

# Getting to Grips with Appropriate Assessment (AA)

- An obligation under Article 6(3) of the Habitats Directive:  
*Any plan or project not directly connected with or necessary to the management of the site [a Natura 2000 site] but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives.*

# Plans or projects outside sites

- Plans or projects outside sites that may impact on the site must be screened and, if necessary, appropriately assessed (ex situ issues).

# Cumulative effects

- *“likely to have a significant effect thereon, either individually or in combination with other plans or projects”.*
- This means that individual plans and projects cannot be viewed in isolation. Any possible cumulative or interactive effects must be taken into account

# Screening for AA

- An essential stage for all plans and projects is screening.
- Screening determines whether AA is necessary
- Screening must establish beyond reasonable scientific doubt that a plan or project will have no significant effect on the integrity of a Natura 2000 site
- Otherwise AA is required

# What is AA?

- A scientifically based assessment of whether, in view of the conservation objectives of the site, a plan or project, alone or in combination with other plans and projects, may have an adverse impact on the integrity of the site.
- Must establish beyond reasonable scientific doubt that there will not be an impact if plan or project to proceed under Article 6(3)
- Otherwise refusal or Article 6(4)

# Article 6(3) Vs. Article 6(4)

- Key outcome: if assessment fails to establish that a plan or project will not adversely affect the integrity of the site, the plan or project cannot be permitted unless
- There are no alternative solutions (must be demonstrated) and
- Imperative reasons of overriding public interest require it to proceed.
- Priority habitats: referral to EU Commission may be necessary.

# Judgments against Ireland

- - C-183/05 : protection of species
- - C-418/04: protection of birds and SPAs.
- Habitats Regulations 1997 did not adequately transpose the Habitats and Birds Directives
- Habitats and Birds Directives not adequately transposed.

# Measures being taken on AA: Guidance

- Guidance document for planning authorities on how to do appropriate assessment are “on the runway”
- Jointly prepared by NPWS and Planning Sections in the Department

# Planning Legislation

- Detailed provisions are being drafted for insertion in the Planning Bill 2009
- Will transpose the Habitats Directive provisions directly into planning legislation
- Obligations on planning authorities and Bord Pleanála will be clearly spelled out
- Minister will have power to make statutory regulations and issue statutory guidelines.
- Responsibility for compliance firmly on the planning authorities.

# Birds and Habitats Regulations 2009

- New regulations at advanced draft stage
- Consolidation of the three previous Habitats Regulations
- Updating of processes for designation of sites
- Clearer more explicit AA provisions
- Addresses recreational damage and invasive species issues

# Aquaculture

- Aquaculture projects will be subject to AA
- Baseline work being carried out.

# Coming to a site near you...

- Ireland has been slow to deal adequately with the AA obligations of the Directive and
- Now obliged to catch up by Commission litigation
- Guidance and legislation will tighten things up
- Should ultimately reduce problems and infringements by clarifying obligations

# A Steep Learning Curve!

- Ireland has still a considerable way to go before we can confidently state that our systems are compliant
- More litigation in the Irish Courts and in the ECJ is to be expected in the process
- Where there is doubt regarding the interpretation of the Directive, only the ECJ can definitively resolve the question.

# A Common Understanding

- The key agencies of the State need to reach a common understanding of what the Directive requires
- Decisions likely to lead to litigation against Ireland present the Minister, as the national competent authority, with great difficulty
- Cases still open, risk of fines, Ireland “bad boy of the class”.