BirdWatch Ireland Submission

Q8. Have the correct strategic risks been identified or are there other significant risks that should be included?

Answer (Overview of Submission and attachment below):

1. The section of the report on Brexit needs to include a section on the risk of divergent regulations north and south of the border and in particular environmental regulations. I attach a briefing by the Environmental Pillar (of which BirdWatch Ireland is a member) and Northern Ireland Environment Link on this topic. The risks include the potential for 'a race to the bottom' for environmental regulation not only on the island of Ireland but potentially across Europe. If there are more relaxed regulations north of the border, this could create competitive disadvantage for some ROI sectors including agriculture putting further pressure on compliance with environmental regulation.
2. The section on climate change and biodiversity is patchy and needs further elaboration. In addition the choice of only one indicator (91% of habitats have bad or inadequate ecological status) is poor. The indicators for species should also be included as well as the indicators for water. Two thirds of our wild bird species are red or amber listed birds of conservation concern. I include two sources of information from which detail should be included:
    a. National Biodiversity Data Centre work on indicators and here.
    b. Irish government 6th national report to the Convention on Biological Diversity is here.
    c. The EPA will be publishing the State of the Environment report soon, maybe contact them.

3. In addition, the primary pressures and threats to biodiversity are not described. The most significant issue for biodiversity is habitat loss. The report only mentions that climate change has an impact and while this is true its is not the worst impact. Habitat loss, disturbance, displacement, pollution and cumulative impacts from intensification of agriculture, inappropriate forestry, land use change, inappropriate siting of wind farm infrastructure, modifications to rivers including flood protection measures pollution and more. The impacts I have just described will be worsened by climate change. And then climate change and warming temperatures will bring its own issues. These pressures and threats must be described properly.

4. The risks are also not adequately described- They needs more elaboration. Find out more here on the economic and social benefits of biodiversity in Ireland. What is the risk? If we do not address biodiversity loss what risks do we face? The risks include
    a. failing to meet our obligations to the CBD and the European Commission.
    b. Species extinction... permanent loss of our national heritage.
    c. failing to protect nature for its own intrinsic value, species extinction. Having to spend millions to stop species going extinct instead of addressing the reasons for declines in the first place (ie. Hen Harrier funding to stop species going extinct, funding for Curlew)

d. failure to secure the free services that nature provides: ie. carbon sequestration (from peatland habitats (all have bad ecological status)), water filtration and regulation, climate regulation, pollination, health and well-being etc.
e. etc...

The actual risks of loss of biodiversity and climate change need to be described better.

Northern Ireland environment link

Environmental Pillar
Working for a sustainable future

Joint Briefing: Brexit and cross-border environmental cooperation on the island of Ireland

The **Environmental Pillar** and **Northern Ireland Environment Link**, who together represent almost 100 environmental organisations from across the island of Ireland, are working together to draw attention to the cross-border environmental implications of Brexit – one of six key areas of cooperation outlined by the North South Ministerial Council as established under the Good Friday Agreement.

Background: the Environment, the EU and the Border

- The island of Ireland and its surrounding seas represent a **single biogeographic unit** with shared land and sea borders. Given that environmental issues **do not respect borders**, effectively addressing these issues on an all-island basis is dependent upon **close cross-border cooperation**.
  - For example, the vast majority of **EU Birds Directive Annex 1 species** on the island of Ireland occur on both sides of the border, such that they can only be effectively conserved on an all-island basis.
- Cross-border cooperation on the island of Ireland is currently **deeply embedded in the common frameworks of EU environmental law and policy** in place as a result of our shared membership of the EU. The **vast majority** of our environmental laws and policies are currently governed by legal frameworks set at the EU level, and much of the **funding for cross-border environmental projects** comes via EU programmes.
- Working together within this **common legislative and funding framework** has been the major driver of environmental improvements on the island of Ireland, facilitating cross-border cooperation between both governmental and non-governmental organisations on a broad range of environmental issues. Together, this has enabled us **to more effectively address cross-border environmental issues** such as the conservation of species and habitats on an all-island basis, with knock-on benefits for the economy and wider society.
  - For example, this has been crucial in the case of **migratory species** that utilise wetlands designated under the **EU Birds Directive** in both jurisdictions. Approx. 90% of the Canadian Flyway population of Light-bellied Brent Geese visit the island of Ireland each year, with the majority using designated wetlands in Northern Ireland during the autumn staging period (Oct-Nov) and designated wetlands in the Republic of Ireland during the main wintering period (Dec-March).
- Common environmental standards also play a crucial role in **providing a level playing field** and **preventing unfair regulatory competition** across key sectors in relation to cross-border trade, indirectly securing more robust protection of the environment.
  - For example, the common set of standards in place under the **EU Birds and Habitats Directives** are currently helping to ensure that port expansions in both Northern Ireland (Belfast Harbour) and the Republic of Ireland (Galway Port) are required to take the same full account of the need to protect the natural environment, thereby providing **a level playing field across the island of Ireland** with regard to the costs of minimising the impacts from economic activities on species and habitats. These common standards will also be crucial in relation to the proposed 400kv North/South Interconnector being developed as part of the **Single Energy Market**.
- The European Commission (EC) and the Court of Justice of the European Union (CJEU) currently play a crucial role in **overseeing and enforcing compliance** with these standards and **securing access to justice for citizens and civil society organisations**, thereby ensuring harmonised implementation and a level playing field for business. As highlighted by 'fitness check' of the EU Birds and Habitats Directives, the vast majority of reported breaches of this legislation in the UK and Ireland originate from citizens' complaints and *"...without EU enforcement and pressure the implementation...would have been weaker".*

Potential Implications of Brexit

- The UK's withdrawal from the EU poses a **significant threat to cross-border environmental cooperation** on the island of Ireland and the effective operation of the cross-border mechanisms that such cooperation relies on.

- In particular, once the UK leaves the EU there is a risk that a **divergence** or **weakening** of environmental protection standards in Northern Ireland will **undermine the level playing field** that is relied on to facilitate cross-border trade and market integration on the island of Ireland and put **cross-border cooperation and environmental protection** at risk.

- The potential loss of the EC's monitoring and enforcement function and the jurisdiction of the CJEU will leave a **particularly important gap** in the current system of environmental law enforcement in **Northern Ireland** given that it lacks an independent environmental regulator. In the absence of any suitable alternative arrangements, this would result in **a de facto weakening of environmental protection** on the island of Ireland.

- While there remains considerable uncertainty regarding the shape of the future relationship between the UK and the EU, it is clear that the way in which environmental issues are dealt with in terms of the outcome of Article 50 process could have **significant implications** for the **environment** and **cross-border cooperation** on the island of Ireland. It is therefore vital that these implications are fully addressed in the ongoing negotiations regarding the UK's withdrawal from the EU.

The EU, the Good Friday Agreement and Environmental Cooperation

- Cross-border environmental cooperation on the island of Ireland operates via a range of formal and informal channels. Since 1973, this cooperation has been **underpinned by the common set of environmental standards established at EU-level**. There is now a long history of cooperation between both jurisdictions directed at meeting the requirements of the EU environmental acquis.

- This cooperative framework was **recognised and strengthened** by the signing of the Good Friday Agreement (GFA) in 1998, with Strand II providing for the institutional mechanisms necessary to develop and promote increased **cross-border and all-island cooperation** on **environmental matters**.

- In particular, the North South Ministerial Council (NSMC) was established *"to develop consultation, co-operation and action within the island of Ireland – including through implementation on an all-island and cross-border basis - on matters of mutual interest"*, with **environment listed as one of the six key areas for cooperation**. It is supported by a joint secretariat and a set of all-island 'implementation bodies'.

- The GFA also provides specifically for the NSMC **to facilitate co-operation and coordination in EU matters**, setting out that the NSMC should *"consider the EU dimension of relevant matters, including the implementation of EU policies and programmes and proposals under consideration in the EU framework."* At present, much of the work of the NSMC (Environment) is **related to EU legislation and funding programmes**.

Key Recommendations: Preventing a Hard Environmental Border Post-Brexit

- In order to ensure that the environment on the island of Ireland is not put at risk by the UK's departure from the EU, any agreement that is reached via the Article 50 process must fully address the issue of **cross-border environmental cooperation**. In particular, the pivotal role played by **common and enforceable EU standards** in **facilitating cross-border cooperation** and **ensuring a level playing field** across **all areas of environmental policy** must be fully taken into account in the outcome of the negotiations – including both the framework for the future relationship any transitional arrangements that are agreed. To make progress, we believe that it is the interests of all sides to work together and secure an outcome that guarantees close future cooperation on environmental matters.

- **Specifically, it should be agreed:**

  - That the island of Ireland and its surrounding seas comprise **a single biogeographic unit** and that effectively addressing shared environmental issues such as biodiversity loss and the conservation of freshwater and marine resources on an all-island basis relies on **close cross-border cooperation**.

  - That cross-border cooperation on environmental matters is a core part the Good Friday Agreement and is **embedded in the common framework of EU law** and that any divergence or lowering of environmental standards on the island of Ireland as a result of Brexit could have significant implications for the environment, for citizens, and for businesses.

  - That **preserving cross-border cooperation** and **preventing unfair competition** in relation to environmental protections post-Brexit will depend on maintaining **the closest possible regulatory alignment** between Northern Ireland and the Republic of Ireland on all matters currently covered by the EU environmental acquis.

  - That **appropriate mechanisms need to be put in place to guarantee this close regulatory alignment on environmental matters** (i.e. to resolve any regulatory divergences and maintain common minimum standards at least as high as those currently in place). This should include consideration of the potential need to secure the on-going application of key EU Directives across the island of Ireland.

  - That to effectively secure equivalence in terms of environmental protection standards, **equally robust enforcement mechanisms** will also need to be in place on both sides of the border, noting the significant role currently played by EU institutions in **overseeing and enforcing compliance** with environmental standards on the island of Ireland and **securing access to justice** for citizens and civil society organisations.

  - That there needs to be on-going commitment to the **continued provision of appropriate and effective cross-border structures, mechanisms and funding streams** to support environmental cooperation and resolve and manage cross-border environmental issues post-Brexit.

Examples: Working Together to Address Environmental Issues

Below are a few practical examples of **cross-border environmental cooperation** on the island of Ireland, highlighting the **key supporting role** played by **EU law, policy, and funding**.

- **Conserving species and habitats on an all-island basis:**

  - For over 20 years, the **EU Birds and Habitats Directives** have helped to ensure a more coordinated and consistent approach to biodiversity conservation on the island of Ireland (e.g. by establishing a common set of standards for the designation and management of a coherent network of protected **'Natura 2000' sites**). Any divergence post-Brexit would risk undermining the ecological coherence of this network on the island of Ireland. The recent 'fitness check' of these laws highlighted cooperation between Member States and between governmental and non-governmental actor as a major factor for success in establishing effective conservation measures.

  - There are a number of **cross-border areas protected under these laws** as well as a number of all-island priority species. For example, the Marsh Fritillary is listed on **Annex II** of the **EU Habitats Directives** and is currently threatened with extinction on the island of Ireland. In 2015, in collaboration with the National Parks and Wildlife Service, the Northern Ireland Environment Agency and Butterfly Conservation Northern Ireland, the National Biodiversity Data Centre established an all-island Marsh Fritillary monitoring scheme across its core sites in order to boost the survival prospects of the species.

  - The **EU LIFE fund** is currently supporting all-island work to improve the conservation status of the Roseate Term – a species listed on **Annex I** of the **EU Birds Directive** – at sites protected under this Directive in

England, Wales, Northern Ireland (Larne Lough SPA) and the Republic of Ireland (Dalkey Islands SPA, Rockabill SPA, and Lady's Island Lake SPA).

- **Addressing the threat posed by invasive species:**

  - Invasive alien species (IAS) are a significant threat to biodiversity on the island of Ireland and can easily cross borders unless effectively managed. Many of the species on the recently adopted **EU IAS Regulation** 'List of Union Concern' occur in Northern Ireland and/or the Republic of Ireland. Such issues are currently being addressed via the joint 'Invasive Species Ireland' project supported by the Northern Ireland Environment Agency and the National Parks and Wildlife Service.

- **Managing cross-border river basins and shared inshore waters:**

  - There are three cross-border River Basin Districts on the island of Ireland designated under the **EU Water Framework Directive,** with the relevant authorities in Northern Ireland and the Republic of Ireland cooperating closely in order to ensure their effective management. This has included the development and coordinated implementation of River Basin Management Plans – supported by the North South Working Group on Water Quality. Monitoring programmes are also closely coordinated and have benefited from the support provided by the **INTERREG funded** 'North South Shared Aquatic Resource' (NS-SHARE) project. Cooperation is also facilitated via joint working between cross-border 'Rivers Trusts' and the relevant authorities. There has also been cooperation on the development of Flood Risk Management Plans through the **EU Floods Directive** to ensure that plans and measures are properly coordinated.

  - A coordinated approach to the management of cross-border sea loughs (Lough Foyle and Carlingford Lough) – both of which are covered by designations under the **EU Birds and Habitats Directives** – is facilitated by the Loughs Agency, a statutory body established as one of the all-island 'implementation bodies' under the Good Friday Agreement. It remains unclear how the agency will effectively operate post-Brexit, although **INTERREG funding** of €3.28m was recently announced to deliver the 'The Shared Waters Enhancement and Loughs Legacy' (SWELL) project which will seek to facilitate cross-border cooperation and contributing towards compliance with the **EU Water Framework Directive**.

- **Tackling illegal waste issues:**

  - A close working relationship has developed in order to more effectively meet the requirements of waste legislation and address cross-border illegal waste activities. For example, after the discovery of illegal waste in Northern Ireland which had originated in the Republic of Ireland, both governments worked together to develop a framework agreement set within the legal context of the **EU Shipment of Waste Regulation**. Post-Brexit, there is a risk that Northern Ireland could become an easy dumping ground for waste produced in the South if standards and/or enforcement efforts are relaxed.

The **Environmental Pillar** is comprised of 26 national environmental NGOs, who work together to represent the views of the Irish environmental sector. The main aim of the organisation is to create and promote policies that advance sustainable development. It also provides a channel for the government and other social partners to engage with the environmental sector on policy matters. The Environmental Pillar also provides the secretariat for the Irish Environmental Network, an umbrella network that works to support environmental NGOs through access to funding and services.

Northern Ireland Environment Link (NIEL) is the networking and co-ordinating body for non-statutory organisations concerned with the environment of Northern Ireland. It has 70+ Full Member organisations, who represent more than 100,000 individual members. NIEL was formally launched in 1990 to complete the UK network: Scottish Environment Link, Wales Environment Link and Wildlife and Countryside Link and works in close cooperation with the Irish Environmental network on strategic cross-border environmental issues.

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