

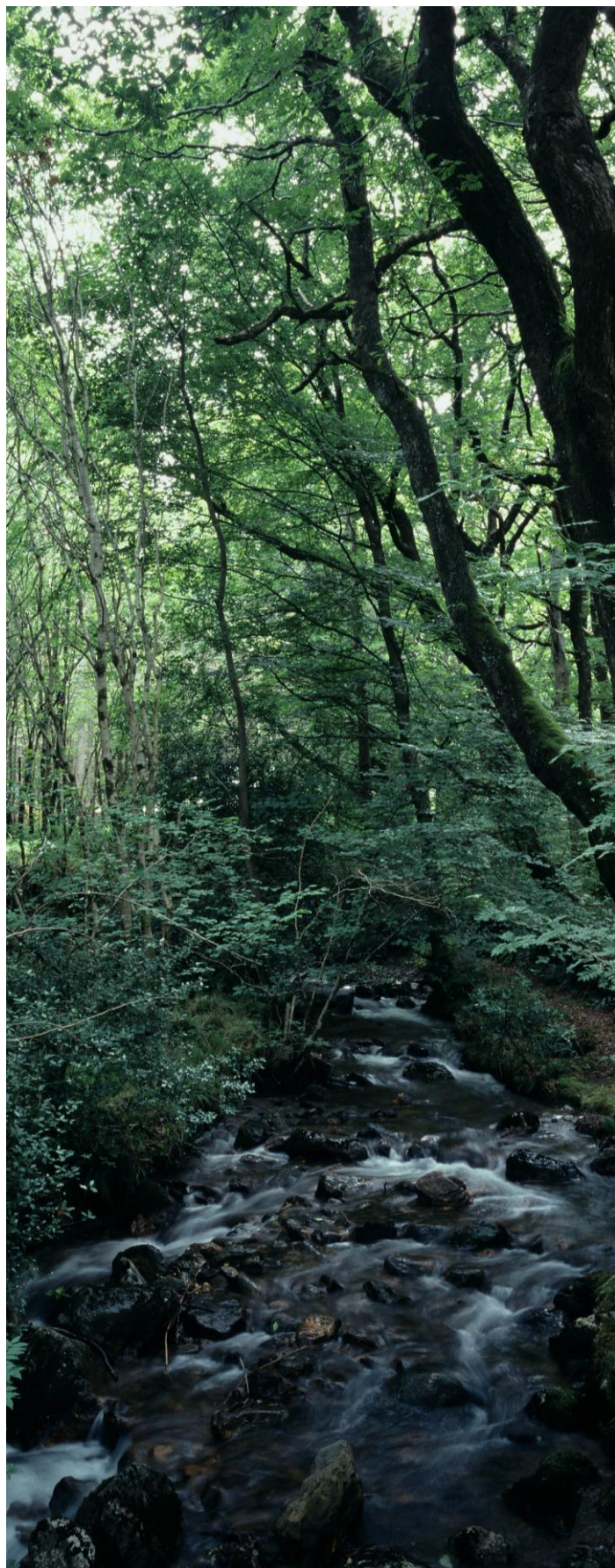
# Natura Impact Statements for Forestry Projects

## Guidance Note and Template

August 2020



**An Roinn Talmhaíochta,  
Bia agus Mara**  
Department of Agriculture,  
Food and the Marine



## Contents

1. Overview	1
2. Introduction	1
3. What is a NATURA Impact Statement?	2
4. How will I know a NIS is required?	2
5. What is the likely content of a NIS, who submits it, and who pays?	3
6. Who prepares the NIS?	3
7. What level of ecological input is needed?	4
8. Relevant sources of information	6
9. In-combination effects	7
10. Additional notes on completing the NIS	8
Appendix 1: Summary of selected rulings (from the European Court of Justice (ECJ) and the Irish Courts) relating to Article 6(3) of the Habitats Directive	9
Appendix 2: Further guidance on compiling Natura Impact Statements	12
Appendix 3: Glossary of terms	13
Appendix 4: Guidance on using the EPA Appropriate Assessment Tool	15
Appendix 5: NIS template	18

## 1. Overview

This document sets out guidance and a template for the preparation of Natura Impact Statements for forestry applications, submitted to inform the appropriate assessment process undertaken by the Minister for Agriculture, Food & Marine under Regulation 19 of the Forestry Regulations 2017, as amended, and Regulation 42 of the European Communities (Birds & Natural Habitats) Regulations 2011, as amended.

The following guidance and template replace those set out in Circular 04 of 2020. Further amendments may be made, to take account of future developments such as evolving case law in the area.

## 2. Introduction

The overall aim of the Habitats Directive (92/43/EEC) is to maintain or restore the favourable conservation status of habitats and species of Community interest. These habitats and species are listed in the Habitats Directive and the Birds Directive (2009/147/EC), and Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) are designated to afford protection to the most vulnerable of these. Both designations are defined as 'European Sites' in the Irish transposing regulations, and are also collectively referred to as the 'Natura 2000 network'. The Habitats and Bird Directives are transposed into Irish law by (*inter alia*) the European Communities (Birds & Natural Habitats) Regulations 2011 (S.I.477 of 2011), as amended, and the Forestry Regulations 2017 (S.I.191 of 2017), as amended (see the Irish Statute Book [www.irishstatutebook.ie](http://www.irishstatutebook.ie)).

As required under the Habitats Regulations 2011 and the Forestry Regulations 2017, on receipt of any application for licensing and / or grant approval, the Minister for Agriculture, Food & the Marine (the "Minister") (as a 'public authority') must undertake an appropriate assessment 'screening' to assess if the project is likely to have a significant effect, either individually or in combination with other plans or projects, on a European Site, in view of that European Site's conservation objectives and in view of best scientific knowledge. If the Minister forms the opinion that the project is likely to have a significant effect on a European Site, or is unable to determine the likely effects of the project on a European Site, the project is 'screened in' and the Minister must carry out an appropriate assessment. The Minister then undertakes the 'appropriate assessment' to determine in view of best scientific knowledge whether there will be an adverse effect on the integrity of these European Site(s), based on (*inter alia*) the nature of the impact and the effectiveness of any mitigation measures proposed. The appropriate assessment must: (a) identify, in light of the best scientific knowledge, all aspects of the development that would affect European Sites; and (b) contain complete and definitive findings capable of removing all reasonable scientific doubt that the development would adversely affect the integrity of those sites.

(Note, screening is often referred to as 'Stage 1', and appropriate assessment as 'Stage 2'.)

The above process cannot have any deficiencies or data / information gaps (or 'lacunae') and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of a project on the European Site(s) concerned. The Minister can only approve an application where s/he deems (at screening stage) that the project is not likely to have a significant effect on a European Site or, after having ascertained (at appropriate assessment stage, if required) that there will be no adverse effect on the integrity of any European Site.

The above process is set out in Regulation 42 of SI 477 of 2011 and Regulation 19 of SI 191 of 2017. Recent rulings from the European Court of Justice and Irish case law provide further legal clarification (see Appendix 1). Furthermore, detailed guidance is set out in the European Commission (2018) Notice *Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC* (see Appendix 2).

As set out under S.I.477 of 2011, as amended, and S.I.191 of 2017, as amended, where a site has been 'screened in' for appropriate assessment, the Minister can seek the submission of a Natura Impact Statement (NIS) to inform that process. Applicants can also opt to submit a NIS with their application at the very outset, in the assumption that the project will be screened in. This note sets out guidance for Applicants and his / her Registered Forester and other agents, on the preparation of a NIS, and sets out a template to be adhered to. This template is not intended to be exhaustive in nature, and situations may arise whereby the NIS may need to address other aspects not included below.

Sources for further guidance are listed in Appendix 2, and a glossary of terms is included in Appendix 3.

### 3. What is a NATURA Impact Statement?

The Forestry Regulations 2017 (S.I. 191 of 2017), as amended, provide that a 'Natura Impact Statemet' has the same meaning as in the Habitats Regulations (S.I.477 of 2011). S.I.477 of 2011 defines a Natura Impact Statement as *"a report comprising the scientific examination of a plan or project and the relevant European Site or European Sites, to identify and characterise any possible implications of the plan or project individually or in combination with other plans or projects in view of the conservation objectives of the site or sites, and any further information including, but not limited to, any plans, maps or drawings, scientific information or data required to enable the carrying out of an Appropriate Assessment"*.

The NIS is a scientific examination that identifies and characterises any possible implications the project may have (either individually or in combination with other plans and projects) on the conservation objectives of any 'screened-in' European Site(s), taking into account the full scope of these objectives, whether generic or site specific. It must also identify and detail any proposed mitigation measures needed to avoid, reduce or eliminate likely significant effects on a European Site or adverse effects on the integrity of a European Site. The NIS must also present the necessary analysis to demonstrate how any proposed mitigation measures will avoid or remove the risks of those adverse effects identified, so that the final analysis and in-combination assessment with other plans and projects is undertaken in the context of the predicted residual effects.

The precautionary principle should be applied throughout the preparation of the NIS. For example, if it cannot be demonstrated that no adverse effect will arise, such an effect must be assumed. As a scientific examination, all findings arrived at must be clear and precise, and must be supported by data, evidence and analysis and by best scientific knowledge and objective information, including baselines and trends. All sources of information must also be cited.

The purpose of the NIS is to provide adequate information to enable the Minister to undertake and complete his or her Appropriate Assessment of the project.

### 4. How will I know a NIS is required?

The Minister must undertake appropriate assessment where the initial screening stage concluded that the project is likely to have a significant effect on the European Site(s) (or where uncertainty exists), either individually or in combination with other plans and projects, in view of the conservation objectives of that European Site(s) and in view of best scientific knowledge. To inform the appropriate assessment, the Minister may seek the submission of a NIS by the Applicant.

Where the Minister requires a NIS in relation to one or more European Sites, it will notify the Applicant in writing. This NIS Request Letter will also set a deadline for the submission of the NIS. Unless otherwise agreed, if the Applicant does not provide the NIS within the specified period, the application will be considered withdrawn. The letter may also provide further information regarding the required focus of the NIS – see below.



Applicants may also opt to submit a NIS with their initial application, in the assumption that a NIS will be stipulated by the Minister later, after screening.

In both cases outlined above, the NIS must adhere to the template set out in this note.

## 5. What is the likely content of a NIS, who submits it, and who pays?

Each NIS will vary in content, given the permutations that arise from the range of forest activities involved (afforestation, forest roading, felling, etc.), the specifics of the project itself, and the details of any European Site(s) involved.

**This note includes a template to be adhered to in situations where a NIS is being prepared for a proposed forestry project. This is to ensure that key issues are addressed and to standardise the structure of NISs submitted, to facilitate review by the Minister. Note, the template is not intended to be exhaustive, and it is the responsibility of the Applicant to ensure that all relevant issues are addressed.**

In his or her NIS request letter, the Minister may stipulate that the NIS focuses on an aspect of the project that gives rise to concern in relation to a particular qualifying interest or conservation objective of an identified European Site. Similarly, it might specify the provision of particular information or data it considers necessary to enable it to carry out the Appropriate Assessment. In such cases, the template must still be adhered to, and sections that are clearly not applicable can be marked 'N/A'.

Regardless of any direction that may be given, either in this note or within the FIR letter, it is the Applicant's responsibility to ensure that the NIS adequately addresses the issues necessary to enable the Minister to complete his / her Appropriate Assessment. If the information provided is insufficient, or if information is absent, further information may be sought. Also note that it is an offence under S.I.477 of 2011 and the Forestry Act 2014 to supply false or misleading information or to withhold or fail to divulge information or data likely to be relevant to the Appropriate Assessment.

It is the responsibility of the proponent of the project (i.e. the Applicant) to engage relevant experts and to bear the cost of preparing the NIS.

## 6. Who prepares the NIS?

As a scientific examination, the NIS must be produced in a scientifically competent, professional and objective manner. In most cases, as habitat and species evaluation are central to the process, a person with appropriate ecological qualifications and experience will be required to undertake any necessary ecological surveys, research and analysis. Other relevant experts may be required if non-ecological input is needed, e.g. in the area of hydrology or engineering.

Generally, the Registered Forester associated with the project will coordinate the compilation of the NIS. It is very important that the forester overseeing the work also inputs directly into the NIS itself, regarding the identification and detailing of proposed mitigation measures. Joint ownership of such measures is essential, to ensure they are effective as mitigation, realistic and practical to implement, and acceptable to the Minister (e.g. under scheme rules). Through his / her own expertise and knowledge, the forester may also draw attention to measures and approaches not immediately obvious to the ecologist.

To assist applicants and Registered Foresters in contacting ecologists, the DAFM has compiled a Directory of Professional Ecologists for Forestry Projects, available at

[www.agriculture.gov.ie/forests/service/grantsandpremiumschemes2014-2020](http://www.agriculture.gov.ie/forests/service/grantsandpremiumschemes2014-2020) (also see Circular 07/2019).

Note, this directory is not exclusive, and the Minister will accept NISs from individuals regardless of whether or not they are listed.

## 7. What level of ecological input is needed?

In addition to baseline information and survey results available online and elsewhere (see below), an ecological survey may be needed to assess if an Annex I habitat or Annex II species, or a supporting habitat or species(\*), is present. The type of survey needed will vary greatly, from a general habitat walkover survey to a more detailed survey involving repeated visits.

(\* As per ECJ Case C-461/17 Brian Holohan and Others v An Bord Pleanála – see Appendix 1.)

The following are examples of the types of surveys and field assessments that may be required. (Note, these examples are included for illustrative purposes only. The ecologist will identify the type of survey required in relation to any particular project.)

- **Ex situ**, where the project is located *outside* the European Site:
  - A habitat walkover survey to assess if the project area contains a habitat used by a species listed as a qualifying interest of the European Site, or a habitat supporting a species upon which the qualifying interest depends. For example, the project area may contain a habitat used for foraging by a specific bird species listed as a Special Conservation Interest (SCI) of a nearby SPA.
  - A hydrological assessment to ascertain if proposed drainage associated with an afforestation project will disrupt the hydrological conditions underpinning a nearby SAC bogland habitat.
- **In situ**, where the project is located *within* a European Site:
  - An ecological survey to determine if a habitat listed as a qualifying interest of the European Site (i.e. an Annex I habitat, such as wet heath) is present or absent within the project area.
  - Similarly, in the case of a particular species listed as a qualifying interest of the European Site (i.e. an Annex II such as Desmoulin's whorl snail (*Vertigo moulinsiana*)), a species survey or a species habitat survey to determine if that species occurs or has the potential to occur within the project area.

The following indicate some of the general issues that can arise:

- Where there is a hydrological connection to a European Site, the NIS must address potential impacts on water quality and aquatic species and habitats. This will include an assessment of likely sources and pathways (such as relevant watercourses or 'hotspot' areas) for runoff from the site, in relation to both sediment and nutrients. Other issues such as altered hydrology and nutrient enrichment may also be relevant.
- In relation to SPAs, the NIS should consider (as relevant) the known location of breeding sites within the SPA, whether the project area contains suitable breeding, foraging or roosting habitats, and whether disturbance impacts arise.
- For felling licence applications, the NIS must include a Harvest Plan and Map (see Circular 11 / 2019\*), with all proposed mitigation measures clearly detailed and mapped. Where clearfelling is involved, the reforestation must be considered, including options such as the 'CCF' and 'BIO' Reforestation Objectives (see DAFM's *Felling & Reforestation Policy* (2017)), increased water setbacks, retrofitting buffers, alternative species, the use of broadleaf species along watercourses, and alternative management options such as continuous cover forestry.

(\* [www.agriculture.gov.ie/forests-service/grants-and-premiums-schemes/2014-2020/schemecirculars/2019circulars/](http://www.agriculture.gov.ie/forests-service/grants-and-premiums-schemes/2014-2020/schemecirculars/2019circulars/))

Typically, a detailed field survey is required if the project is located within a Natura Site *and* where the qualifying interests include terrestrial habitats and species. In situations where all the qualifying interests are aquatic in nature, the focus of the scientific examination should be on avoiding or eliminating the risk of any potential impacts (e.g. sediment and nutrient runoff, altered hydrology, nutrient enrichment) on the aquatic habitat or species.

Regarding terrestrial-based qualifying interests, the nature of these will determine the type of survey(s) required. Given the range of Annex habitats and species, it is not possible to outline the appropriate survey method(s) for each. Some Annex II terrestrial species require specialist expertise as they may not be easily observed.

When surveying the site, it is important that the following are noted:

- Invasive species: If these species have the potential to have an impact on European sites, they must be addressed in the NIS. If not, the presence of invasive species should be noted in the habitat walkover survey and if appropriate, addressed outside the NIS. Under Regulation 49 of the European Communities (Birds and Natural Habitats) Regulations, 2011 (S.I. No. 477 of 2011), save in accordance with a licence granted under paragraph (7), any person who plants, disperses, allows or causes to disperse, spreads or otherwise causes to grow any invasive plants listed in the third column of Part 1 of the Third Schedule shall be guilty of an offence. Further information in relation to invasive species and the development of invasive species management plans is available at <https://invasivespeciesireland.com/invasive-plant-management/>
- Nationally protected habitats /species, either under the Wildlife Act or the Flora Protection Order (e.g. small white orchid, badger sett): These must be recorded in the walkover survey and if appropriate addressed outside the NIS. (They may need to be addressed in the NIS if their presence influences operations, e.g. timing.)

## 8. Relevant sources of information

Relevant sources of information are listed below. Relevant data from recent or ongoing surveys undertaken by various bodies may be available, thereby possibly reducing the need for direct survey work during the preparation of the NIS.

<p><b>Environmental Protection Agency Appropriate Assessment tool</b>  <a href="https://gis.epa.ie/EPAMaps/AAGeoTool">https://gis.epa.ie/EPAMaps/AAGeoTool</a></p>	<p>The EPA's online Appropriate Assessment tool is a valuable resource that allows the user to quickly identify SACs and SPAs found within a certain radius of the project area, or downstream along a river.</p> <p>See Appendix 4 for guidance.</p>
<p><b>National Parks &amp; Wildlife Service (Department of Culture, Heritage &amp; the Gaeltacht)</b>  <a href="http://www.npws.ie/protectedsites">www.npws.ie/protectedsites</a></p>	<p>This website contains information on individual SACs and SPAs, including each site's conservation objectives, site synopsis, Statutory Instrument (with site map) and related publications. <a href="http://www.npws.ie/maps-and-data">www.npws.ie/maps-and-data</a> provides further maps and data and also instructions on how to request sensitive or unpublished data that may be relevant in relation to a particular project area and associated NIS.</p> <p>Local records may be available through the local NPWS Office. NPWS Article 17 report for 2019 contains general information on Annex I habitats and Annex II species, ecology, distribution, pressures, status, etc. See <a href="http://www.npws.ie/publications/article-17-reports/article-17-reports-2019">www.npws.ie/publications/article-17-reports/article-17-reports-2019</a></p>
<p><b>National Biodiversity Data Centre</b>  <a href="http://www.biodiversityireland.ie">www.biodiversityireland.ie</a></p>	<p>NBDC is a national centre for the collection, collation, management, analysis and dissemination of data on Ireland's biological diversity. It contains numerous maps and data on a wide range of habitats and species, that may be relevant in relation to a particular project area and associated NIS.</p>
<p><b>Birdwatch Ireland</b>  <a href="http://www.birdwatchireland.ie">www.birdwatchireland.ie</a></p>	<p>This website provides a wealth of information on Irish bird species, and the results of various bird studies / surveys.</p>
<p><b>Bat Conservation Ireland</b>  <a href="http://www.batconservationireland.org">www.batconservationireland.org</a></p>	<p>This website is an online records database (with maps) for bat species, including the Lesser Horseshoe Bat, an Annex II species under the Habitats Directive.</p>



## 9. In-combination effects

In-combination effects can be defined as impacts on a European Site that result from incremental changes caused by other past, present or reasonably foreseeable actions together with the project being assessed.

Appropriate assessment requires an assessment of possible in-combination effects under the European Communities (Birds & Natural Habitats) Regulations 2011, as amended, and the Forestry Regulations 2017, as amended. Section 3.5.3 of the EC Commission Notice *Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC* (2018) details the process: *"When determining likely significant effects, the combination with other plans and/or projects should also be considered to take account of cumulative impacts during the assessment of the plan or project in question. The in-combination provision concerns other plans or projects which have been already completed, approved but uncompleted or actually proposed."*

The following box outlines the process further, setting out the steps involved to ensure that all impacts upon the European Site are identified, including those direct and indirect impacts that are a result of cumulative impacts.

Steps in the [cumulative] assessment	Activity to be completed
Identify all projects/plans which might act in combination	Identify all possible sources of effects from the project or plan under consideration, together with all other sources in the existing environment and any other effects likely to arise from other proposed projects or plans.
Impact identification	Identify the types of impacts (e.g. noise, water resource reduction, chemical emissions, etc.) that are likely to affect aspects of the structure and functions of the site vulnerable to change.
Define boundaries for assessment	Define boundaries for examination of cumulative effects; note these will be different for different types of impact (e.g. effects upon water resources, noise) and may include remote (off-site) locations.
Pathway identification	Identify potential cumulative pathways (e.g. <i>via</i> water, air, etc.; accumulation of effects in time or space). Examine site conditions to identify where vulnerable aspects of the structure and function of the site are at risk.
Prediction	Prediction of magnitude/extent of identified likely cumulative effects.
Assessment	Comment on whether or not the potential cumulative impacts are likely to be significant.
From European Commission's <i>Assessment of plans and projects significantly affecting Natura 2000 sites: Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC</i> (2001).	

## 10. Additional notes on completing the NIS

- Appendix 5 of this note contains a template for a Natura Impact Statement (NIS) that must be adhered to for all NISs submitted to the Minister in relation to a forestry application.
- The *green italic text* throughout the NIS template sets out instructions for completing the various sections of the document. The **yellow highlighted** text indicates where specific insertions are required.
- All sections must to be completed, unless the Minister's letter seeking the NIS narrows the focus (in which case, sections not relevant can be marked 'N/A'). Issues not covered by the template can be addressed by adding new sections.
- Regarding the preparation of the NIS, in most cases, a person with appropriate ecological qualifications and experience will be required to undertake the necessary ecological surveys, research and analysis. However, it is very important that the forester overseeing the work also inputs directly into the NIS, regarding the identification and detailing of proposed mitigation measures. Joint ownership of such measures is essential, to ensure they are effective as mitigation, and realistic and practical to implement. Through his / her own expertise and knowledge, the forester may also draw attention to measures and approaches not immediately obvious to the ecologist.
- At specific points in the NIS template, maps are required to illustrate various information, including a Current Environment & Habitat Map and an Operations & Mitigation Map. Such maps are intrinsic to the NIS, and must adhere to the following conventions:
  - Maps must be based on OS raster map(s) or orthophoto(s), with the site perimeter outlined in red. The scale 1:5,000 is typical, but use a larger scale if necessary for clarity.
  - Maps must be appropriately titled (e.g. 'Current Environment & Habitat Map'), to reflect the information being illustrated. All relevant features, measures and operations are to be clearly mapped and indicated using symbols, colours, letters, text-and-arrows and a concise legend. Linear features (e.g. waterways, hedgerows) should be indicated using colour-coding, and individual features (e.g. badger setts) by letters or symbols. For an example of a Current Environment & Habitat Map, see Circular 13 of 2020 (<https://www.agriculture.gov.ie/forests-service/grants-and-premiums-schemes/2014-2020/schemecirculars/2020circulars/>).
  - It is strongly recommended that such details are added using the Adobe Reader graphics tool, especially where orthophotos are being used.
  - Maps are included in the appendices but must be clearly cross-referenced with the relevant section(s) in the main body of the NIS.
  - Each map must accurately represent the information being illustrated. They must also be legible. If an individual map becomes too cluttered, use a second map and indicate accordingly (e.g. Operations & Mitigation Map no. 1, Operations & Mitigation Map no. 2).
- If photographs are included in the NIS, include a 'Photo Map' illustrating the location and orientation of each photograph, and cross-reference with the relevant section(s) in the main body of the NIS.
- Submit the NIS in a photocopy friendly A4 format, without permanent binding. It is also acceptable in digital format, with an electronic signature (e.g. a cover e-mail from the Applicant, with the NIS included as an attachment).
- The submission of incomplete, inaccurate or incoherent NISs will result in delays, requests for further information, and / or refusal.

## Appendix 1

### Summary of selected rulings (from the European Court of Justice (ECJ) and the Irish Courts) relating to Article 6(3) of the Habitats Directive

#### ECJ Case C-258/11, Peter Sweetman and Others v An Bord Pleanála

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=136145&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=10649>

##### Text from ruling

*Article 6(3) of [the Habitats Directive] must be interpreted as meaning that a plan or project not directly connected with or necessary to the management of a site will adversely affect the integrity of that site if it is liable to prevent the lasting preservation of the constitutive characteristics of the site that are connected to the presence of a priority natural habitat whose conservation was the objective justifying the designation of the site in the list of sites of Community importance, in accordance with the directive. The precautionary principle should be applied for the purposes of that appraisal.*

#### ECJ Case C-164/17, Edel Grace and Peter Sweetman v An Bord Pleanála

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=204392&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=10649>

##### Text from ruling

*Article 6 of [the Habitats Directive] must be interpreted as meaning that, where it is intended to carry out a project on a site designated for the protection and conservation of certain species, of which the area suitable for providing for the needs of a protected species fluctuates over time, and the temporary or permanent effect of that project will be that some parts of the site will no longer be able to provide a suitable habitat for the species in question, the fact that the project includes measures to ensure that, after an appropriate assessment of the implications of the project has been carried out and throughout the lifetime of the project, the part of the site that is in fact likely to provide a suitable habitat will not be reduced and indeed may be enhanced may not be taken into account for the purpose of the assessment that must be carried out in accordance with Article 6(3) of the directive to ensure that the project in question will not adversely affect the integrity of the site concerned; that fact falls to be considered, if need be, under Article 6(4) of the directive.*

### ECJ Case C-323/17 People Over Wind and Peter Sweetman v Coillte Teoranta

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=200970&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10649>

Also attached *Inside Ecology* article 01May18 for an unofficial but informed digest of the judgement, <https://insideecology.com/2018/05/01/habitat-regulations-assessments-no-more-screening-out-with-mitigation-measures/>

#### Text from ruling

*Article 6(3) of [the Habitats Directive] must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site.*

### ECJ Case C-461/17 Brian Holohan and Others v An Bord Pleanála

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=207428&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10649>

#### Text from ruling

- 1. Article 6(3) of [the Habitats Directive] must be interpreted as meaning that an ‘appropriate assessment’ must, on the one hand, catalogue the entirety of habitat types and species for which a site is protected, and, on the other, identify and examine both the implications of the proposed project for the species present on that site, and for which that site has not been listed, and the implications for habitat types and species to be found outside the boundaries of that site, provided that those implications are liable to affect the conservation objectives of the site.*
- 2. Article 6(3) of Directive 92/43 must be interpreted as meaning that the competent authority is permitted to grant to a plan or project consent which leaves the developer free to determine subsequently certain parameters relating to the construction phase, such as the location of the construction compound and haul routes, only if that authority is certain that the development consent granted establishes conditions that are strict enough to guarantee that those parameters will not adversely affect the integrity of the site.*
- 3. Article 6(3) of Directive 92/43 must be interpreted as meaning that, where the competent authority rejects the findings in a scientific expert opinion recommending that additional information be obtained, the ‘appropriate assessment’ must include an explicit and detailed statement of reasons capable of dispelling all reasonable scientific doubt concerning the effects of the work envisaged on the site concerned.*
- 4. Article 5(1) and (3) of, and Annex IV to, Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, must be interpreted as meaning that the developer is obliged to supply information that expressly addresses the significant effects of its project on all species identified in the statement that is supplied pursuant to those provisions.*
- 5. Article 5(3)(d) of Directive 2011/92 must be interpreted as meaning that the developer must supply information in relation to the environmental impact of both the chosen option and of all the main alternatives studied by the developer, together with the reasons for his choice, taking into account at least the environmental effects, even if such an alternative was rejected at an early stage.*

**Kelly -v- An Bord Pleanála [2014] IEHC 400**

<http://www.courts.ie/Judgments.nsf/0/7A4764A297EF3FC080257D35004D2540>

Non-legal summary

The Irish High Court quashed a decision to grant planning permission for a wind farm for failing to comply with the European Habitats Directive on the grounds, *inter alia*, that An Bord Pleanála failed to carry out an assessment which: (a) identified, in light of the best scientific knowledge, all aspects of the development which would affect various local protected habitats; and (b) contained complete and definitive findings capable of removing all reasonable scientific doubt that the development would adversely affect the integrity of the habitats.

**Kelly -v- An Bord Pleanála & anor [2019] IEHC 84**

<http://www.courts.ie/Judgments.nsf/0/7599087E33F1C206802583A50058F9D4>

Non-legal summary

The Irish High Court did not find that Sustainable Urban Drainage Systems (SUDS) and other standards mandatory and best practice environmental measures can be considered in every screening for Appropriate Assessment. It is always necessary to analyse whether the measure, however described and whether or not it has another purpose, is proposed with the intention of avoiding or reducing a harmful effect on a European Site. If there is a source-pathway-receptor connection between the proposed development and the qualifying interest of a European Site and potential harmful effects have been identified, measures to avoid or reduce those effects must be excluded from the screening analysis.

**Heather Hill Management Company clg & anor -v- An Bord Pleanála & anor [2019] IEHC 450**

<http://www.courts.ie/Judgments.nsf/0/9BBAA0F37143FFC280258423003FED1D>

Non-legal summary

The Irish High Court held that the Board had relied on a commitment to comply with 'best practice measures' during construction in order to minimise any emissions into the Trusky Stream, which was identified as being a potential pathway to the Special Protection Area (SPA) and Special Area of Conservation (SAC) in Galway Bay. The Court held that this commitment to comply with 'best practice measures' represented an avoidance or reduction measure that must be excluded for the purpose of reaching a screening determination.



## Appendix 2

### Further guidance on compiling Natura Impact Statements

European Commission. 2018. Commission notice: Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC. Available at:

[www.ec.europa.eu/environment/nature/natura2000/management/guidance\\_en.htm](http://www.ec.europa.eu/environment/nature/natura2000/management/guidance_en.htm)

European Commission. 2000. Managing Natura 2000 Sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC. European Communities. Available at:

[www.ec.europa.eu/environment/nature/natura2000/management/docs/art6/provision\\_of\\_art6\\_en.pdf](http://www.ec.europa.eu/environment/nature/natura2000/management/docs/art6/provision_of_art6_en.pdf)

NPWS. 2017. The Status of EU Protected Habitats and Species in Ireland. Overview Volume 1. National Parks & Wildlife Service, Department of Arts, Heritage & the Gaeltacht, Dublin. Available at:

[www.npws.ie/publications/article-17-reports/article-17-reports-2019](http://www.npws.ie/publications/article-17-reports/article-17-reports-2019)

European Communities (Birds & Natural Habitats) Regulations 2011 (S.I.477 of 2011). See the Irish Statute Book [www.irishstatutebook.ie](http://www.irishstatutebook.ie)

Forestry Regulations 2017 (S.I.191 of 2017). See the Irish Statute Book [www.irishstatutebook.ie](http://www.irishstatutebook.ie)

DEHLG. 2010. Appropriate Assessment of Plans and Projects in Ireland: Guidance for Planning Authorities. Department of Environment, Heritage & Local Government. Available at:

[www.npws.ie/sites/default/files/publications/pdf/NPWS\\_2009\\_AA\\_Guidance.pdf](http://www.npws.ie/sites/default/files/publications/pdf/NPWS_2009_AA_Guidance.pdf)

European Commission. 2001. Assessment of plans and projects significantly affecting Natura 2000 sites: Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC.

European Commission Environment DG. Office for Official Publications of the European Communities, Luxembourg. Available at:

[http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/natura\\_2000\\_assess\\_en.pdf](http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/natura_2000_assess_en.pdf)

## Appendix 3

### Glossary of terms

**BIRDS DIRECTIVE** Directive 2009/147/EC of the European Parliament & of the Council of 30 November 2009 on the conservation of wild birds.

**CJEU Judgement C-323/17** Under this Court of Justice of the European Union (CJEU) Judgement C-323/17 *People Over Wind and Sweetman*, specific measures intended to avoid or reduce the harmful effects of a proposed forestry project on a SAC or SPA may no longer be taken into account by the Forestry Inspector at the AA screening stage, when deciding on whether or not that proposed project is likely to have a significant effect on the conservation objectives of a European Site. (See CJEU Judgment at [curia.europa.eu/juris/liste.jsf?language=en&num=C-323/0](https://curia.europa.eu/juris/liste.jsf?language=en&num=C-323/0) and also attached *Inside Ecology* article 01May18, for an unofficial but informed digest of the judgement.)

**CONSERVATION OBJECTIVE** The specification of the overall target for the species & / or habitat types for which a European Site is designated, in order for it to contribute to maintaining or reaching favourable conservation status of the species & habitat concerned, at the national, the biogeographical or the European level.

**CONSERVATION STATUS (HABITAT)** An assessment of the health of a natural habitat, based on the sum of the influences acting on that habitat & its typical species that may affect its long-term natural distribution, structure & functions as well as the long term survival of its typical species. Methods for assessing conservation status were drawn up by the European Topic Centre for Nature Conservation in conjunction with the Scientific Group of the Habitats Directive. It involves the application of a 'favourable', 'inadequate', 'bad' or 'unknown' assessment to four separate parameters (i.e. range, area, structures & functions, & future prospects) & an assessment of overall status (NPWS, 2013).

**EUROPEAN COMMUNITIES (BIRDS & NATURAL HABITATS) REGULATIONS 2011 (S.I.477 OF 2011)** The principal instrument transposing the Birds and Habitats Directives into Irish law, with provisions for (*inter alia*): the conservation of natural habitats & habitats of species; activities, plans or projects affecting European Sites; appropriate assessment; & the protection of flora & fauna.

**EUROPEAN SITE** Defined as including a Special Area of Conservation or a Special Protection Area, under the European Communities (Birds & Natural Habitats) Regulations 2011 (S.I.477 of 2011).

**FORESTRY REGULATIONS 2017 (S.I.191 OF 2017), AS AMENDED** Regulations that further transpose the Birds and Habitats Directives into Irish law, as they apply to forestry developments.

**HABITATS DIRECTIVE** The Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats & of wild fauna & flora, which aims to promote the maintenance of biodiversity in Europe, taking account of economic, social, cultural & regional requirements. The EU Habitats Directive, together with the Birds Directive, forms the cornerstone of Europe's nature conservation policy, & establishes the EU-wide Natura 2000 ecological network of protected areas. Annex I & Annex II list natural habitats & species (both animal & plant) of community interest whose conservation requires the designation of Special Areas of Conservation by Member States. The Habitats Directive is transposed into Irish law under the European Communities (Birds & Natural Habitats) Regulations 2011 (S.I.477 of 2011), as amended, and, as regards forestry developments, by the Forestry Regulations 2017 (S.I.191 of 2017), as amended.

**NATURA SITE** Non-legal term sometimes used to describe a Special Area of Conservation or a Special Protection Area.

**QUALIFYING INTEREST** The particular species or habitat for which a European Site has been designated.

**SIGNIFICANT EFFECT** A project may have a significant effect on a European Site if it (*inter alia*):

- reduces the area of an Annex I habitat, the habitat of an Annex II species, or the overall European Site;
- damages the physical quality of the environment (e.g. water quality & supply, soil compaction) within the European Site;
- causes serious or ongoing disturbance to species or habitats for which the European Site is selected (e.g. increased noise, human activity);
- results in direct or indirect damage to the size, characteristics or reproductive ability of populations within the European Site; or
- interferes with mitigation measures put in place for other plans or projects.

**Note** Case C258/11 Preliminary Ruling under Article 267 TFEU – Lough Corrib site – N6 Galway City Outer Bypass road scheme case: Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats & of wild fauna & flora must be interpreted as meaning that a plan or project not directly connected with or necessary to the management of a site will adversely affect the integrity of that site if it is liable to prevent the lasting preservation of the constitutive characteristics of the site that are connected to the presence of a priority natural habitat whose conservation was the objective justifying the designation of the site in the list of sites of Community importance, in accordance with the directive. The precautionary principle should be applied for the purposes of that appraisal.

**SPECIAL AREA OF CONSERVATION (SAC)** Defined under S.I.477 of 2011 as meaning “a site of Community importance designated by a Member State pursuant to Article 4(4) of the Habitats Directive through a statutory, administrative or contractual act, or any combination thereof, where the necessary conservation measures are applied for the maintenance or restoration, at a favourable conservation status, of either or both the natural habitats and the populations of the species for which the site is designated”. Also defined as a ‘European Site’. In general terms, a SAC is prime wildlife conservation area considered to be important at a European as well as an Irish level, designated under the Habitats Directive.

**SPECIAL PROTECTION AREA (SPA)** Defined under S.I.477 of 2011 as meaning “an area classified pursuant to Article 4(1) or 4(2) of the Birds Directive as a special protection area”. Also defined as a ‘European Site’. In general terms, a SPA is an area of significance for the conservation of habitats which are important for birds & have been designated under the EU Council Directive 79/409/EEC on the conservation of wild birds (or ‘Birds Directive’).

**STAGE 1** A non-legal term often applied to AA screening.

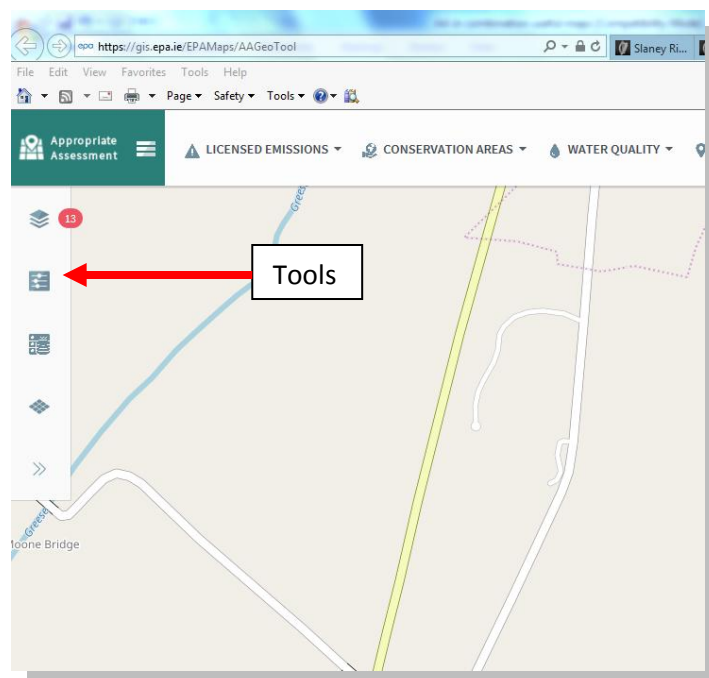
**STAGE 2** A non-legal term often applied to the post-screening appropriate assessment.

## Appendix 4

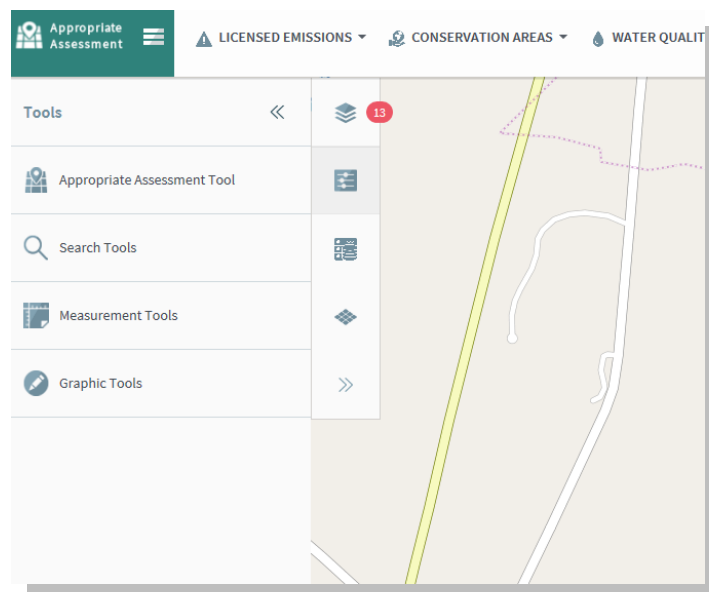
### Guidance on using the EPA Appropriate Assessment Tool

The EPA Appropriate Assessment Tool [gis.epa.ie/EPAMaps/AAGeoTool](https://gis.epa.ie/EPAMaps/AAGeoTool) is a useful tool for showing SACs and SPAs located within a certain radius, as follows.

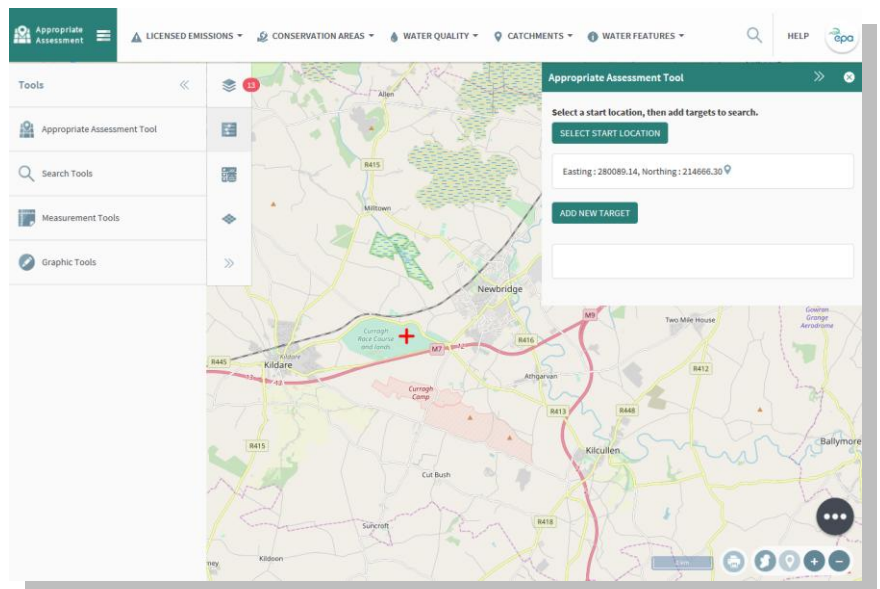
- To start, scroll into and 'click-and-drag' the map of Ireland, to locate the vicinity of the project area. Once located, click the tools symbol on the left-hand margin, i.e.



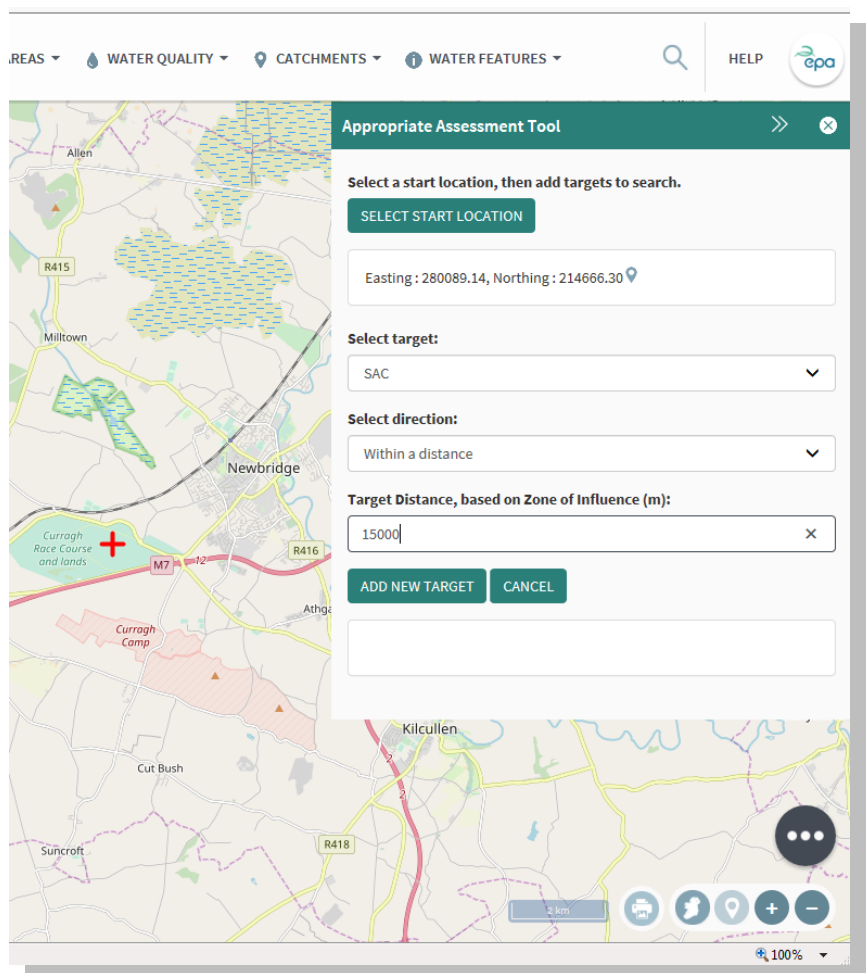
- Then, click the 'Appropriate Assessment Tool' option, which opens a new panel.



- Then click the 'SELECT START LOCATION' tab and drop a pin (red cross) on the centre-point of the project area.

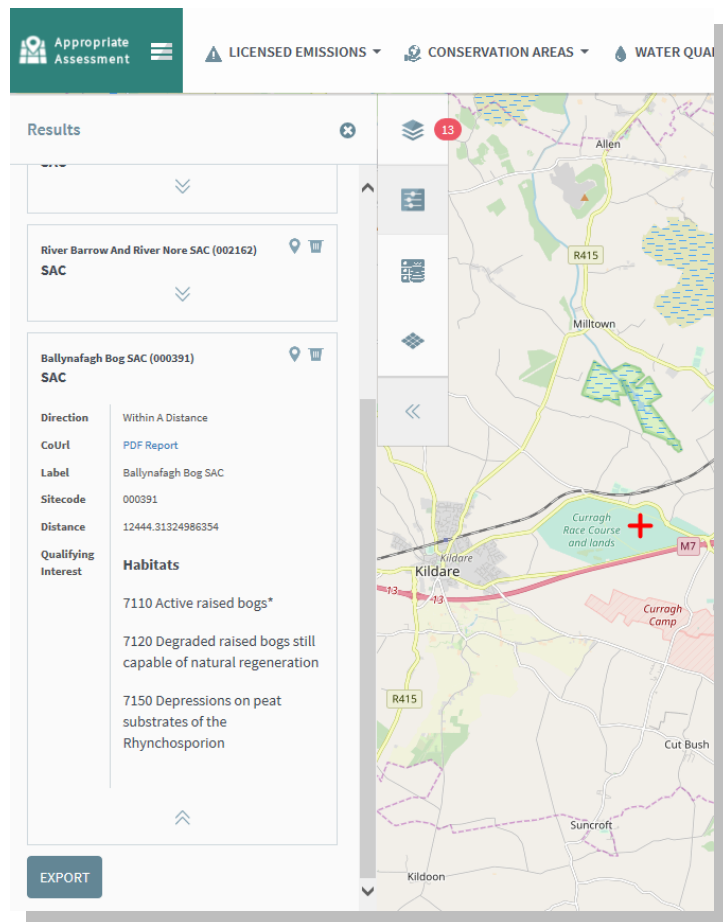


- Then, click the 'ADD NEW TARGET' tab. This opens a panel with two dropdown lists.
- Under the 'Select target:' dropdown list, select 'SAC'.
- Under the 'Select direction:' dropdown list, select 'Within a distance'. (Note, this dropdown list also offers 'Upstream along a river' and 'Downstream along a river' options.)
- Then, under the 'Target Distance, based on Zone of Influence (m):' box, enter '15000' (i.e. 15,000 m or 15 km).





- Click on the 'ADD NEW TARGET' tab and the subsequent 'GET RESULTS' tab. This will show, in a panel to the left of the map, all the SACs within 15 km of the project area (i.e. the dropped pin). For each SAC, the panel provides the SAC name and site code, the exact distance of the SAC from the centre point, a link ('PDF Report') to the NPWS Conservation Objectives document, and the list of Qualifying Interests for that SAC.



- Clicking on the 'EXPORT' tab at the bottom of this panel generates a tabulated version of this list, which can be saved or printed out.

Site Type	Site Code	Site Name	Distance To (m)	Direction To	Qualifying Interests (* denotes a priority habitat)	Conservation Objectives	Assessment
SAC	000396	Pollardstown Fen SAC	1644.50	WithinDistance	<b>Habitats</b> 7210 Calcareous fens with Cladium mariscus and species of the Caricion davallianae* 7220 Petrifying springs with tufa formation (Ceratoneurion)* 7230 Alkaline fens <b>Species</b> 1014 Narrow-mouthed Whorl Snail ( <i>Vertigo angustior</i> ) 1013 Geyer's Whorl Snail ( <i>Vertigo geyeri</i> ) 1016 Desmoulin's Whorl Snail ( <i>Vertigo moulinsiana</i> )	<a href="http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000396.pdf">http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000396.pdf</a>	
SAC	002331	Mouls Bog SAC	3162.39	WithinDistance	<b>Habitats</b> 7110 Active raised bogs* 7120 Degraded raised bogs still capable of natural regeneration 7150 Depressions on peat substrates of the Rhynchosporion	<a href="http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002331.pdf">http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002331.pdf</a>	
SAC	001387	Ballynafagh Lake SAC	10672.50	WithinDistance	<b>Habitats</b> 7230 Alkaline fens <b>Species</b> 1065 Marsh Fritillary ( <i>Euphydryas aurinia</i> ) 1016 Desmoulin's Whorl Snail ( <i>Vertigo moulinsiana</i> )	<a href="http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO001387.pdf">http://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO001387.pdf</a>	

- Scrolling out from the map itself will illustrate the location of the SACs in relation to the centre of the project area. The printer symbol along the bottom righthand corner of the map generates a '.png' file of the current map view, which can be saved or printed out.
- To search for SPAs with 15 km of the project area, press the 'ADD NEW TARGET' tab and repeat the process.

This EPA mapping tool also has all the EPA licensed emissions, (IED, Waste, IPC etc.), designated sites, water quality information, and helpfully, the flow direction arrows for the waterbodies (which can be accessed using the dropdowns at the top of the page).

## Appendix 5

### NIS template

See accompanying WORD document 'NIS Template for Forestry vers28Aug20'.

*end*