



An Roinn Cultúir,
Oidhreachta agus Gaeltachta
Department of Culture,
Heritage and the Gaeltacht

Appropriate Assessment Overview and update

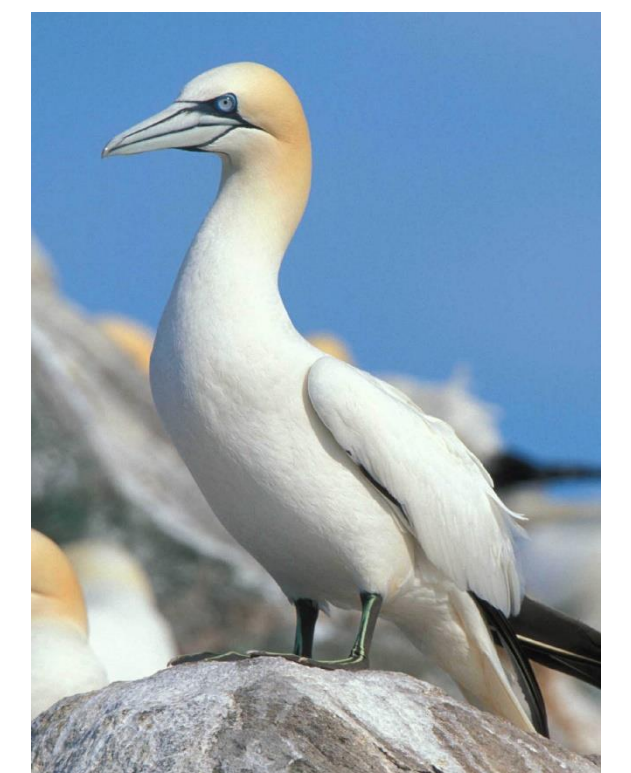
Gerry Clabby
Head of Ecological Assessment, National Parks and Wildlife Service

IPI CPD online
1st May 2020



National Parks and Wildlife Service Ecological Assessment Unit

- Advising on the implications of proposed plans and projects for nature conservation
- Advising in relation to ecological assessment and its application
- Advising in relation to conservation management
- Developing guidance in relation to ecological assessment and related matters





Our Divisions and Regions



Northern Division

Cameron Clotworthy, Emmett Johnston

Southern Division

Brian Duffy, Jervis Good

Western Division

Susan Callaghan, Julie Fossitt

Eastern Division

Terry Doherty, Ciara Flynn

Head Office, Dublin

Annette Lynch, Enda Mullen

Gerry Clabby, Kelly Muldoon



Some context

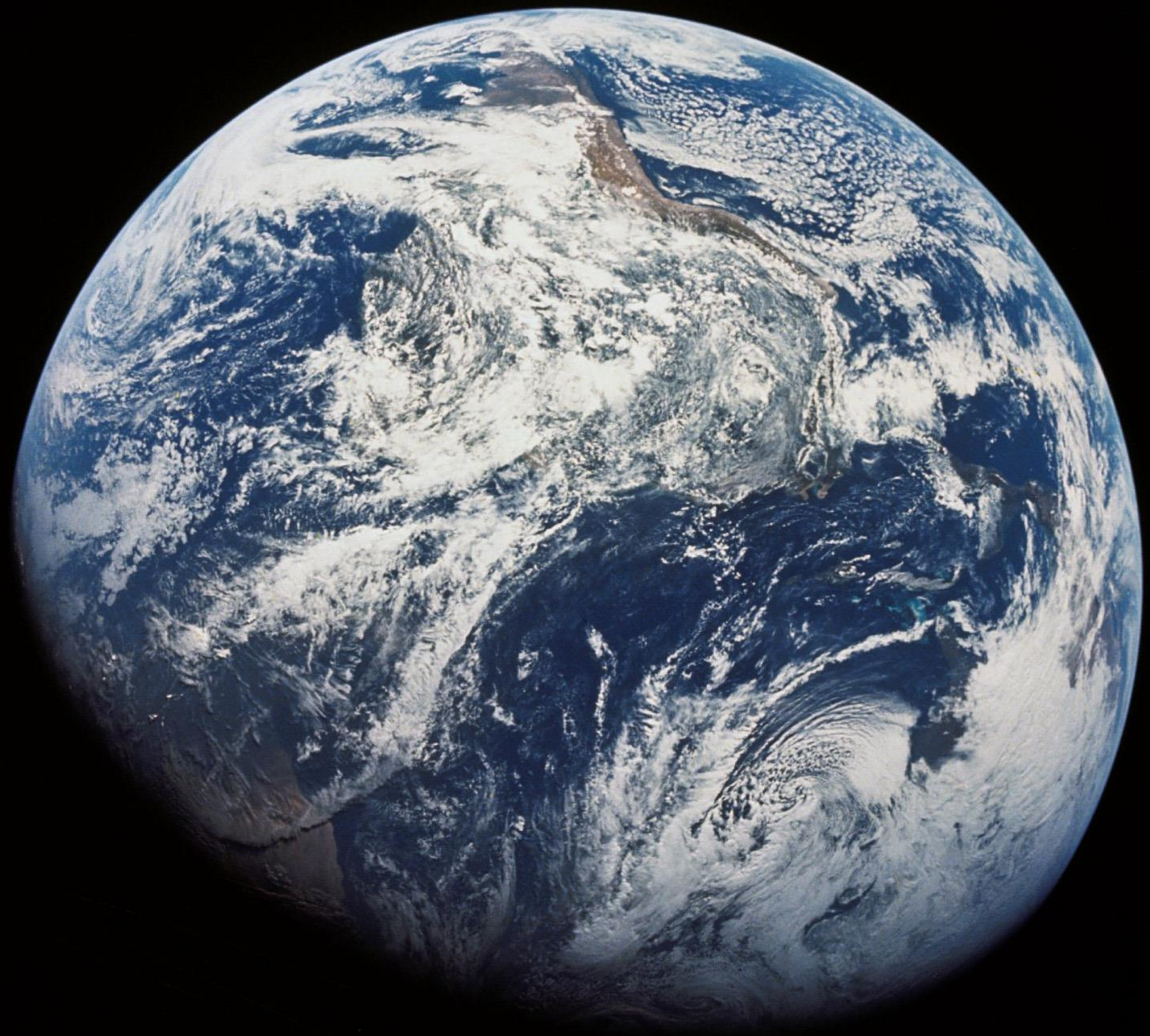
- Minister for Culture, Heritage and the Gaeltacht receives statutory referrals in relation to a variety of consents (e.g. planning, forestry, foreshore)
- Minister is also consulted under the EC (Birds and Natural Habitats) Regulations, 2011 in relation to appropriate assessment for public authority projects outside the planning and related codes
- NPWS also receives a variety of other requests for consultation (e.g. pre-application consultation)
- In 2019 the Department received over 10,000 referrals under all headings

Summary



- Biodiversity overview
- Nature Directives
- Article 6(3) and 6(4) Habitats Directive
- Current NPWS initiatives







Biodiversity in crisis

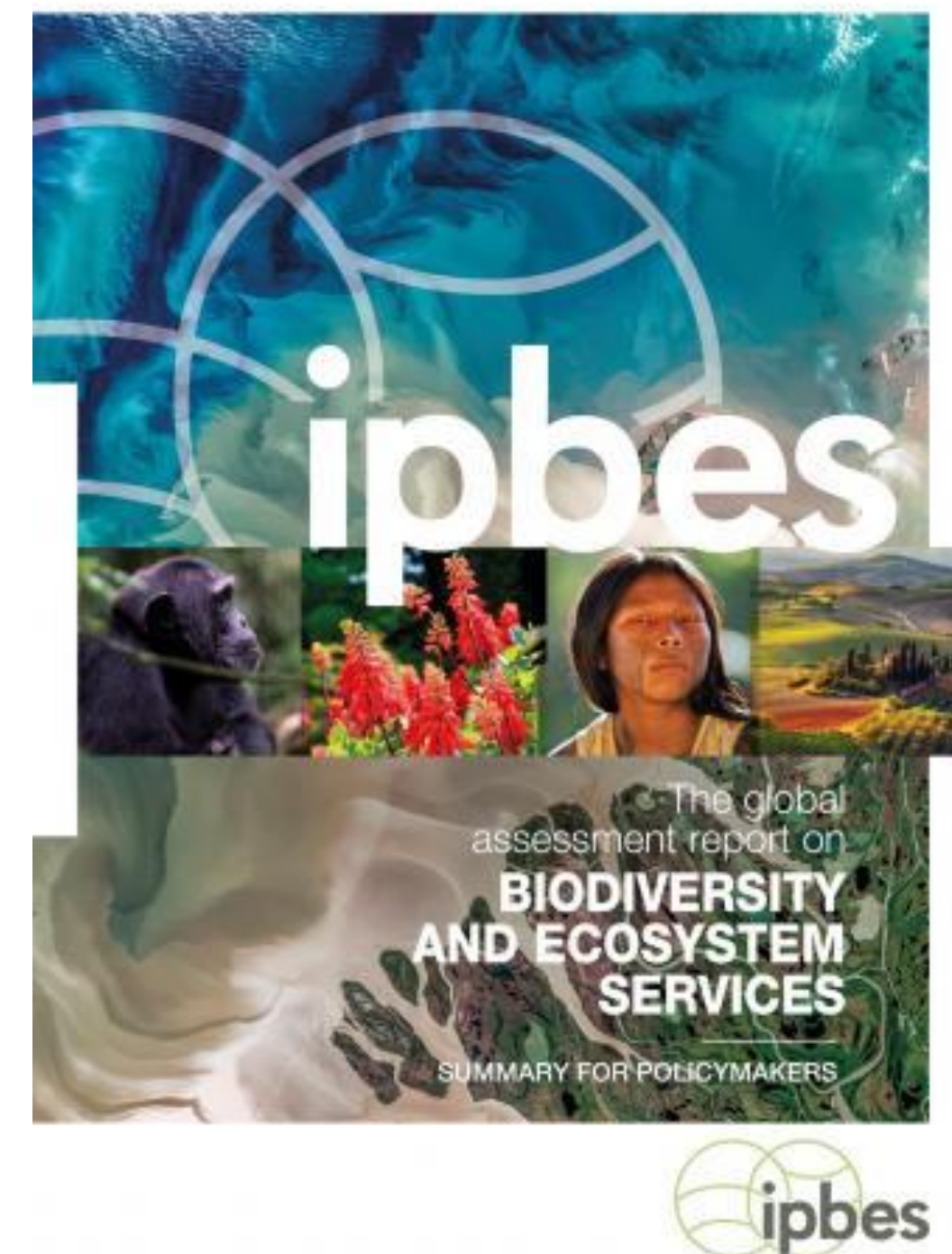
Habitat Loss & Degradation

Invasive Species

Overexploitation

Pollution

Climate Change



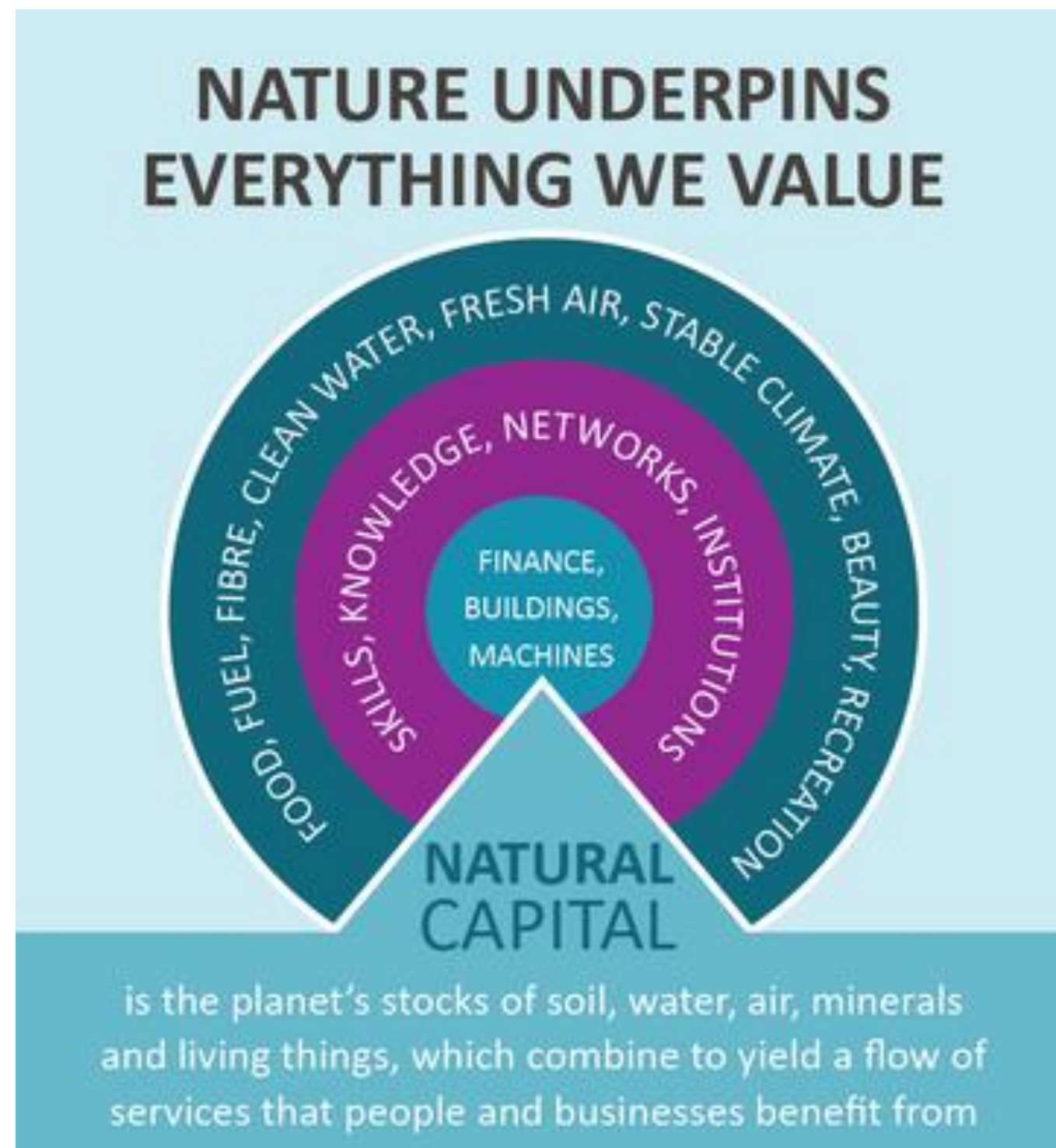


“By 2050, European Union biodiversity and the ecosystem services it provides — its natural capital — are protected, valued and appropriately restored for biodiversity's intrinsic value and for their essential contribution to human wellbeing and economic prosperity, and so that catastrophic changes caused by the loss of biodiversity are avoided”

EU Biodiversity Strategy, 2011

[\(http://ec.europa.eu/environment/nature/biodiversity/policy/\)](http://ec.europa.eu/environment/nature/biodiversity/policy/)

Natural Capital & Ecosystem Services



<https://www.naturalcapitalireland.com/>

MAKE MINE A PINT OF NATURE

Lesser-known ingredients in a pint include mountains, forests, bogs, rivers, oceans and all living things

Rain falls on **bogs** in the **mountains** which purify the **water** mechanically, chemically and biologically. The water flows through the **rocks** deep underground - picking up a unique water chemistry - and into the **rivers**, where it is extracted and processed to make beer.

Biodiversity is nature's Research & Development department, and it's been working hard to diversify life at ecosystem, species and genetic levels for 3.6 billion years. This process gives **hops** the **genetic traits** that beer makers exploit when cross-breeding new varieties to taste 'just right'. Biodiversity also makes the **species diversity** of 1500 types of **yeast** different from each other, both taxonomically and in terms of flavour.

Woodlands and **wetlands** in the catchment regulate flooding and recycle the **nutrients** that fertilise **soils**. They also sequester carbon, as do the **oceans**, which helps to regulate the **climate**. These systems work together to provide the perfect conditions in which to grow the **barley** that goes into your pint.

Nature is valuable and many of us think it's priceless, but because it's free the economy treats it as worthless.
This has to change.



Immediate and concerted action



Since 1950 global population has tripled, economic output increased 12-fold and primary energy use increased five-fold

75% terrestrial environment “severely altered” by human actions (40% to 66% in marine environment)

In Europe policies have been more effective in reducing environmental pressures than in protecting biodiversity and ecosystems

Across Europe 23% of protected species and 16% of protected habitats are in favourable conservation status

Full implementation of existing policies would go a long way towards achieving Europe’s environmental goals to 2030



Nature Directives

Cornerstone of European and national biodiversity policy

Habitats Directive – Special Areas of Conservation (SACs)

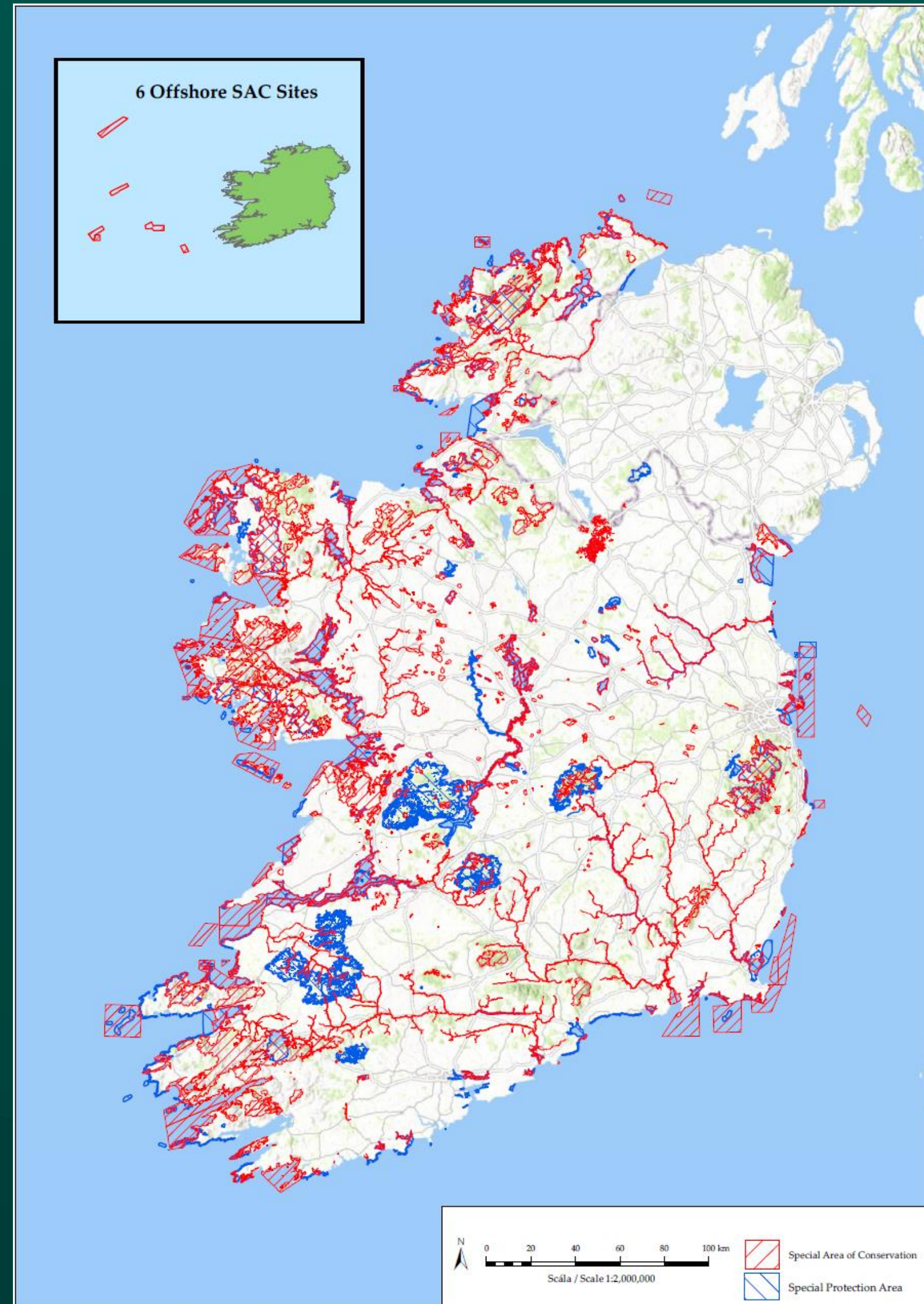
Birds Directive – Special Areas of Conservation (SPAs)

Natura 2000: A network of sites encompassing rare habitat types and core breeding, resting and feeding areas for rare and threatened species across Europe

Across all 27 EU countries, both on land and at sea

Covers more than 18 % of the EU's land area

Natura 2000 network in Ireland



- 439 SACs
- 154 SPAs
- 906,000 ha terrestrial area (13%)
- 1,042,000 ha marine area

Special Areas of Conservation



The Habitats Directive was adopted by Member States in May 1992
“Directive on the conservation of natural habitats and wild fauna and flora”

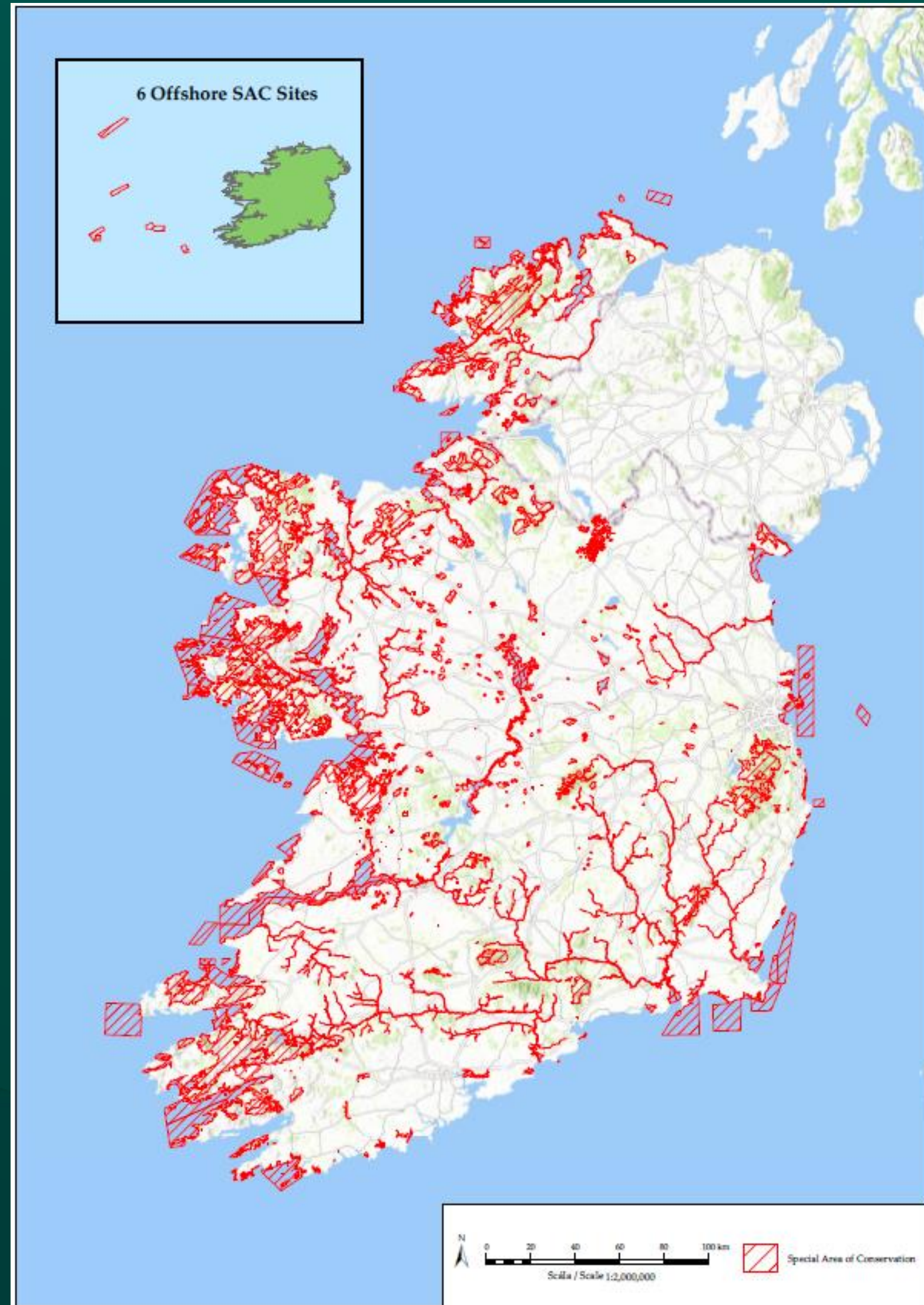
Article 4 relates to the identification and selection of sites to be designated as SACs

Member States must designate sufficient SACs for:

- Habitats listed in Annex I of the Directive
- Species listed in Annex II



SAC network in Ireland



439 SACs

- SACs selected for:
- 59 Annex I habitats (16 priority)
- 25 Annex II species

Recognises the particular importance of certain species and habitats



Special Protection Areas



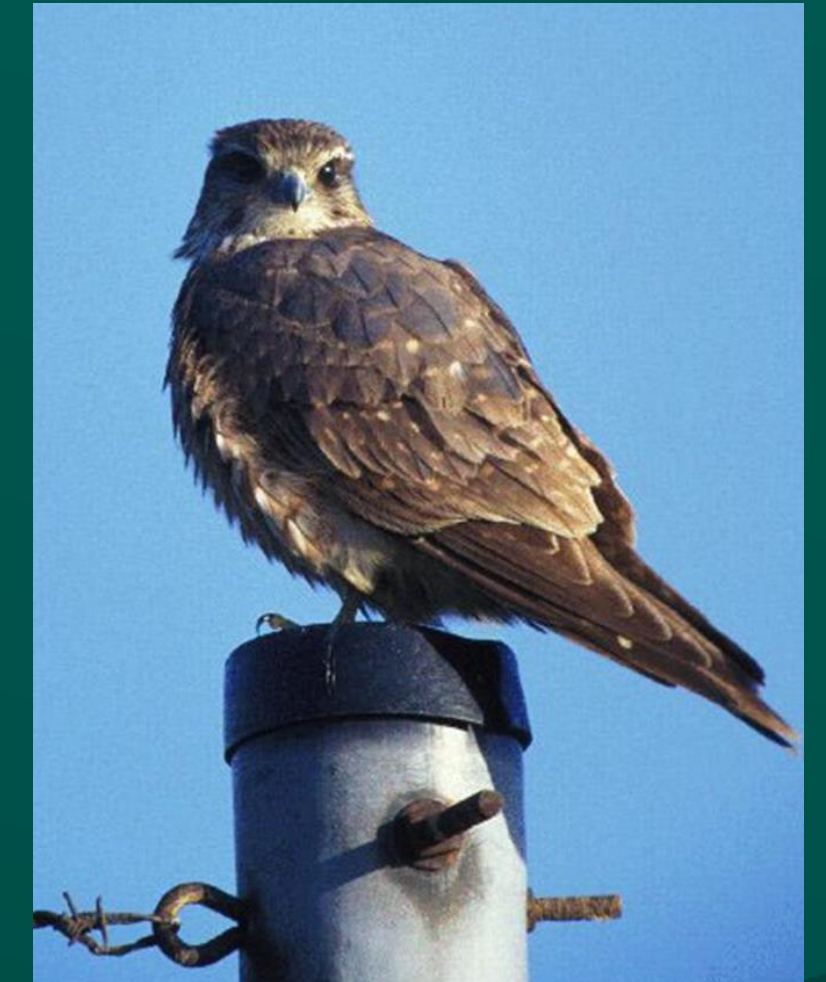
The Birds Directive was unanimously adopted by Member States in April 1979; amended in 2009

The oldest piece of EU legislation on the environment

Aims to protect all of the 500 wild bird species naturally occurring in the European Union

Article 4 relates to the classification of Special Protection Areas for :

- Species listed in Annex I of the directive
- Regularly occurring migratory species



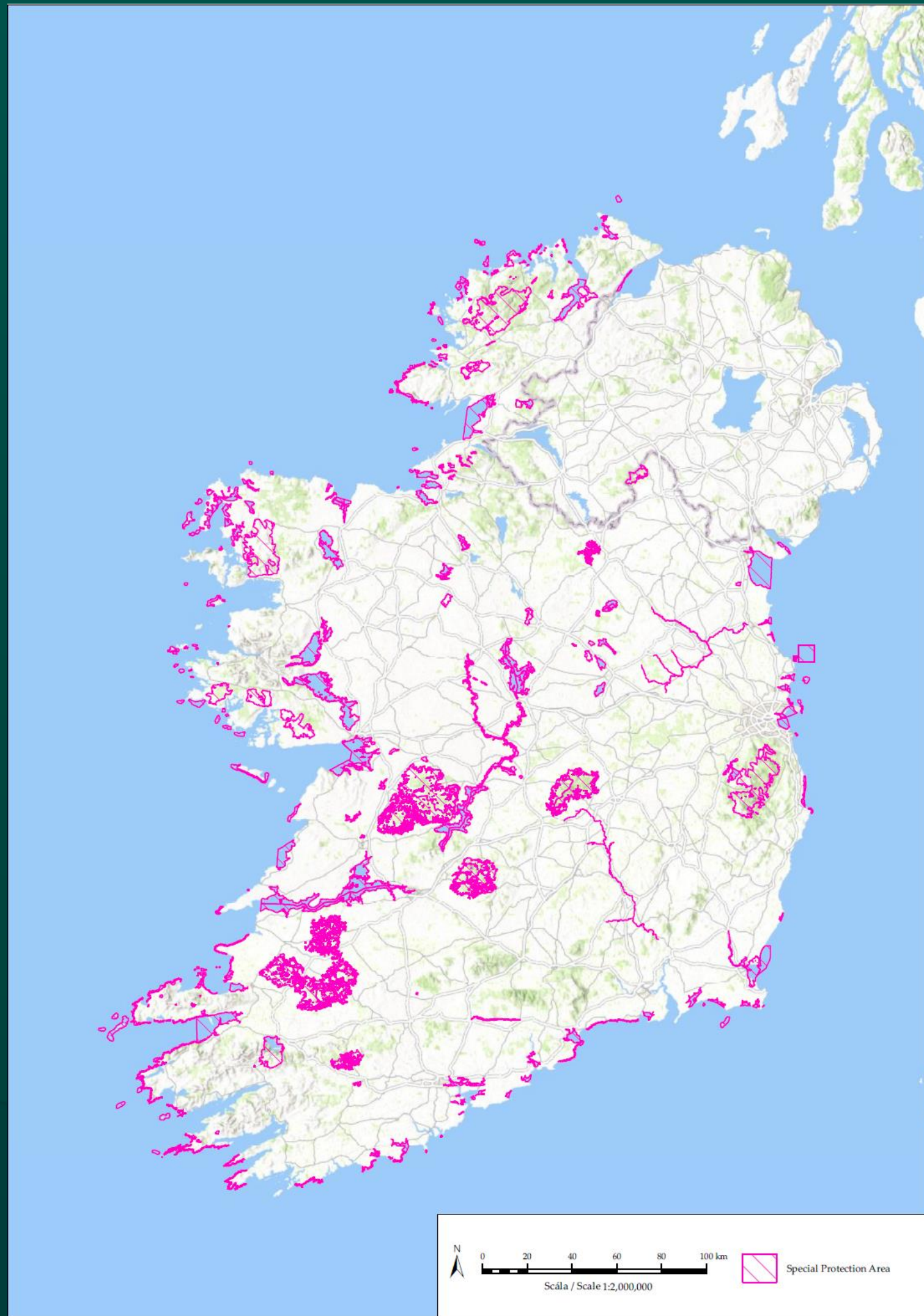
SPA network in Ireland



154 SPAs

Site selection based on:

- Sites regularly supporting 20,000 waterbirds/ 10,000 pairs of seabirds
- Sites regularly supporting 1% or more of the all-Ireland population of an Annex I species
- Sites regularly supporting 1% or more of the biogeographic population of a migratory species



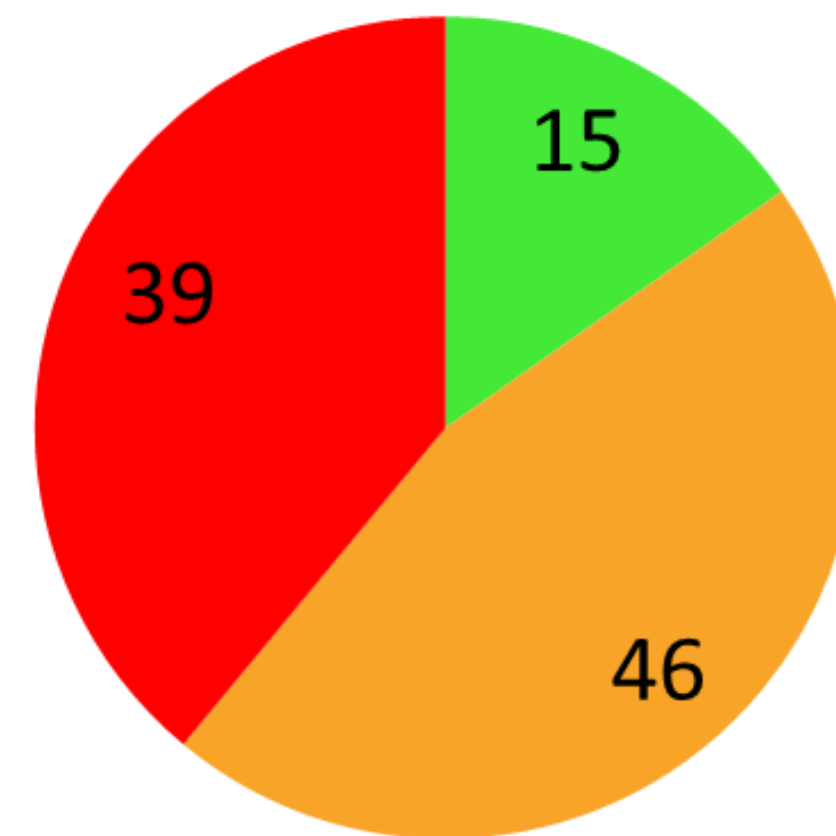
Habitats Directive Article 17 Reporting 2019



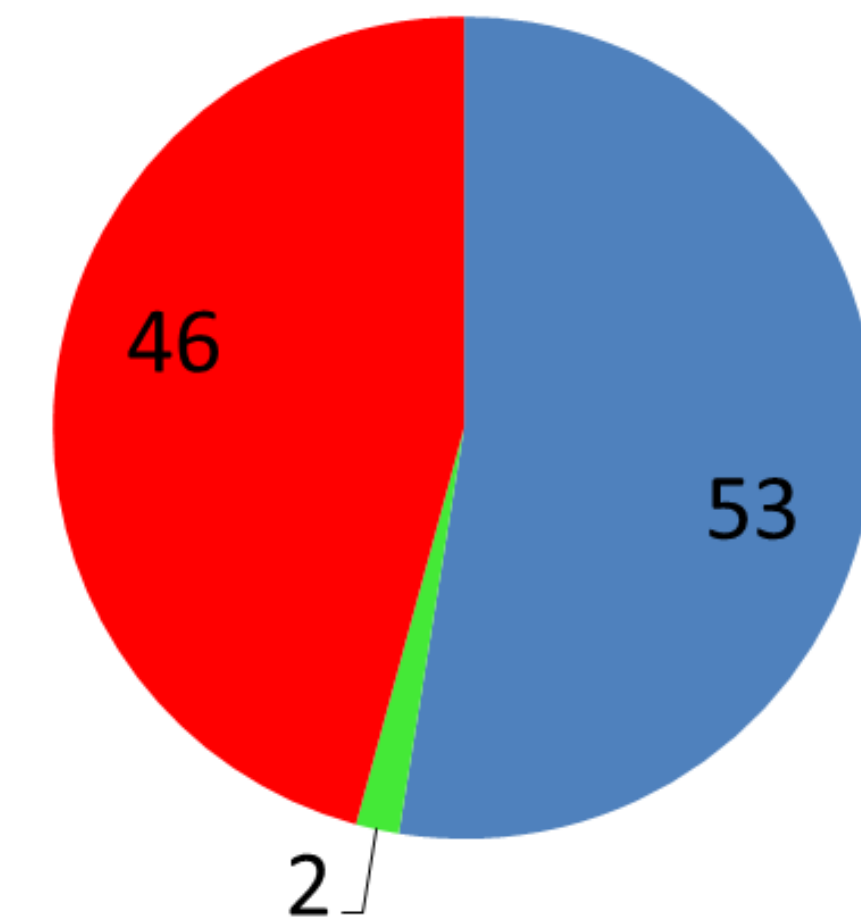
The Status of EU Protected
Habitats and Species in Ireland
2019



Habitats



- Favourable
- Inadequate
- Bad



- Stable
- Improving
- Declining

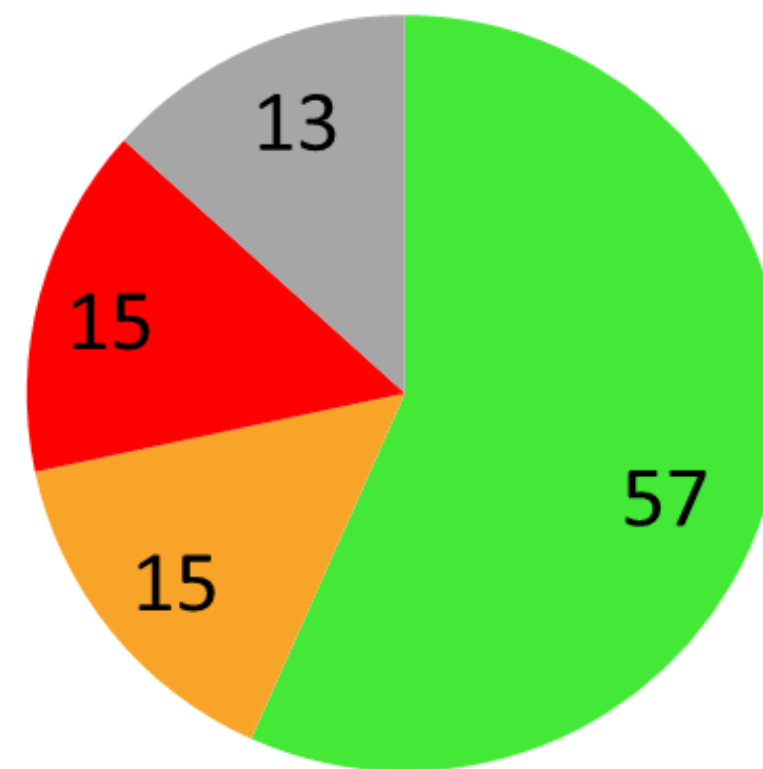
Habitats Directive Article 17 Reporting 2019



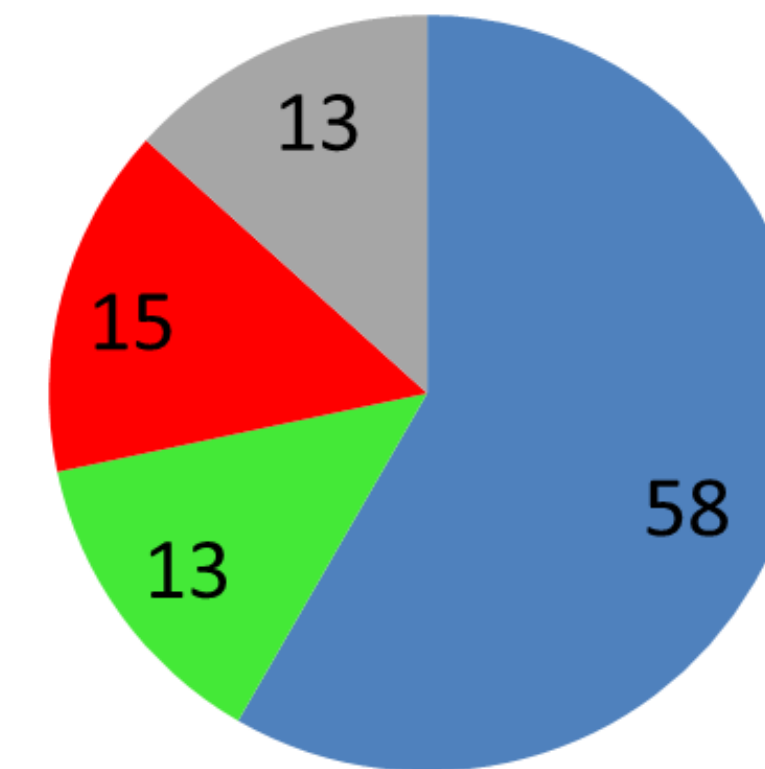
The Status of EU Protected
Habitats and Species in Ireland
2019



Species



- Favourable
- Inadequate
- Bad
- Unknown



- Stable
- Improving
- Declining
- Unknown



Article 6(1)

Must take appropriate conservation measures to maintain and restore the habitats and species for which SACs have been designated at favourable conservation status

Similar provisions apply to SPAs under Articles 3, 4(1) and 4(2) of the Birds Directive

Provides for positive conservation measures, involving, if required, management plans, and statutory, administrative or contractual measures which meet the ecological requirements of the sites



Article 6(2)

Must avoid damaging activities that could significantly disturb species or lead to a deterioration in the habitats of the protected species or habitat types.

Take all appropriate actions to ensure that no deterioration or significant disturbance occurs

Scope is broader than Articles 6(3) and 6(4) which are concerned only with plans and projects. Applies to all ongoing activities – like agriculture, forestry, fisheries and water management

Reflected in requirements of Regulation 27 of the EC (Birds and Natural Habitats) Regulations, 2011 and Section 177S, Planning and Development Act, 2000

Article 6(3)



Sets out a step by step procedure referred to as appropriate assessment for considering plans and projects likely to have significant (negative) effects on SACs and SPAs, the outcome of which has consequences for whether a plan or project can be lawfully permitted

First step in the process is screening for appropriate assessment – not explicitly referred to in Article 6(3) but is an explicit requirement in Irish law (Planning and Development Act, 2000 Part XAB, S177U)

Next step is full appropriate assessment – the outcome of this assessment must conclude with certainty that the plan or project will not adversely affect the (ecological) integrity of the site concerned – before a competent authority can approve a plan or project

OR the procedures set out in Article 6(4) must be followed.

Screening for AA



Is the proposal likely to have a significant effect on (the conservation objectives of) a European site?

(Waddenzee C-127/02 paragraphs 39–44)

It is not permissible to take into account, at the screening stage, **measures which are intended to avoid or reduce the harmful effects of a project** on a European site

(People over Wind v Coillte Teo C-323/17)

Eoin Kelly v. ABP [2019] IEHC 84



Proposed development of a discount foodstore

Court ruled that the Board and its inspector did not take into account “mitigation measures” (within the correct meaning of that term as interpreted by the CJEU in *People over Wind*) at the screening stage

“It is clear.....that the inclusion of the SUDS measures is not with the intention of avoiding or reducing any potentially harmful effect of the development on any European site and that their inclusion is required for completely different reasons.” (Para 141)

Underlines the importance of establishing:

1. Whether there are pathways which could give rise to impacts to a European site
2. Whether any such impacts could affect the conservation objectives of the European site(s) in question

Heather Hill v. ABP [2019] IEHC 450



Proposed Housing development

Court ruled that “best practice measures” had been improperly relied upon in reaching the conclusion that the proposed development would not be likely to have a significant effect on the European sites in question.

“The structure of the screening determination, and the fact that the inspector thought it necessary to make reference to “best practice measures”, in what is a very short determination, indicates that the inspector was relying upon the combined effect of the “best practice measures” and dissipation by tidal currents in reaching her determination.”

(Para 177)

Para 176: The key determinant of whether a measure is an avoidance / reduction measure is its intended purpose. This can only be ascertained by reference to the predicted impact of the proposed development on a European site, and whether the measure is intended to avoid or reduce a potential impact.

Two other cases of interest



Uí Mhuirín v. MHPLG [2019] IEHC 824

Installation of a renewable energy wind wave and tidal test facility

Sweetman v ABP [2020] IEHC 39

Proposed solar farm

See paras 51-91 of the judgement for a summary of the relevant case law in relation to screening for appropriate assessment.

In particular para 89 summarises the relevant principles



Appropriate Assessment



SACs - qualifying interests (QI) of the site (Annex I habitats, Annex II species)
SPAs - special conservation interest (SCI) bird species of the site

Assessment must examine the implications of the plan or project for the QIs, or SCIs, of the European site concerned, in view of the site's conservation objectives, in light of the best scientific knowledge in the field

Assessment must also address the potential impacts on habitat types and species found within a European site which are not listed as QI/SCI of the site; and/or habitats and species found outside the site, where such impacts may affect the conservation objectives of the site

Holohan v. An Bord Pleanála C-461/17

Appropriate Assessment



- The assessment cannot have lacunae, and must contain complete, precise and definitive findings and conclusions.
- Competent authorities can authorise a plan or project only if they have made certain that it will not adversely affect the integrity of a European site.
- This is so when there is no reasonable scientific doubt as to the absence of such effects.
- A rigorous and demanding process

Appropriate Assessment



Natura Impact Statement

Scientific examination of a plan or project.....to identify and characterise...implications of the plan or project individually or in combination with other plans or projects in view of the conservation objectives of the site(s)

- Must consider trends, baseline data
- Must focus on conservation objectives for site(s)
- Must focus on pathways which may give rise to potential impacts
- Must then assess potential impacts to predict (ecological) effects and understand their significance
- Must be careful design of mitigation measures in order to avoid and reduce impacts to a level where they will no longer adversely affect the site's integrity
- Mitigation must do what it says it will
- And there must be clarity in relation to detail, design, delivery, implementation, timelines



Towards better assessment

- Identifying issues as early as possible
- Ensuring ecologists are involved early in project lifecycles
- Scientifically rigorous and transparent approach is essential (e.g see CIEEM Guidelines for EclA)
- Ensuring procedures and paperwork are fit for purpose and in place

Article 6(4)



Sets out a derogation procedure from the requirements of Article 6(3) in certain very limited circumstances

Firstly it must be established that there are no alternative solutions, which are less damaging to the site, to the plan/project being proposed

There must also be imperative reasons of overriding public interest (IROPI)

All compensatory measures must be taken to ensure that the overall coherence of the Natura 2000 network is protected



Current initiatives

Better engagement

- *National Appropriate Assessment Forum*
- *Engagement with key stakeholders (e.g. DHPLG, DAFM, ABP, OPR, TII, DCCAE, CIEEM, IPI, BWI)*

Inputs to plans and programmes. For example

- *National Marine Planning Framework*
- *More focus on city/county development plans*

Guidance

- *Guidance for public authorities in relation to Article 6(3) and 6(4) of the Habitats Directive*
- *Guidance on the assessment of atmospheric N deposition (incl. ammonia)*



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Resources

Legislation

- Habitats Directive 92/43/EEC
- Birds Directive 2009/147/EC
- European Communities (Birds and Natural Habitats) Regulations, 2011 (as amended)
- Planning and Development Act, 2000 (as amended)
- CJEU and Irish caselaw

Guidance

- Managing Natura 2000 sites – The provisions of Article 6 of the ‘Habitats’ Directive 92/43/EEC (updated 2018)
- Appropriate Assessment of Plans and Projects in Ireland: Guidance for Planning Authorities (2009)