessment of the representation to ESS investigation criteria

6.1. The table below provides a summary of the representation against ESS's criteria for investigation.

| | |
|---|---|
| Does the matter arise from a significant or potentially significant incident | Yes – the failure to monitor water quality leading to reduced water quality in shellfish protected areas (believed to be from activity licensed under CAR). |

| | |
|---|---|
| concerning the environment? | |
| Does the matter raise public health concerns? | Shellfish protected areas can coincide with waters used for recreation. Where water quality is poor and not monitored e.g. outside of designated bathing waters, this could represent public health concerns. Additionally, should shellfish become contaminated as a result of poor water quality, this could raise public health concerns |
| Is the matter something which seriously affected (or could seriously affect) the welfare of any member of the public? | As the contamination/pollution/poor water quality concerns are linked in the representation to CAR-licensed activities e.g. sewage treatment plants any sewage encountered in the water or on a beach could seriously affect the welfare of a member of the public. |
| Does the matter concern significant alleged neglect or systemic non-compliance? | Yes – the alleged lack of review and lack of monitoring system could be considered to be significant neglect or non-compliance |
| Could the matter undermine public confidence? | Yes – the representation contact has expressed that they have discussed the matter in depth with SEPA and are dissatisfied personally and as a trade organisation. Where water quality is alleged to be poorly or ineffectively monitored in shellfish-producing areas, this would not inspire public confidence in the quality of the shellfish. |
| Does the matter concern a failure to meet international obligations? | Potentially - where monitoring is required in internationally important conservation areas which overlap with SWPA |

6.2. Following on the above, the case is considered to meet ESS' criteria for investigation.

## 7. Assessment and conclusion

7.1. Pre-investigative work can focus on the links between this case and the Cromarty Firth case, particularly where evidence from either could influence the other. Pre-investigation work should also consider the specific legislative failures within the SWPA legislation additionally to ensure that these can be pursued separately where necessary.

7.2. Where the representation touches on the commercial impact of failures of environmental legislation, this is not within ESS' remit.

7.3. The case meets ESS's criteria for further consideration and should be taken to pre-investigation.