Doyle, Eimear

From: forestry <forestry@chg.gov.ie>
Sent: Sunday 26 July 2020 15:29
To: Felling Forest Service
Subject: RE: TFL00495920
Attachments: Appendix 1 Forestry Consultations.pdf

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TFL00495920

Outlined below please find the nature conservation recommendations of the Department of Culture, Heritage and the Gaeltacht for the above-mentioned application.

1. This felling application is in the Slievefelim to Silvermines Mountains Special Protection Area (SPA) (Site Code 004165). It is part of the Therefore an Appropriate Assessment is required if the works are planned to be carried out within the breeding season for Hen harriers, April 1st to August 15th.
2. As the site occurs within a Hen Harrier SPA 20% of the clearfell areas when restocked should consist of open space suitable for foraging for Hen Harrier.
3. The site is upstream of the Lower River Shannon Special Area of Conservation (SAC) (Site Code 002165) and therefore the Forest Service whilst carrying out Appropriate Assessment screening must ensure that the activity will not have a significant negative impact on the SAC downstream.
4. Appropriate aquatic buffer zones, adhering to current best practice, should be established along all aquatic zones on site upon restocking.
5. Forest Services should ensure that works on site do not result in the spread of invasive species. If invasive species are identified on site then appropriate biosecurity measures should be put in place to prevent their spread.

The attached appendix contains more general points that are of relevance and will hopefully be of assistance to you in your consideration of this matter.

Kind regards,
Sinéad

—
Sinéad O' Brien
Executive Officer
—
An Roinn Cultúir, Oidhreachta agus Gaeltachta
Department of Culture, Heritage and the Gaeltacht

Aonad na nIarratas ar Fhorbairt
Development Applications Unit

Bóthar an Bhaile Nua, Loch Garman, Contae Loch Garman Y35 AP90
Newtown Road, Wexford, County Wexford Y35 AP90
—
T: +353 (0)53 9117528
manager.dau@chg.gov.ie
ww.chg.gov.ie
—

From: Felling Forest Service [mailto:Felling.ForestService@agriculture.gov.ie]
Sent: Friday 12 June 2020 06:53
To: forestry
Subject: TFL00495920

Hi,

Please see attached for your comments.

Kind regards,
Christina

Christina Price
Forest Service

An Roinn Talmhaíochta, Bia agus Mara
Department of Agriculture, Food and the Marine

Eastát Chaisleán Bhaile Sheáin, Co. Loch Garman, Y35 PN52

Johnstown Castle Estate, Wexford, Y35 PN52

T: 076 106 4459
www.agriculture.gov.ie

Disclaimer:

Department of Agriculture, Food and the Marine

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An Roinn Talmhaíochta, Bia agus Mara

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Tá an t-eolas sa ríomhphost seo faoi rún, chomh maith le gach comhad atá ceangailte leis, agus i gcomhair úsáid an duine nó an chórais a bhfuil sé dírithe air amháin. Má fhaigheann tú an ríomhphost seo trí bhotún, cuir scéal chugainn ag webmaster@chg.gov.ie. Tá an ríomhphost seo arna sheiceáil ag scanóir víreas agus dealramh air go bhfuil sé glan.

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

Appendix 1: General observations from the National Parks and Wildlife Service of the Department of Culture, Heritage and the Gaeltacht in relation to forestry application referrals

In addition to any specific observations/recommendations the National Parks and Wildlife Service of the Department of Culture, Heritage and the Gaeltacht may issue in relation to a forestry application referral, the general points set out below are of relevance and may be of assistance to the Forest Service of the Department of Agriculture, Food and the Marine in making its determination on applications for forestry developments. The general points set out below are made in the context of this Department's role in relation to nature conservation, including as a consultation body with respect to forestry developments (e.g. the Forestry Act 2014 and Regulations made thereunder)..

Please note that if the Department is not in a position to make specific comments on a particular referral, no inference should be drawn that the Department is satisfied or otherwise with the proposed activity and the points made below will still apply.

Duties of a Public Authority

As you know, the Minister for Agriculture, Food and the Marine is a "public authority" within the meaning of the EC (Birds and Natural Habitats) Regulations 2011 (the 2011 Regulations) and as such has duties in relation to Nature Conservation and for Screening for Appropriate Assessment and where necessary following a screening, Appropriate Assessment before an approval or licence may be granted (see especially Regulation 42).

In addition to the screening/assessment, decision-making and record-keeping obligations[1] that exist in this case, the Forest Service should also be mindful of:

- the general duties placed on all public authorities[2] by Regulation 27 of the 2011 Regulations in relation to European sites. Among other things, this includes a duty to exercise all functions, including but not only consent functions, in compliance with, and so as to secure compliance with the requirements of the Habitats and Birds Directives and the 2011 Regulations. Public authorities are obliged, when exercising their functions, to take appropriate steps to avoid, in European sites, the deterioration of natural habitats and the habitats of species, as well as disturbance of species for which a site has been designated insofar as this disturbance could be significant in relation to the objectives of the Habitats Directive;

- general obligations in relation to protected species of flora and fauna and their key habitats, including breeding sites and resting places, wherever they occur, under the 2011 Regulations (i.e. strictly protected Habitats Directive Annex IV species), and

[1] Obligations to keep associated records, including of screening and appropriate assessment determinations, are set out in Regulation 61 of the 2011 Regulations

[2] Defined in Part 1 of the European Communities (Birds and Natural Habitats) Regulations, 2011, and including the Forest Service as part of a Government Department

Aonad na nIarratas ar Fhorbairt, Bóthar an Bhaile Nua, Loch Garman, Y35 AP90
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manager.dau@chg.gov.ie
www.chg.gov.ie

Wildlife Acts, 1976-2018. Derogation licences may be required from this Department where protected species, or their key habitats, would be damaged or disturbed in the course of forestry development, works or other activities;

- general obligations not to cause or allow 'environmental damage' to occur, as defined in the Environmental Liability Directive (2004/35/EC) and European Communities (Environmental Liability) Regulations, 2008, and including damage to 'protected species and natural habitats'[3].

Appropriate assessment

Screening for appropriate assessment must be carried out to assess, in view of best scientific knowledge and in view of the conservation objectives of the relevant European site(s), if the proposed operation/activity on its own or in combination with other plans or projects is likely to have a significant effect on the European site(s) (Regulation 42(1) of the 2011 Regulations). For example, the likely effects of all aspects of the operation must be considered and screened in combination with other forestry operations and other forest management activities which are completed, commenced, permitted or proposed and other developments that could act in combination.

It must be determined that an appropriate assessment is required if it cannot be excluded on the basis of objective scientific information, following screening, that the project, alone or in combination with other plans or projects will have a significant effect on the European site(s) (Regulation 42(6)). The precautionary principle should be applied in reaching this determination, i.e. where there is uncertainty or a lack of data, it should not be assumed that significant effects will not result.

In the event that it is determined that an appropriate assessment is required, the relevant legislation should be followed, and the standards established by case law of the Court of Justice of the European Union should be noted. In the case of the latter, for example, you may be aware that the Court of Justice has established that an appropriate assessment cannot have lacunae, and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of a project on the European site(s) concerned.

The Department acknowledges that the Forest Service has developed a suite of environmental guideline documents and requirements for forestry operations, including the Code of Best Forest Practice and the recently published environmental requirements. It is also understood that the standards, procedures, mitigation measures and safeguards contained within these documents apply to forestry operations in general and as required, and that consents or approvals are given subject to such compliance.

[3] Including Annex I species and other regularly occurring migratory species, and their habitats (wherever they occur), under the Birds Directive, and Annex I habitats, Annex II species and their habitats, and Annex IV species and their breeding sites and resting places (wherever they occur), under the Habitats Directive

In cases where risks of adverse effects on European sites and their conservation objectives could result from forestry operations, alone or in combination with other plans and projects, and mitigation measures are required, the full details of the latter, and their implementation and likely effectiveness in the specific case and site in question, need to be available to the Forest Service when the appropriate assessment is carried out. It should also be demonstrated that any necessary mitigation measures will be effective in addressing and ameliorating the full range and likely significance of the adverse effects that may result from the project; the final analysis by the decision-making authority should be of the residual effects. Specialist input or advice may be required in designing and delivering mitigation measures and specifying the locations where these are required.

Environmental Impact Assesment (EIA)

Consideration should be given to potential impacts on biodiversity as part of the consideration of the need for EIA in relation to forestry applications as set out in the Forestry Act 2014 and Regulations made thereunder. Where proposals fall below the thresholds for mandatory EIA, set out in the Forestry Regulations, 2017, consideration should be given to the need for a sub-threshold Environmental Impact Assessment (EIA)

Other Biodiversity Considerations

Particular consideration should be given to the following matters as part of a general consideration of potential impacts on biodiversity, and in any consideration of the need for sub-threshold EIA, arising from forestry applications including:

- The presence of, and potential effects on strictly protected 'Annex IV' species (Habitats Directive), and their key habitats (i.e. Breeding sites and resting places) in the course of clear-felling, replanting and any associated works and development.

- The need for derogation licences under the European Communities (Birds and Natural Habitats) Regulations, 2011-2015, for the above.

- The presence of, and potential effects on any other protected species of flora or fauna (Wildlife Acts, 1976-2018), and their key habitats (i.e. Breeding sites and resting places) in the course of clear-felling, replanting and any associated works and development.

- The need for any licences under the Wildlife Acts, 1976-2018, for the above.