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6<sup>th</sup> July 2018

Minister Josepha Madigan  
c/o Chair of the Hen Harrier Threat Response Plan Dr. Ciaran O’Keeffe c/o Lorna Grehan  
Department of Culture, Heritage and the Gaeltacht,  
National Parks and Wildlife Service  
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Re: Draft Hen Harrier Threat Response Plan (v.020518) Observations

The IRSG Committee would like to take this opportunity to raise serious concerns to the Minister on the unacceptable level of engagement, inclusivity, transparency, and professionalism from the Ministers Department in conducting the Hen Harrier Threat Response Plan (HHTRP) consultation to date. In our opinion, the consultative process has been purposefully biased towards private and commercial sector stakeholders. This process is meant to be a Hen Harrier Threat Response Plan, not a Threat to Forestry, Wind Farms and Peat Extraction from Hen Harrier Plan...which is clearly what has been produced in the Draft HHTRP presented to the Consultative Committee. The HHTRP should be a conservation framework for the species recovery but clearly has been driven more by the sectoral interests.

The IRSG Committee would also to raise serious concerns to the Minister as to the content of the Draft HHTRP (v.020518). Despite being developed over the last 5 years, the Draft HHTRP has no Conservation Objectives set for Hen Harrier, no Hen Harrier targets defined, no deliverables, and no explanation presented as to why or what data has been used to inform the proposed conservation options nor does it define any approach to measure the efficacy of proposed actions and what the expected immediate, short or long term positive effects on Hen Harrier will be at the population level. The soft and passive response evident in the Draft HHTRP has clearly been developed as a damage limitation exercise, where vague non-commitment has been finely spread across each Department, and conservation actions presented as “ideas”, “improvements” or “procedures”. These are framed in wording that indicates sector and private vested interests will essentially avoid having to contribute to any form of meaningful response limiting their activities. Other recognised threats such as Peat Extraction, Recreation and Persecution do not feature in the Draft. The best evidence base on forestry impacts in an Irish and European context has been entirely ignored. There is also a very obvious and concerning emphasis on and thereby a reliance on, the procurement of further academic research to inform conservations actions ~ actions that can be informed now on the extensive data already available – actions needed now.

The IRSG would like to express outrage at the Ministers proposed Action 19 in the Draft HHTRP. The proposal to further expand forestry in Hen Harrier SPAs is not legal, is incompatible with sustainable upland farming, and the worst possible scenario for a conservation plan designed to save the Hen Harrier. The Minister has thereby presented a Draft HHTRP that is not a conservation plan, but a blueprint for the continued destruction of the Natura 2000 network and the continued extinction of the Hen Harrier from the wider countryside for the benefit of private commercial and sectoral interests.

All the very best,

Ryan Wilson-Parr  
Chairman  
On behalf of the Irish Raptor Study Group



## Overview of the IRSG Perspective on the Draft HHTRP (v.020518)

In June 2013, the then Minister for Arts Heritage and the Gaeltacht Heather Humphreys began the development of a Threat Response Plan to save the Hen Harrier. The Hen Harrier is protected under European nature conservation legislation and the breeding population has undergone a 50% decline in the last 40 years. Six Special Protection Areas (SPAs) have been designated for the protection of Hen Harrier in Ireland. National Hen Harrier surveys show that the breeding Hen Harrier population, both nationally and in the SPAs continue to decline. There are now more Hen Harrier outside of protected areas than inside.

**The conservation of the Hen Harrier is worth over €100,000,000 to rural farming communities through agri-environment schemes as part of the Green Vision for Irish Agriculture in the Rural Development Programme.**

Conifer forestry is the main threat to the upland and marginal farmland on which the rare ground nesting Hen Harrier depends. To inform land use policy, the Government has spent over €5 million of tax payers' money on forest sector led research in an attempt to establish links between commercial forestry and impacts on Hen Harrier. This research shows strong scientific evidence that conifer forestry negatively impacts Hen Harrier and is a driver of population decline.

The IRSG expect that forestry is removed from SPAs as a critical measure of the Government's conservation plan to save the Hen Harrier from extinction, however, **in the Draft HHTRP issued by Minister Madigan in May 2018, the National Parks & Wildlife Service have blatantly ignored scientific evidence; expert advice; European case law; and, the Departments own Policy documents and proposed planting of Hen Harrier habitat in SPAs in the very conservation document that aims to avoid, reduce and reverse impacts of forestry on Hen Harrier.**

In our opinion, Minister Madigan has shamelessly guised the pursuit of minor forest profits in strictly protected areas in a conservation document, clear in the knowledge that this would be to the detriment of the Hen Harrier and the associated habitats and biodiversity that the Ministers Department has a remit to protect. The Government cannot justify using tax payers money to undermine EU Directives.

Despite the huge investment in farming for conservation, lucrative tax payer funded forest premiums and grants are purposefully considerably higher and longer lasting than Basic Farm Payments and this, in light of low farm viability in upland areas and a looming farm succession crisis facing rural communities, has driven a reluctant demand for forestry over farming in certain areas. This is despite any evident benefits of forestry to local communities over the last 30 to 40 years.

An open complaint to the European Commission led to a Forest Service imposing a ban on any further conifer planting in Hen Harrier SPAs. The Forest Service have categorised all lands in Natura 2000 sites as not considered suitable for certain types of forest development. There has been intensive lobbying by a minority of private forest businesses to lift the ban and political pressure has clearly led Minister Madigan and Minister Creed to purposefully ignore scientific evidence, expert advice and the position of the Ministers own Departments in the development of the Threat Response Plan.

Minister Madigan and Minister for Agriculture, Food and the Marine, Minister Michael Creed are sending a clear message that the loss of rural farming communities and natural heritage are affordable in the pursuit of forest profits for the few. The move to approve forestry in Natura 2000 sites is a purposeful assault on marginal and hill farmers and the conservation value and ecosystem services provided by high nature value farmland - entirely contrary to the future direction of results-based farming and the spirit of rural socio-economic stability and integrated sustainable upland land use. The pursuit of forestry profits are not compatible with upland pastoralism or the conservation of a bird that depends on that pastoral landscape and a vibrant and sustainable rural farming economy.

Minister Madigan's proposed draft Threat Response Plan is a contrived and dishonest ploy to fool the European Commission, our upland farmers and the public that a compromise on forestry in Natura 2000 is somehow legal, compatible and justifiable on conservation grounds. This is not in the public interest and is entirely unacceptable for a public representative and there needs to be accountability in the Ministers Department for this error of judgment.



## Why has the Draft Threat Response Plan taken so long to produce?

The HHTRP began in the year 2013. Five years on and the Draft document presented by the NPWS in May 2018 is not a Threat Response Plan, this is unsatisfactory. Since the 1960s, over 52% of the Hen Harrier farmland habitat in the now Hen Harrier SPAs has been lost to forestry. Since the 1990s the 73 10km Squares that support the national breeding Hen Harrier population in the Republic of Ireland now host a total of 520 wind turbines. The drivers of population decline in the Hen Harrier and other upland birds of conservation concern are well understood. The Article 12 Report to the Commission on the Hen Harrier demonstrates there is a considerable amount of information derived on threat and pressures on Hen Harrier in Ireland. All the information is there and it should be straightforward in determining the appropriate conservation actions that will avoid, reduce and reverse the population decline. Why has the Draft Threat Response Plan taken so long to produce?

## The Consultation Process

On the 2<sup>nd</sup> May 2018, NPWS emailed details of next Consultative Committee meeting to be held on the 8<sup>th</sup> May 2018. Due to public holidays this was 2 working days' notice. In that email the NPWS issued draft documents, including the Draft HHTRP (38 pages), and a 3rd (Wind Energy) sectoral review document (90+ pages). After two years of no correspondence, the IRSG are given two working days' notice of the meeting venue, date, and time and to review over 140 pages of text. Two working days to review and prepare discussion on one of the most important conservation documents NPWS have developed is not meaningful consultation. At the Consultative Committee meeting on the 8<sup>th</sup> May, representatives were asked to approve previous Meeting Minutes which were over two years old.

**Over the last two years there been numerous opportunities afforded to the Social and Economic pillars of the Consultation process, whilst there was a total lack of engagement with the Environmental Pillar.** During this period multiple formal requests from the IRSG in writing to the Minister and your Department for any update on the HHTRP have been ignored; yet it is apparent from publicly available Parliamentary Questions/Ministers answers and Oireachtas Communications other stakeholders in this Consultative Committee have been accommodated preferentially. The IRSG have also been made aware recently that material of the Draft TRP [that the Environmental Pillar had not been provided] had been obtained or made available to persons with related commercial sectorial interests out-with the initial Consultative Committee. There has been an apparent bias in the consultation process. **This is unsatisfactory and a departure from the level of inclusivity, transparency and professionalism expected of a Ministerial Consultation.**

There have also been inconsistencies in email correspondence issued to the Consultative Committee Members, with individuals added to Committee that do not represent a recognised stakeholder in the TRP Consultative Committee by the Minister. In the interest of transparency in the consultation it would be reasonable to expect that any new addition(s) to the Consultative Committee by the Minister would be appropriately communicated to the Committee and for the Members to be provided with details on what stakeholder group they represent and why they have been appointed onto the Committee by the Minister, throughout the process.

The IRSG would also like to note for the record that at no time were the Consultative Committee of the TRP formally notified that a Draft TRP had been prepared and was to be, or was submitted, to the Directorate-General for Environment of the European Commission prior to it being issued to the Consultative Committee of the TRP or subject to the Public Consultation process. It could be interpreted that NPWS have purposefully submitted the Draft TRP to Directorate-General to circumvent the ability of the Consultative Committee of the TRP to amend the TRP NPWS presented; secure in the knowledge NPWS have a level of assurance that it will satisfy Directorate-General, irrespective of endorsement or rejection by the Consultative Committee Members. **The IRSG would like to question whether issuing the Draft HHTRP to Directorate-General has satisfied the Minister's Arhus Convention obligations?**

In summary, for 20 years, NPWS have relied heavily on the voluntary efforts of bird organisations to collect Hen Harrier breeding data to fulfill the obligations of the Birds Directive. However, as policies develop, it is apparent that the Minister's Departments partners in field data provision are somehow less worthy of input; compared to the views of the economic and social partners, as regards sustainable policies and land management.



## What the IRSG Committee Set Out in Our Position Statement to the Minister

To ensure the HHTRP was in fact for the purposes of conserving and protecting the Hen Harrier, and to assist the Department to identify and implement the required conservation measures, the IRSG Committee produced a simple but comprehensive position statement on the effective recovery and conservation of the Hen Harrier in Ireland for consideration during preparation of the draft plan. This was submitted to Dr. Ciaran O’Keeffe on the 17<sup>th</sup> October 2016. *Core Requirements for the Recovery and Conservation of the Hen Harrier in Ireland. Position Statement of the Committee of the Irish Raptor Study Group prepared for the Chair of the Hen Harrier Threat Response Plan, National Parks & Wildlife Service, Department of Arts, Heritage, Rural, Regional & Gaeltacht Affairs. August 2016.*

*Hyperlink:*

## What the IRSG Committee Set Out in Our Position Statement to the European Commission

On receiving news that the Irish Government had submitted a Draft HHTRP to the European Commission the IRSG and BirdWatch Ireland issued a joint position statement to Micheal O’Briain and Sibylle Grohs of the Directorate-General for Environment of the European Commission to highlight our views on the required components of the HHTRP, which are informed by an intimate understanding of the ecological requirements of Hen Harrier populations in the Republic of Ireland, as well as our legally binding obligations to deliver effective conservation of Hen Harriers – both of which in combination are essential to the success or otherwise of the HHTRP. This was emailed on the 1<sup>st</sup> December 2017. *Requirements for delivering an effective Hen Harrier Threat Response Plan: Position statement of BirdWatch Ireland and the Irish Raptor Study Group December 2017.*

*Hyperlink:*

## Conservation Options need to be framed within the Socio-Economic Context

Article 8.4 of the Habitats Directive states “the Commission shall adopt, having regard to the available sources of funding under the relevant Community instruments....a prioritised action framework of measures involving co-financing when the site has been designated”.

During the last RDP, the Department of Agriculture, only issued 95 million euro for NATURA 2000/Directive 2000/60/EC sites, whereas an allocation of over 500 million euro was allocated for measure 213 of Axis 2, under Pillar II, by European Agricultural Fund for Rural Development (EAFRD). **Only €95 million of €528 million allocated to Natura 2000 sites in Ireland was used for that purpose during the last RDP.** National Exchequer funding was ultimately used for Hen Harrier management through National Parks & Wildlife Service Farm Plan Scheme (FPS), rather than implementing similar measures using 75% European funding.

**The re-allocation of Common Agricultural Policy (CAP) funding during the last Rural Development Programme (RDP) created insurmountable obstacles to landowners in Natura 2000 and effectively ended any possibility of effective Hen Harrier conservation in Ireland.**

In a socio-economic context, the Hen Harrier Locally Led Agri-Environment Scheme Consultations have shown that farmers want to continue farming and in an ideal world do not see forestry as part of sustainable and viable farming future or as part of a vibrant rural economy. Clearly there is very little desire for more forestry within farmers in these areas and the drive to plant in SPAs is from a minority of private vested forest business interests exerting political influence.

**The Draft HHTRP has clearly side stepped this critical issue. There is no evident analysis of the socio-economic implications of any conservation measures in the Draft HHTRP.** Many of the environmental challenges associated with upland biodiversity loss mirror a continuing socio-economic decline in rural farming. The two are inter-linked. The loss of local communities is therefore an equally important concern. The Birds Directive makes provision for the consideration of socio economic elements in devising conservation action and the Draft HHTRP needs to be supported by evidence based socio-economic justifications that benefit the Hen Harrier and the farming communities on which it depends.



The NPWS has ignored its own Review Document and the evidence base on forestry impacts

Afforestation and forest maturation is recognised as the primary threat to Hen Harrier populations in Ireland. Hen Harrier breeding success (nest survival) can decrease noticeably when the percentage of second rotation pre-thicket forest in the surrounding landscape is greater than 10%. At present, the proportion of forest cover across the SPA network exceeds 52%. **There is no published data available in the Draft HHTRP on what proportion of forest in the SPA network is second rotation pre-thicket.** The Draft HHTRP therefore lacks the baseline for evidence based decision making on forest removal and restoration to heath/bog.

It is critical that this negative relationship to the proportion of pre-thicket second rotation cover in the surrounding landscape is used to inform appropriate conservation measures at a relevant spatial scale within Hen Harrier breeding areas both in the SPA network and in the wider countryside. **The conservation measures proposed in the HHTRP must result in positive population effects. The exact science of this 10% threshold needs to be considered in the HHTRP and accurate current and future data on forest demography must be presented in the HHTRP and used as an evidence-base to justify the conservation actions that will deliver long term population gains. The HHTRP must clearly present data on what proportion of pre-thicket second rotation cover is currently within the core Hen Harrier breeding areas and SPA network and show how this proportion will change in the future.**

Action 19 is Unacceptable

**Action 19 directly contradicts with the NPWS Forest Sectoral Report and is not compliant with the preliminary ruling Advocate General C164/17.** Action 19 is part of the measures listed 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 - it states the following:

*“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.”*

Are NPWS and Forest Service seriously proposing as a conservation measure - for the protection of Hen Harrier - that in return for removing some forestry [of which is not stated, how much, where and when], they may begin **approving planting new forest** in SPAs targeting rough grassland [Hen Harrier foraging habitat]?

Improved grassland can easily succeed into rough grassland. No Actions Requiring Consent exist that prevent rough grassland being converted to improved grassland in Hen Harrier SPAs. So a landowner can take his Hen Harrier habitat on his farm in the SPA and convert it to improved grassland and then the Forest Service may approve planting it without any perceived obligation to “mitigate” its loss. In regard to the “Forest Removal Programme” there has not been any information made available in the Draft HHTRP. Without conservation objectives or targets how can Forest Service calculate what is the optimum location and amount for removal and what evidence has been used to inform the removal programme? Has the 10% threshold of 2<sup>nd</sup> rotation pre-ticket cover being used to calculate the amount of forest to be removed to avoid population limiting effects? How do NPWS know that this is sufficient to secure a positive SPA level population response?

**NPWS are proposing a conservation action that allows planting of Hen Harrier habitat in SPAs in a legal conservation plan that aims to avoid, reduce and reverse impacts of forestry on Hen Harrier.** This is absurd.

Currently, there is already too much forest cover in the SPA network, and any proposals or mechanisms to increase on existing forest cover within the SPA network would signify an extreme failure of the HHTRP, and a breach of our obligations under the Birds Directive, while undermining over €100 million of EU funding in agri-environment within Hen Harrier breeding areas. Recommendations to remove unproductive forest, enhance existing forest areas for Hen Harriers and/or expand Areas of Biodiversity Enhancement within the existing forest estate may provide conservation benefits if planned and implemented appropriately but cannot under any circumstances be used as a means to off-set further afforestation in these areas. **There are clear ecological and legal problems with any such off-setting approach. The 5km sub square approach is deeply flawed as SPAs need to be considered as a whole as per EU Case Law.**



Firstly, the target forest to be removed i.e. stunted, partially open conifer forest on wet heath can provide suitable foraging habitat for Hen Harrier. Secondly, the intended habitat targeted for afforestation, i.e. wet grassland, provides foraging habitat for Hen Harrier.

**IRSG 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.

It is unclear how this could not have been raised as an issue by Directorate-General for Environment of the European Commission when they were sent the Draft.

In a legal context, due to the known negative effects of forestry on Hen Harrier it is not envisaged the Forest Service, as the competent authority, can actually approve any future re-planting or afforestation in SPAs and be compliant with Article 6(3) and 6(4) of the Habitats Directive or the Birds Directive. There are two significant obvious problems for the Forest Service if Action 19 is retained in the HHTRP:

- i) determination that the HHTRP requires a Strategic Environmental Assessment and subsequent legal challenge.
- ii) **recent preliminary ruling of the Advocate General C164/17** [Bunkimalta Wind Farm, Keeper Hill, Tipperary] *Grace & Sweetman v An Bord Pleanála, ESB, Coillte and DCHG*.

**In regard to Action 19 the preliminary ruling Advocate General C164/17 states that the Forest Service must take the view that the whole of a site that is designated as an SPA for the benefit of a given species must be taken into account when determining whether it has complied with its obligations under Article 6(3) of the Habitats Directive. It is not in conformity with the case-law that provision to exclude areas that have not yet been called in aid to provide habitat (potential areas) when assessing whether what is proposed by way of mitigation of the adverse effects of the proposed afforestation/activities is sufficient. This means, in the context of the main proceedings, that what is proposed by NPWS and Forest Service does not meet the requirement of sufficient protective (mitigatory) measures under Article 6(3) of the Habitats Directive.**

Recent preliminary ruling of the Advocate General C164/17

**The Draft HHTRP must be cognisant of this ruling in all conservation measures proposed.** Preliminary ruling C164/17 will have significant implications for land management and development in SPAs. The ruling states that the Conservation Objective of the SPAs is to maintain or restore the favourable conservation condition of the Hen Harrier and that **the constitutive characteristics of the SPA is thus to ensure sufficient habitat for the hen harrier in line with the Conservation Objective of the SPA.**

Applying the interpretation of the Briels and Orleans Cases there is a requirement to ensure a sufficient 'existing' habitat for the Hen Harrier, however they do not address the problem at source, that is, **loss of needed lands**. In line with the Court's case-law, since the benefits to be expected from the measures [mitigatory] proposed with any development in SPAs are to take place over the lifetime of a plan or project, there is an obligation to ensure that the measures are certain beyond all reasonable doubt to avoid all direct adverse effects on the integrity of the SPA at the time of authorisation by the competent authority.

The ruling states that **potential habitat** of the Hen Harrier is part of the constitutive characteristics of the SPA that contributes to the favourable conservation status of the Hen Harrier. **Thus, the significant loss of potential habitat of the Hen Harrier must be taken into account in an assessment of whether measures proposed by the competent authority are sufficient to avoid or reduce the adverse effects of the authorised plan or project on the integrity of the SPA. Potential areas within the zone protected under EU law are nothing more than areas which have not yet been managed because the changing needs of the habitat of the Hen Harrier have not yet required it, or are not yet ready to support Hen Harriers.**

As such the Draft HHTRP requires significant revision prior to its issue for Public Consultation.



## What needs to be in the revised Draft HHTRP

- Conservation Objectives need to be set based on the number of Hen Harrier present in SPAs at time of designation as per Natura 2000 Standard Data Forms submitted to the Commission.
- The Draft HHTRP must commit the Department of Agriculture, Food and the Marine to a position of no longer considering future afforestation applications in Hen Harrier breeding areas.
- The 10% threshold on 2nd rotation pre-thicket forest must be used as the baseline for a maximum allowable forest cover in Hen Harrier breeding areas and for that metric to be used to identify forest to be removed and restored to heath/bog. The implementation of the Forest Removal Programme must take into account the typical restoration and establishment period for heath/bog of upto ten years.
- The Draft HHTRP must commit the Department of Agriculture, Food and the Marine to a Forest Removal Programme that shows what Coillte forest parcels in each SPA will be removed, when and why they will be removed and when these will be restored to heath/bog.
- The re-allocation of €430million away from Natura 2000 farmers has had a demonstrable impact on farmers attitudes to Hen Harrier SPAs due to lack of entitlements and supports and the perceived loss of alternative lucrative tax payer funded forestry grant programme advantages. The Draft HHTRP must commit the Department of Agriculture, Food and the Marine to a comparable level of financial stability and security for farmers in Natura 2000 sites and to finance and administer a 15 year locally led results based scheme for all peatland/upland SPAs and SACs [Upland Farming for Conservation Programme] with potential maximum payments equivalent to tax exempt forest premia.
- The Draft HHTRP must commit the Department of Agriculture, Food and the Marine to finance and administer a 15 year locally led actions based scheme for winter Hen Harrier with potential maximum payments equivalent to those that would be available through an uncapped GLAS Wild Bird Cover Measure. Actions should include retaining stubble for as long as possible and the continuation of spring cereals to provide conservation headlands in core wintering areas.
- NPWS should make provision for a suitably qualified full time Hen Harrier Liaison Officer to operate across all SPA regions in delivering community focused support and management advice to landowners. This should be entirely separate to any Ornithological or Scientific expertise provided via Locally Led Agri-Environment Schemes.

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**END**