



## Requirements for delivering an effective Hen Harrier Threat Response Plan

***BirdWatch Ireland** is the largest independent conservation organisation in Ireland. Established in 1968, we currently have over 15,000 members and supporters and a local network of 30 branches nationwide. The primary objective of BirdWatch Ireland is the **protection of wild birds and their habitats** in Ireland. In order to fulfil this objective we carry out extensive research and survey work; operate applied conservation projects and manage a network of reserves nationwide; prepare and advocate policies; recruit, retain and service a growing membership base; promote the importance of wild birds and biodiversity through field education, dedicated media and to the national media and build on existing partnerships with NGOs, with Government departments, the European Commission and farming organisations, and to establish new partnerships with other sectors. BirdWatch Ireland is the Republic of Ireland partner of BirdLife International, a partnership of over 100 bird conservation organisations across the globe. As a global and European partnership, BirdLife International influences decision-making processes through lobbying and production of robust information and policy material.*

### **1.0 Introduction**

BirdWatch Ireland welcomes the development of a Hen Harrier Threat Response Plan (HHTRP), which in accordance with the legal requirements of Regulation 39 of S.I. No. 477/2011<sup>1</sup>. Section 2(b) of this regulation lays down a number of important requirements which must be met in the development and implementation of a threat response plan or plans including the requisite measures “to preserve, maintain or re-establish a sufficient diversity and area of habitats” for Hen Harriers “including the creation of protected areas, as appropriate, the upkeep and management in accordance with the ecological needs of habitats inside and outside the protected zones, the re-establishment of destroyed biotopes and the creation of biotopes.” Or as it was summarised by the National Parks and Wildlife Service, the HHTRP aims to ‘cease, avoid, reverse, reduce, eliminate or prevent threats to the Hen Harrier’.

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<sup>1</sup> Regulation 39 of S.I. No. 477/2011 can be found in the Annex section of this report

The HHTRP is the appropriate mechanism to implement, for the first time, an effective and urgently required conservation strategy to restore Hen Harrier populations and the habitats on which they depend. BirdWatch Ireland will fully support a robust HHTRP which aims to achieve the stated objectives and deliver on our legal obligations with respect to Hen Harrier conservation. However, we are also cognisant of the complexity of the issues facing Hen Harriers and the varied stakeholder and political interests involved. To date, the evidence-based conservation actions required to address the known pressures and threats to Hen Harriers are also those which have met with greatest resistance. At present, the interests of stakeholders from farming and forestry sectors and aligned political agendas are inextricably linked to the fate of the Hen Harrier population due to both real and perceived conflicts of interests with regards to the management of the Irish uplands, including Special Protection Areas (SPA's).

We firmly believe that an effective HHTRP can and should provide the instrument for dissolving such conflicts and achieving effective stakeholder consensus and collaboration to deliver for Hen Harrier conservation and stakeholders alike. We acknowledge however that this is undoubtedly a challenge and will require a robust and transparent long-term strategy, one that we wish to help shape.

With this in mind BirdWatch Ireland would also like to encourage strengthened transparency and communication within the Consultative Committee process. In particular we are concerned that the draft Plan was sent to the European Commission before the Consultative Committee seeing the document and its contents. This is regrettable as it undermines the function of the Committee. The lack of transparency extends to some actions within the draft Plan that have been agreed by the Government's Working Group and presented without sufficient detail and rationale which leads to questions on their potential efficacy to ensure conservation of the Hen Harrier and an effective TRP.

## **2.0 The Requirement for the Plan to reflect the available scientific data**

The Hen Harrier has been the focus of extensive research and monitoring, including a national survey undertaken every five years over the past two decades, which has facilitated a detailed understanding of the conservation status and ecological requirements of the species as well as specific factors which influence Hen Harrier populations. It is essential that the outcomes of the HHTRP are directly aligned and informed by the peer-reviewed ecological data on Hen Harrier, specifically evidence on the primary pressures and threats on Hen Harrier populations.

We wish to highlight the specific example of afforestation within the SPA network – high levels of afforestation and forest maturation are recognised as one of the primary threats to Hen Harrier populations in Ireland. Based on the ecological requirements of Hen Harriers, the level of forest cover in the SPA network is too high (Irwin *et al.* 2012), yet there remains significant pressure that further afforestation in SPA sites is licensed. Any proposed increase in afforestation within the SPA network would be contrary to the scientific evidence, detrimental to Hen harrier populations and upland areas, and would not only represent a severely failed HHTRP but would be a breach of our obligations under the Birds and Habitats Directives.

BirdWatch Ireland is concerned that some of the actions within the draft HHTRP do not appear to be adhering to the available science. In addition, many of the actions also relate to future research priorities. While it is essential that conservation is underpinned by scientific evidence, knowledge gaps cannot be used as an excuse to not act on the large body of research that already exists. The plan needs more detail on how Hen Harriers and their habitats will be protected from the identified sectoral pressures, a clear and ambitious timeline for the delivery of the objectives as well as the public bodies that will deliver the objectives.

### **3.0 The Requirement to apply the Precautionary Principle**

Despite extensive research and monitoring of Hen Harrier populations in Ireland, there remain knowledge gaps on specific aspects of Hen Harrier ecology and factors which effect their populations. In this regard, lack of evidence of the effects of specific management or development activities on Hen Harrier populations cannot be used as rationale to permit such activities to proceed – ‘absence of evidence is not evidence of absence’. Consequently, where there is uncertainty – the obligation is to apply the Precautionary Principle – unless scientific evidence can provide certainty there are no impacts.

### **4.0 BirdWatch Ireland comments on the Actions within the draft TRP**

The plan is meant to stop the decline of this important Annex 1 species but BirdWatch Ireland is concerned that the draft Plan as it stands now will not deliver for Hen Harrier. There are some good actions in the Plan especially on wind energy and on the agriculture side but some of these require greater detail for adequate assessment of their merits. Some actions in relation to forestry are not in line with Hen Harrier conservation at all and this needs to be addressed. Overall, the draft Plan is lacking the coherence required ‘to cease, avoid, reverse, reduce, eliminate or prevent threats to the Hen Harrier’. Additional effort is required to outline the detail of the actions in this draft and for this detail to be presented to the Consultative Committee members for review before the Plan is finalised. BirdWatch Ireland is happy to help strengthen this Plan should this opportunity be made available to us.

In the following section BirdWatch Ireland submits comments on the actions in the Plan.

#### **4.1 Actions 1-12**

##### **Overview**

Ensuring that the Hen Harrier can co-exist with farming communities is an essential part of this plan and effective agri-environment schemes which work for the farmer and biodiversity are essential. In relation to the actions focused on Agriculture and a socio-economic context, the Hen Harrier LLAES Consultations have shown that many farmers want to continue farming as part of a vibrant rural economy. The Hen Harrier LLAES may potentially be the most positive outcome of the HHTRP process.

The Green Low-carbon Agri-Environment Scheme, which came into effect in 2015, includes a measure which aims to promote the maintenance and creation of suitable habitat for Hen Harriers, with a payment rate of €370/ha per annum. Whilst this measure may help to alleviate some of the pressures

on landowners within the SPAs, the prescriptions are unlikely to be sufficiently targeted to make a real difference for Hen Harriers. Furthermore, a funding limit of €7,000 for each applicant means that farmers with lands over 19 hectares of Hen Harrier habitats cannot manage all of the target Hen Harrier areas. Finally, the operation and roll-out of the Hen Harrier measure does not require the use of specialist advisors with experience of managing habitats for Hen Harriers. As a result, certain actions may be targeted poorly, or even result in a reduction in the quality of certain habitats to Hen Harriers.

The Hen Harrier Locally-led Agri-environment Scheme (LLAES) offers additional supports to GLAS and non-GLAS farmers to undertake specific actions for Hen Harriers.

Between July and August 2017 the LLAES has undertaken extensive consultation with landowners prior to its launch, and the results of an attitudinal survey (published on social media November 16th 2017 @henharrierproject) of farmers in Hen Harrier SPAs provided clear insights into the challenges and desires of these communities. It is clear that ideally farmers want a future of farming enterprise in these areas, sustainable and viable with meaningful supports to deliver produce and wider environmental benefits.

Some of the actions within the agricultural section of the draft HHTRP are too vague for detailed assessment. BirdWatch Ireland request that we are provided with sufficient detail about what is being proposed so that we can provide input.

**4.1.1 Actions 1-6.** Action 1 refers to a regulatory framework and a communication strategy. While both may be positive it is impossible to comment on the virtues of either initiative without the necessary detail about what is being proposed. Any evaluations of the current different agri-environment schemes for Hen Harrier should be carried out by independent evaluators with ornithological experience and qualifications. Environmental and conservation organisations should be included in any review as a consultee.

Some of the habitats highlighted in Action 1 as being a priority for inclusion in Agri-environment schemes are also targeted within the Forestry Services Synergies document as being targeted for afforestation. This contradiction needs to be addressed.

In relation to Action 4 on the extension of the lifespan of agri-environment schemes, it has already been established within the consultative committee that the Government can extend schemes beyond the end of an RDP cycle. This is one of the recommendations which was strongly supported by both environmental and farming reps within the consultative committee. The timeline of 2017-2020 for this action doesn't make sense and no rationale is provided. The consultative committee should have a response from the Government on this action before the draft HHTRP goes out to public consultation.

**4.1.2 Action 7:** BirdWatch Ireland has concerns in relation to current implementation of the EIA regulations in relation to agricultural activities. In particular the thresholds for the different activities including field boundary removal and land restructuring are too high. Significant tightening of implementation of the EIA regulations is needed in Ireland. Where a landowner is found to have breached the EIA (Agriculture) Regulations there should be an action outlining how this will be addressed. We are aware that there are issues with the current implementation of the EIA regs and the actions outlined do nothing to suggest that implementation will be significantly improved.

The habitat mapping exercise outlined in Action 7 is positive but in addition to the quantitative assessment there should also be a qualitative assessment of habitats.

Action 7 should be changed to reflect the updated EIA regulations for agriculture which were amended in 2017.

**4.1.3 Actions 8-11:** BirdWatch Ireland supports these measures for effective 'Wider Countryside' conservation for Hen Harrier. Action 9 however is vague and needs to be strengthened. More detail needs to be provided on this action. The inclusion of non-designated Hen Harrier habitat within GLAS and Commonage Management Plans under actions 8 and 9 is positive. Consideration should be given to the management of Hen Harriers within other designated sites such as NHA's.

The re-evaluation of the relative importance of important breeding areas under action 10 should not result in areas being abandoned. Areas where habitat has been lost due to agricultural intensification or burning should be subjected to a review under the relevant regulations and relevant restoration measures should be prioritised.

**4.1.4 Actions 12a-12d:** BirdWatch Ireland supports the Wider countryside non-breeding season measures.

## **4.2 Actions 13-21 relating to Forestry**

### **Overview**

These actions are based on the premise of developing an 'appropriate long-term forest management strategy covering all six SPAs ..... in order to reduce the impact of the closed canopy forest bottleneck, to increase the quality of foraging resources within the forest estate, to promote habitat linkage and to reduce the risks of depressed breeding productivity rates'.

**These actions are missing the necessary detail for adequate consultation and comment. BirdWatch Ireland requests that this detail be provided so that we can assess these actions against Hen Harrier Conservation needs.**

The plan contains no specific information on the management of forestry within the SPA network. There is no information of the amount of forestry which will be removed for example or how habitats will be restored and managed following deforestation. Given that a detailed habitat mapping exercise was carried out when the HHTRP was initiated we would have expected that specific actions and management measures would have been outlined for each SPA and that these measures would have been linked to site specific Conservation Objectives.

The measures in this section are not adequately reflecting the available scientific evidence cited in the forestry sectoral document which highlight the negative relationship between forestry and Hen Harrier conservation and that given the established negative relationship between Hen Harrier breeding success and second rotation pre-thicket forestry<sup>2</sup> a maximum threshold of 40% total forest

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<sup>2</sup> Wilson, M. W., O'Donoghue, B., O'Mahony, B., Cullen, C., O'Donoghue, T., Oliver, G & Rotella, J. J. (2012). Mismatches between breeding success and habitat preferences in Hen Harriers *Circus cyaneus* breeding in forested landscapes. *Ibis*, 154(3), 578-589.

cover in the landscape would be needed to ensure that a Hen Harrier breeding population does not collapse<sup>3</sup>.

A 40% threshold is well below the current forest cover across the six SPAs<sup>4</sup>. It was predicted in 2006 that afforestation and the maturing age structure of forestry would drive the loss of suitable open habitat beyond critical levels by 2015. Within the nine most important areas in the country for breeding Hen Harrier it was predicted that habitat loss would drive a 30% reduction in these populations<sup>5</sup>. The 2010 and 2015 national surveys<sup>6,7</sup> demonstrate the decline in the species.

Based on the scientific literature it is clear that forest cover within the SPA network needs to be reduced to at least 40%. Habitat restoration and management will then be needed to ensure that the ecological needs of the Hen Harrier population and their habitat are met.

The reference to the Slieve Bloom Mountains SPA (004160) within the draft plan is misleading and unhelpful. The Plan states that *“It is noted that the Slieve Blooms SPA, where there is nearly 60% coniferous plantation cover, is the best performing SPA in terms of Hen Harrier population increase. However, the remaining 40% of that SPA is almost all heather moorland managed optimally for Hen Harrier. In 2015, 90% of Hen Harrier nests within this SPA were in heather rather than afforested areas. This suggests that improved management of non-afforested lands in other SPAs, alongside measures within forests themselves may provide opportunities for providing more suitable habitat.”*

Comparing the performance of the Slieve Bloom Mountains SPA (004160) to the other five SPA ((Mullaghanish to Musheramore Mountains (004162), Slieve Aughty Mountains (004168), Slieve Beagh (004167), Slievefelim to Silvermines Mountains (004165) and the Stack’s to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle (004161)) is not comparing ‘like with like’. The Slieve Blooms SPA is very different to the other SPAs in terms of its management, habitat composition and the breeding behaviour of the Han harriers within the site. The other five SPAs do not consist of a managed heather moorland of almost continuous habitat that is bordered by forestry. In no other SPA is there such a predominance of heather nesting Hen Harriers. This comparison gives a false impression that the scale of afforestation within the SPA network is compatible with the conservation objectives of the sites. This is not the case unless:

- The TRP establishes large areas of forestry free habitat such as heather moorland within the SPAs and connects these areas of habitat at a landscape level.
- The TRP sets actions for the protection, restoration and management of traditional Hen harrier habitats.

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<sup>3</sup> Irwin, S., Wilson, M., O’Donoghue, B., O’Mahony, B., Kelly, T., & O’Halloran, J. (2012). Optimum scenarios for Hen Harrier conservation in Ireland. Cork: Department of Agriculture, Food and the Marine by the School of Biological, Earth and Environmental Sciences, University College Cork.

<sup>4</sup> Moran, P. & Wilson-Parr, R. (2015) Hen Harrier Special Protection Area (SPA) Habitat Mapping Project 2014. Irish Wildlife Manuals, No. 83. National Parks and Wildlife Service, Department of Arts, Heritage and the Gaeltacht, Ireland.

<sup>5</sup> Wilson, M., Gittings, T., O’Halloran, J., Kelly, T., & Pithon, J. (2006). The distribution of Hen Harriers in Ireland in relation to land use cover, particularly forest cover. COFORD, Dublin.

<sup>6</sup> Ruddock, M., (2012). Republic of Ireland National Hen Harrier Survey 2010. National Parks and Wildlife Service.

<sup>7</sup> Ruddock, M., Mee, A., Lusby, J., Nagle, A., O’Neill, S. & O’Toole, L. (2016). The 2015 National Survey of Breeding Hen Harrier in Ireland. Irish Wildlife Manuals, No. 93. National Parks and Wildlife Service.

If these actions are central to the TRP only then should a comparison be made with the Slieve Bloom Mountains SPA.

Further, we wish to bring to your attention the Opinion of Advocate General of the European Court of Justice issued on April 18<sup>th</sup> 2018 on C-167-17. While a ruling from the Court has not been issued yet, the opinion of the Advocate General is worth noting in terms of implications for management measures within Hen Harrier SPAs.

**4.2.1 Action 13 and 15:** These actions contain no detail whatsoever and render our assessment of them impossible. The detail must be provided so that they can be assessed.

**4.2.2 Action 14:** This action is lacking detail for effective conservation of Hen Harrier. Considering that the habitat mapping exercise was completed a number of years ago, this action should instead be based on a detailed habitat site specific restoration and management plan including presentation of the area of habitat which will be restored which must be linked to detailed site-specific conservation objectives.

**4.2.3 Action 16** states that forest management within important Hen Harrier breeding and wintering habitat should be based on the best available scientific evidence. Ongoing research which should inform forestry management include the outputs of the SHINE (Supporting Hen Harriers In Novel Environments) project research which is nearing completion in University College Cork. BirdWatch Ireland supports this measure in principle but significant additional detail is required in order to assess the merits of the action.

**4.2.4 Action 18** states that the Forest Service and Coillte will develop a programme of targeted forest removal focused on lower timber productivity forests adjoining open moorland habitat, to expand and link prime Hen Harrier habitat. BirdWatch Ireland is concerned that the primary criterion for the selection of areas of forestry to be removed -the conservation benefits for Hen Harrier- is missing from this action. This action needs refocus and additional detail.

**4.2.5 Action 19:** This action is particularly problematic. It states that:  
*'In tandem with the identification of forest areas for removal and the subsequent implementation of the forest removal programme, afforestation of some areas of rough grassland can be considered, based on the step-by-step process outlined in the Forest Service document Forestry and Hen Harrier: Exploring Synergies, November 2015 and the necessary appropriate assessment procedures. Improved grassland is of low value as a Hen Harrier habitat and these areas may also be considered without the requirement for forest removal elsewhere.'*

BirdWatch Ireland rejects the proposal to allow further afforestation within the SPAs including on rough grassland. **There can be no consideration of further afforestation within the SPAs.**

In addition, it is difficult to comprehend the relation between Action 18 and 19 without detailed Conservation Objectives to assess these against. We are concerned that the potential exists that the open habitat resulting from the targeted forest removal carried out under Action 18 could be used to compensate for the afforestation of rough grassland, an important Hen Harrier foraging habitat - *"In tandem with the identification of forest areas for removal and the subsequent implementation of the forest removal programme, afforestation of some areas of rough grassland can be considered."* The removal of forestry from the Hen Harrier SPA network and the restoration of suitable Hen Harrier habitat is essential to the conservation of the species. Grassland that has been improved within the

Hen Harrier SPAs may already be in breach of the regulations governing the SPAs. The Statutory Instruments for Hen Harrier SPAs list the Activities Requiring Consent which includes Agricultural improvement of heath or bog. These are activities which cannot be undertaken without adequate review and assessment of the NPWS. Just because they may be improved now does not mean that afforestation is the next step, indeed it may be restoration to the preceding habitat that is required. We are totally opposed to any plan by the Forest Service to approve afforestation on improved agricultural grassland in SPAs under the premise that intensively managed grassland is of limited value to Hen Harrier. Improved agricultural can easily be reverted into low intensity grassland of benefit to Hen Harrier and this should be the preferred management option. *See further detail on Article 6(3) and 6(4) in Section 6.*

**4.2.6 Actions 20-24** are too vague for us to provide any meaningful input. These actions should be redrafted outlining exactly what is being proposed.

**4.2.7 Action 25** states that the afforestation of important wintering sites should be avoided. Avoiding afforestation within these critical sites is not good enough. An assessment of the habitat and prey availability within these sites should be carried out as per action 27 and protective measures put in place to prevent the loss of habitat due to afforestation and other pressures including development pressures.

There is no action which clearly states that nationally important habitats outside of designated will be protected from afforestation. The actions relating to the Red Zone methodology will only reduce disturbance and will not address the bigger issue which is habitat loss and degradation. An action needs to be drafted which outlines how important Hen Harrier habitats outside of designated areas, which qualify as HNV should be protected from afforestation.

### **4.3 Actions 28-39 Wind Energy Development**

#### Overview

The Hen Harrier Conservation and the Renewable Energy Sector in Ireland (2017) report has been drafted without any meaningful input from the consultative committee. Having said that the actions relating to wind energy are some of the strongest in the plan.

While the negative impacts of windfarms on bird species vary on a regional and species basis it is accepted that the potential negative effects of wind turbines on Hen Harriers include the direct effect of mortality caused by collisions, and indirect effects such as displacement due to disturbance, loss of foraging or nesting habitat, and barrier effects<sup>8</sup>.

In relation to the report 'Hen Harrier Conservation and the Renewable Energy Sector in Ireland' (2017) BirdWatch Ireland has some general comments to make. The draft plan has noted the findings of Fernández-Bellon et al., (2015)<sup>9</sup> which found that nest within 1 km of wind turbines were less successful than nests found at greater distances. The results of this study are close to statistical significance

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<sup>8</sup> O'Donoghue, B., O'Donoghue, TA., King., F. 2011 The Hen Harrier in Ireland: Conservation in the 21st Century, Biology and Environment: Proceedings of the Royal Irish Academy, Vol. 111B (2011). DOI: 10.3318/BIOE.2011.07

<sup>9</sup> Fernández-Bellon, D., Irwin, S., Wilson, M. & O'Halloran, J. (2015). Reproductive output of Hen Harriers *Circus cyaneus* in relation to wind turbine proximity. *Irish Birds*. 10: 143-150.



despite a small sample size. These results should be interpreted with the precautionary principle in mind. The small sample size may also be reflective of disturbance impacts associated with wind farms.

Likewise, the research by Wilson et al., (2016) is cited in the report. It concluded that the presence of wind farms is negatively related to Hen Harrier population trends in squares surveyed in 2000 and 2010, but this relationship was not statistically significant, and may not be causal<sup>10</sup>. These results should also be interpreted with the precautionary principle in mind while also considering the range of factors potentially driving the spatial overlap in wind farms and Hen Harriers.

Pearse-Higgins et al (2009)<sup>11</sup> have highlighted the impact of windfarm disturbance and avoidance on foraging Hen Harriers, resulting in a 53% reduction within 500m of turbines. This highlights the negative impact wind farms may have on habitat quality and potentially foraging success and breeding productivity. These disturbance impacts have been supported by more recent research in the UK<sup>12</sup>. The avoidance of windfarms for a 250m-500m radius will result in a loss of foraging habitat for the local Hen Harrier population. Eurasian skylark (*Alauda arvensis*) is very susceptible to the negative effects of wind farms<sup>13</sup>. The species is a key prey species for Hen Harrier. Reduced densities of Meadow pipit and Skylarks within the footprint of the windfarm and other altered habitats and hard constructions will have knock on effects for any Hen Harriers whose territory the windfarm fall within.

Given that Hen Harriers are known to forage within 11km of their nest site any wind farms within this foraging distance may have a negative impact on foraging and breeding success<sup>14</sup>. This should be considered in SEA, EIA, NIS.

We support the conclusion of the wind energy document that: *“the development of a wind farm in a Hen Harrier SPA or immediately adjacent to an SPA will result in some loss and/or reduction in quality of breeding habitat. The creation of habitat to offset this impact is not mitigation as per Article 6.3. [NOTE: This reflects the current situation however this may be revised in light of future court rulings]. As such, and in the context of other cumulative pressures, it appears that*

- *any further wind farm development proposals in the SPAs would be considered to have significant adverse impact on the conservation objectives of the SPA;*
- *proposals to re-build, or “re-power” existing windfarms at the end of their permitted lifespan, or to extend their operational life through new planning permissions, would face a very severe test under appropriate assessment per Art 6(3) of the Habitats Directive.”*

These conclusions are however not followed up with a corresponding recommendation or action within either the recommendations of the wind energy sectoral report or the draft HHTRP. There are no actions which explicitly state that Hen Harriers either inside or outside of designated areas will

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<sup>10</sup> Wilson, M.W., Fernández-Bellon, D., Irwin, S. & O’Halloran, J. (2016). Hen Harrier *Circus cyaneus* population trends in relation to wind farms. *Bird Study* <http://dx.doi.org/10.1080/00063657.2016.1262815>.

<sup>11</sup> Pearce-Higgins, J.W., Stephen, L., Langston, R.H.W., Bainbridge, I.P. & Bullman, R. (2009a). The distribution of breeding birds around upland wind farms. *Journal of Applied Ecology* 46: 1323-1331.

<sup>12</sup> Haworth, P. F. & Fielding, A. H. (2012). A review of the impacts of terrestrial wind farms on breeding and wintering Hen Harriers. Report prepared for Scottish Natural Heritage. 39pp

<sup>13</sup> Bastos, R., Pinhanços, A., Santos, M., Fernandes, R.F., Vicente, J.R., Morinha, F., Honrado, J.P., Travassos, P., Barros, P. and Cabral, J.A., 2016. Evaluating the regional cumulative impact of wind farms on birds: how can spatially explicit dynamic modelling improve impact assessments and monitoring?. *Journal of Applied Ecology*, 53(5), pp.1330-1340.

<sup>14</sup> Irwin, S., et al (2012) Optimum Scenarios for Hen harrier Conservation in Ireland. UCC.

<https://www.ucc.ie/en/media/research/planforbio/pdfs/HEHHARRIERFinalProjectReportJune2012.pdf>

enjoy greater protection from Wind Farm development as the result of this process. Based on the available evidence there should be no-further construction of wind farms within or adjacent to Hen Harrier SPAs. Any windfarms which may impact upon nationally important population of breeding and wintering Hen Harrier inside or outside of designated areas should reflect the established impacts of wind farms on Hen Harrier within their EIA and NIS assessments.

There should also be a review of the use of mitigation and compensatory measures relating to wind farm developments in Ireland given the requirement for any such measures to be in line with Article 6(3) and 6(4) of the Habitats Directive.

**4.3.1 Actions 28, 36 and 39:** BirdWatch Ireland strongly supports these actions which will help to inform the future assessments of potential developments and the actions targeted at knowledge transfer. At present in Ireland there are no standard guidelines for professional ecologists and developers on the best practice survey requirements for birds or methods in place for assessing the impacts of wind energy interactions with birds. This is an ongoing issue which requires clarification and progress from professional bodies representing Ecological Consultants (e.g. Chartered Institute of Ecology and Environmental Management) and the NPWS. Post-construction monitoring requirements for wind farms in Ireland is lacking. In particular, following review of several wind farm consents, carcass search conditions sometimes require just 2 searches per year. A guidance note should be developed on post-construction bird monitoring and circulated to the different planning consent authorities.

We request that the Wind Energy Guidelines, the general assessment guidelines and the Hen Harrier assessment guidelines be subject to SEA, EIA and NIA and public consultation. Guidance should include a requirement for developers to engage with a suitably qualified Ornithologist with proven project expertise in Hen Harrier survey and assessment where the project may impact on suitable habitat for this species. A specific guidance note should also be published by NPWS for Cumulative Impact Assessment of Wind Energy Developments on Birds pursuant to Article 6(3) and 6(4) of the Habitats Directive.

Guidance should be sent to Planning Authorities highlighting the significance of non-designated Hen Harrier breeding and wintering grounds so that planning decisions are properly informed. **This should be included as an action.**

**4.3.2 Action 33:** This action relates to a review of the efficacy of the current offsetting works which are undertaken as a condition of planning. We would welcome a review of commonly used mitigation measures and compensatory measures in Ireland.

#### **4.4 Administrative, Review and Update- Actions 40-42**

**4.4.1 Action 40.** We support the establishment of site specific conservation objectives for Hen Harrier SPAs which have the objective of restoring the Hen Harrier breeding population to the levels which occurred at the time of designation. The establishment of conservation objectives should have been a prerequisite for the drafting of a HHTRP as all of the actions should be designed to deliver upon these conservation objectives.

According to Article 4(4) of Directive 92/43/EEC all sites submitted to the Commission must have established priorities for the maintenance or restoration of those sites (Conservation Objectives) at a favourable conservation condition (or Favourable Reference Values) within six years. To date,

Conservation Objectives have not been established and 'Favourable Reference Values' for Hen Harrier populations have not been defined within the six sites designated as SPAs for Hen Harrier in 2007. BirdWatch Ireland have submitted a document to the NPWS and the European Commission outlining the methods and required procedures for establishing Favourable Reference Values for Hen Harriers based on international best practice.

Conservation Objectives and Favourable Reference Values are important components to developing an effective conservation strategy for a given habitat or species, and would have several tangible benefits for the management of Hen Harrier SPAs and populations within, such as; defining measurable objectives required to achieving favourable conservation status; providing transparency to stakeholders as to the performance of the SPA network which would facilitate more efficient and realistic resource planning, and allowing the performance of the SPA network to be determined on an on-going basis which would facilitate effective reporting (e.g. Article 12), conservation planning and implementation of management plans on a site specific basis.

**4.4.2 Action 41** We support action 41 and welcome the opportunity to be involved in the review of ongoing implementation of the HHTRP moving forward.

**4.4.3 Action 42** calls for the review and update Threat Response Plan in light of results of 2020 national survey. We support action 42 and would add that the HHTRP should be updated in response to all relevant scientific research. Ongoing research which should inform implementation of the HHTRP. In particular SHINE (Supporting Hen Harriers In Novel Environments) research which is nearing completion in University College Cork.

## **5.0 Other Actions Needed**

5.1 An action is required to ensure the conservation of High Nature Value habitat associated with nationally important Hen Harrier populations both inside and outside the Natura 2000 network.

5.2 An action is required calling for the independent assessment of the Forest Service's Appropriate Assessment Procedure to ensure that the requirements under Article 6(3) and 6(4) are properly implemented moving forward.

5.3 The Statutory Instruments for the Hen Harrier SPAs list the Activities which Require the Consent of the Minister (ARCs). Burning of vegetation is not included as an ARC and this needs to be addressed especially as burning is an activity that occurs every year in Hen Harrier SPAs at often at a time when Hen Harriers are back on territories or actively nesting-from early Spring (March).

## **6.0 Article 6(3) and 6(4) of the Habitats Directive and Forestry Applications**

Any afforestation application within any of the six SPAs must be subjected to a full Appropriate Assessment under Art 6(3) of the Habitats Directive. Any mitigation measures related to Article 6(3) assessment cannot be considered at the screening stage. Also, competent authorities cannot circumvent the Art 6(3) processes by calling compensation measures mitigation and so avoid the procedures of 6(4) (C-521/12 - Briels and Others). The habitat resulting from actions taken pursuant to action 18 with the expressed intention of offsetting habitat loss resulting from further afforestation of open habitat under action 19 must be considered compensation measures. This is supported by the available European Case Law:

*“Consequently, it follows from the foregoing considerations that 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 of Community importance, which has negative implications for a type of natural habitat present thereon and which provides for the creation of an area of equal or greater size of the same natural habitat type within the same site, has an effect on the integrity of that site. Such measures can be categorised as ‘compensatory measures’ within the meaning of Article 6(4) only if the conditions laid down therein are satisfied” (Case C-521/12 Briels and Others, paragraphs 29-35, 38-39)*

Any proposed compensation measures must only be considered under Article 6(4) after a full appropriate assessment has already been carried out under Article 6(3) which has concluded that negative impacts are likely, but that afforestation must go head as a matter of overriding public interest due to social or economic reasons and there are no alternative solutions.

*“Consequently, it follows from the foregoing considerations that 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 of Community importance, which has negative implications for a type of natural habitat present thereon and which provides for the creation of an area of equal or greater size of the same natural habitat type within the same site, has an effect on the integrity of that site. Such measures can be categorised as ‘compensatory measures’ within the meaning of Article 6(4) **only if the conditions laid down therein are satisfied** (Case C-521/12 Briels and Others, paragraphs 38- 39).”*

*“It is only if, in spite of a negative assessment carried out in accordance with the first sentence of Article 6(3) of the Habitats Directive, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, and **there are no alternative solutions**, that Article 6(4) of the Habitats Directive provides that the Member State is to take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected” (see Case C-304/05 Commission v Italy EU:C:2007:532, paragraph 81; Case C-182/10 Solvay and Others EU:C:2012:82, paragraph 72; and Sweetman and Others EU:C:2013:220, paragraph 34).*

We would welcome an explanation from the NPWS and Forest Service how the threshold of no alternative solutions can be met in the context of an individual afforestation application. We believe that it cannot and therefore compensation habitat cannot be used to facilitate further afforestation.

Action 19 of the draft plan is based on the Forest Service document *Forestry and Hen Harrier: Exploring Synergies*, November 2015 rather than the NPWS’s own *Hen Harrier Conservation and the Forestry Sector in Ireland (2015)* report. The NPWS report concluded that *“further afforestation is not considered to be part of the overall suite of positive conservation options”* firstly because afforested land cannot be used as breeding habitat after approximately 12 years and secondly that afforestation would eventually contribute to an increase in the extent of the second rotation pre-thicket forest at a landscape level which is associated with a decrease in breeding success when the percentage of second rotation pre-thicket forest in the surrounding landscape is greater than 10%. No rationale has been presented as to why the draft Threat Response Plan is going against the available scientific evidence which underpinned both the NPWS’s own recommendations and the original decision to place a moratorium on further afforestation back in 2013.

The step-by-step process outlined in the Forest Service document is deeply flawed. The document suggests that further afforestation within the SPA’s can occur based on annual limits for each SPA. The use of annual limits is completely meaningless as the only consideration should be whether or not the afforestation will result in negative impacts on the Hen Harrier population. The Forest Service document also suggests that unimproved rushy grasslands should be targeted for afforestation

despite the fact that this is an established foraging habitat for Hen Harrier. The suggested use of a minimum 20% open biodiversity area is problematic given that over a 30-year rotation cycle afforestation would still result in a 80% loss in open habitat over an 18 year period, without even considering the range of other direct, indirect and cumulative impacts associated with afforestation.

Steps 1 and 2 outline the procedure to calculate the percentage of suitable foraging habitat within an application area. The information provided in afforestation applications is insufficient to determine the quality of the habitat on site which would be required to carry out a proper screening assessment under Article 6(3) of the Habitats Directive.

Step 3 of the Forest Service's procedure outlines how they will carry out a screening and a full AA under Art 6(3). The process highlights a range of issues in relation to both the threshold for AA within a screening assessment and the legal requirements of an AA. Inappropriately ruling out AA at the screening stage or inadequate AA which systematically come to conclusions which directly conflict with the published evidence and scientific consensus have been responsible for the afforestation of the six SPAs in the past.

In Case C-258/11, *Sweetman & Ors. V An Bord Pleanála & Ors.*, Advocate General Sharpston opined that the trigger for a full AA during a screening decision is very light - *"the test is set at a lower level and that the question is simply whether the plan or project concerned is **capable of having an effect**. It is in that sense that the English 'likely to' should be understood."* In the Case C-127/02 ('the Waddenzee case' – Case C-127/02, *Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij* [2004] I-07405) it was held that the trigger for an appropriate assessment is a **very light one, and the mere probability or a risk that a plan or project** might have a significant effect is sufficient to make an 'appropriate assessment' mandatory. In the absence of certainty as to the likelihood of a negative impact of a plan or project on a Natura 2000 site at the screening stage a full Stage two AA is required.

In *Kelly v An Bord Pleanála & Ors.*, [2013 No 802 J.R. ] with reference to *Commission v Spain* C-404/09 the High Court held that that the competent authority must carry out an AA for a plan or project in light of the best scientific knowledge in the field and that the final determination of the competent authority must include **complete, precise and definitive findings**.

*"40...(i) Must identify, in the light of the best scientific knowledge in the field, all aspects of the development project which can, by itself or in combination with other plans or projects, affect the European site in the light of its conservation objectives. This clearly requires both examination and analysis.*

*(ii) Must contain complete, precise and definitive findings and conclusions and may not have lacunae or gaps. The requirement for precise and definitive findings and conclusions appears to require analysis, evaluation and decisions. Further, the reference to findings and conclusions in a scientific context requires both findings following analysis and conclusions following an evaluation each in the light of the best scientific knowledge in the field.*

*(iii) May only include a determination that the proposed development will not adversely affect the integrity of any relevant European site where upon the basis of complete, precise and definitive findings and conclusions made the Board decides that no reasonable scientific doubt remains as to the absence of the identified potential effects."*

The Forest Service's step-wise procedure suggest that suitable Hen Harrier foraging or breeding habitat can be afforested if *"the minimum foraging threshold was maintained"*. The only minimum habitat threshold which should be considered within the Conservation Objectives of a Hen Harrier SPA is the threshold at which sufficient habitat of a sufficient quality is protected which can deliver as a minimum the number of breeding Hen Harrier that were present at the time of designation. The purpose of AA is to establish whether or not a qualifying habitat or species will be negatively impacted by a plan or project not what threshold the habitat or population will collapse.

The Forest Service's step wise approach fails to outline the range of potential direct, indirect and cumulative negative impacts which afforestation may have on Hen Harriers. These impacts cannot be assessed based on a simplistic desk-based assessment of the extent of pre-thicket habitat available. Many of these threats are known to the NPWS as they are outlined in their own 'Hen Harrier Conservation and the Forestry Sector in Ireland' document and include the direct loss of both foraging and breeding habitat, habitat degradation, habitat fragmentation, edge effects and predation.

Aside from Art 6(3) the step wise approach and the Forest Service's Appropriate Assessment procedure also fails to meet the legal requirements of Article 6 of the supplementing regulations of the Rural Development Regulations (No. 1305/2013) which provides protection for HNV farmland from afforestation, which states (emphasis added)<sup>15</sup>:

*"Minimum environmental requirements with which the afforestation of agricultural land must comply should be laid down ensuring that **no inappropriate afforestation of sensitive habitats including areas under high natural value farming takes place** and that the need for resilience to climate change is taken into account. On sites designated as Natura 2000, afforestation should be consistent with the management objectives of the sites concerned. Special attention should be paid to specific environmental needs for particular sites such as the prevention of soil erosion. More stringent rules should be provided for afforestation operations leading to the creation of larger forests in order to take into account the impact of scale of those operations on the ecosystems and to ensure that they comply with the objectives of the Green Infrastructure Strategy (1) and new EU Forest Strategy (2)."*

These obligations are known to the Forest Service as they are reflected in Priority 4 (a) of the Forestry Programme 2014-2020. There are no corresponding objectives or actions under priority 4 which even mention HNV farmland. There are currently no guidelines or recommendations within the afforestation approvals process to implement these obligations.

The European Commission DG Agri defines High Nature Value farmland as - *"High Nature Value farmland comprises those areas in Europe where agriculture is a major (usually the dominant) land use and where that agriculture supports or is associated with either a high species and habitat diversity, or the presence of species of European, and/or national, and/or regional conservation concern, or both."* Indeed *"the highest grade of HNV farmland is that which supports the presence of species of European conservation concern."*<sup>16</sup> Rough grassland habitats provide important foraging<sup>17</sup> and nesting

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<sup>15</sup> European Commission delegated regulation No 807/2014 supplementing regulation (EU) No 1305/2013 <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0807&from=en>

<sup>16</sup> Cooper, T, et al. 2007 HNV Indicators for Evaluation, Final report for DG Agriculture. Brussels: European Commission, Institute for European, Environmental Policy

<sup>17</sup> Arroyo, B, et al. "Hunting habitat selection by Hen Harriers on moorland: Implications for conservation management." *Biological Conservation* (2009): 586-596. Vol 142.

habitat<sup>18</sup> for Hen Harriers and other Annex I bird species under the Birds Directive in Ireland. Rough grassland constitutes 11.02% of the area of the six Hen Harrier SPAs and is the largest open habitat type within the network<sup>19</sup>. Given the importance of rough grassland for Hen Harrier it should be considered HNV farmland and protected from afforestation where it provides foraging or breeding habitat for nationally important Hen Harrier populations within and outside of the Natura 2000 network.

## **7.0 Environmental Assessment of the draft Plan**

The SEA Directive - Directive 2001/42/EC provides for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development. The SEA process is an iterative one where the assessment informs the overall plan development. To date no SEA has been commissioned for the HHTRP despite the plan being at the draft stage and this is regrettable.

Given the far reaching environmental implications for of the HHTRP both inside and outside of designated sites the draft TRP should be considered for potential assessment against the requirements of the EIA Directive (85/337/EEC), the Habitats Directive (Council Directive 92 /43 /EEC) and Birds Directives (Directive 2009/147/EC) and relevant European Court of Justice Case Law.

This submission was prepared by Fintan Kelly, John Lusby and Oonagh Duggan of BirdWatch Ireland.

June 22 2018

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<sup>18</sup> Wilson et al. 2009. The importance of pre-thicket conifer plantations for nesting Hen Harriers *Circus cyaneus* in Ireland. *Ibis* (2009): 151: 332-343.

<sup>19</sup> Moran, P and R Wilson-Parr. (2015). Hen Harrier Special Protection Area (SPA) Habitat Mapping Project 2014." Irish Wildlife Manuals, No. 83 2015.