

Prepared by

Roughan & O'Donovan
Arena House, Arena Road, Sandyford Dublin 18, D18 V8P6
Tel +353 1 294 0800 | Email info@rod.ie | www.rod.ie



Appropriate Assessment Screening Report for the Draft Wexford Destination & Experience Development



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Appropriate Assessment Screening Report for the Draft Wexford Destination and Experience Development Plan

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1.0 INTRODUCTION

1.1 Overview

This Appropriate Assessment Screening Report ("the AA Screening Report"), with respect to the Wexford Destination and Experience Development Plan (hereafter referred to the "draft Wexford DEDP" or the "draft DEDP") has been prepared independently by Roughan & O'Donovan ("ROD"), on behalf of Fáilte Ireland (FI). It does not, in and of its own right, confer planning permission for any specific development but rather guides the tourism investment and decision making in Wexford.

This document comprises the AA Screening Report in accordance with the requirements of the Habitats Directive, the Habitats Regulations and the Planning and Development Act 2000, as amended. The aim of this AA Screening Report is to inform and assist the Competent Authority, FI, in carrying out its AA Screening Assessment by determining whether or not the draft DEDP, either individually or in combination with other plans and projects, has the potential to significantly affect one or more European sites in view of their Conservation Objectives.

The AA Screening Report is intended to assess the likelihood of the draft DEDP, either individually or in combination with other plans or projects, significantly affecting areas designated as being of European importance for nature conservation ("European sites"), thereby enabling FI, in its capacity as the Competent Authority in this case, to comply with its obligations under Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ("the Habitats Directive").

It is the considered opinion of ROD, as the author of this AA Screening Report, that the draft Wexford DEDP, either individually or in combination with other plans or projects, is likely to give rise to impacts which would constitute significant effects on European sites, in view of their Conservation Objectives, and, therefore, that AA is required in respect of the draft DEDP

1.2 Legislative Context

Council Directive 92/43/EEC of the 21st May 1992 on the conservation of natural habitats of wild fauna and flora ("the Habitats Directive") and Directive 2009/147/EC of the European Parliament and of the Council of the 30th November 2009 on the conservation of wild birds ("the Birds Directive") list habitats and species which are, in a European context, important for conservation and in need of protection. This protection is afforded in part through the designation of sites which support significant examples of habitats or populations of species ("European sites"). Sites designated for wild birds are termed "Special Protection Areas" (SPAs) and sites designated for natural habitat types or other species are termed "Special Areas of Conservation" (SACs). The complete network of European sites is referred to as "Natura 2000".

In order to ensure the protection of European sites in the context of land use planning and development, Article 6(3) of the Habitats Directive provides for the assessment of the implications of plans and projects for European sites, as follows:

"Any plan or project not directly connected with or necessary to the management of the 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. In the light of the conclusions of the assessment of the implications for

the site¹ and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.”

In Case C-323/17[§34], *People Over Wind*, the Court of Justice of the European Union (‘the CJEU’) referred to the nature of the test to be applied in making a screening determination as follows:

“[...] it is settled case-law that Article 6(3) of the Habitats Directive makes the requirement for an appropriate assessment of the implications of a plan or project conditional on there being a probability or a risk that the plan or project in question will have a significant effect on the site concerned. In the light, in particular, of the precautionary principle, such a risk exists if it cannot be excluded on the basis of objective information that the plan or project will have a significant effect on the site concerned (judgment of 26 May 2011, Commission v Belgium, C-538/09, EU:C:2011:349, paragraph 39 and the case-law cited). The assessment of that risk must be made in the light inter alia of the characteristics and specific environmental conditions of the site concerned by such a plan or project (see, to that effect, judgment of 21 July 2016, Orleans and Others, C-387/15 and C-388/15, EU:C:2016:583, paragraph 45 and the case-law cited).”

Further clarification on the use of mitigation measures was provided in *Eco Advocacy*² where the CJEU ruled that where constituent elements are incorporated into the design of a project as standard features required for all projects of that nature and not within the aim of reducing negative effects of a project on European sites, those features cannot be regarded as indicative of likely significant effects on European sites concerned and should not be interpreted as mitigation measures intended to avoid or reduce harmful effects of a plan or project on those European sites. The judgment was made as follows:

“In the light of the foregoing considerations, the answer to the fourth question is that Article 6(3) of the Directive 92/43 must be interpreted as meaning that, in order to determine whether it is necessary to carry out an appropriate assessment of the implications of a plan or project for a site, account may be taken of the features of that plan or project which involve the removal of contaminants and which therefore may have the effect of reducing harmful effects of the plan or project on that site, where those features have been incorporated into that plan or project as standard features, inherent in such a plan or project, irrespective of any effect on the site.”

Article 7 of the Habitats Directive provides that the provisions of, inter alia, Article 6(3) are to apply to SPAs under Directive 2009/147/EC (the “Birds Directive”).

As stated, the requirements arising out of Article 6(3) of the Habitats Directive are transposed into Irish law by the European Communities (Birds and Natural Habitats) Regulations 2011 as amended³ (S.I. No.477 of 2011) (the Habitats Regulations), including Part 5 thereof.

The determination of whether or not a plan or project requires AA Screening is referred to as “Stage 1” or “AA Screening”. A “Stage 1” or “AA Screening” is completed to determine whether or not the Project, either individually or in combination with other plans or projects, in view of best scientific knowledge, is likely to have a significant

¹ Including, where applicable, ‘sites’.

² *Eco Advocacy v. An Bord Pleanála* [2023] C-721/21.

³ Including inter alia S.I. 290 of 2013; SI 499 of 2013; SI 355 of 2015; the Planning, Heritage and Broadcasting (Amendment) Act 2021, Chapter 4; SI 293 of 2021.

effect on areas designated as being of European importance for nature conservation ("European sites"), thereby enabling the Applicant, to fulfil its obligations under Article 6(3) of the Habitats Directive.

Article 6(3) of the Habitats Directive specifies that AA Screening must be undertaken by the "competent national authorities". In Ireland, the "competent authority" is the relevant planning authority for each plan or project. Consequently, the responsibility for carrying out AA Screening lies solely with the competent authority. In that respect, the AA Screening Report is not in itself an AA Screening Assessment but provides the competent authority with the information it needs in order to carry out its AA Screening.

1.3 Guidance

The following guidance documents informed this AA Screening and the assessment methodology:

- EC (2021) *Assessment of plans and projects in relation to Natura 2000 sites: Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC*. Environment Directorate-General of the European Commission.
- EC (2018) *Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC*. European Commission, Brussels.
- DEHLG (2010) *Appropriate Assessment of Plans and Projects in Ireland – Guidance for Planning Authorities*. Department of the Environment, Heritage and Local Government, Dublin.
- NPWS (2010) *Appropriate Assessment under Article 6 of the Habitats Directive: Guidance for Planning Authorities*. Circular Letter NPWS 1/10 & PSSP 2/10. National Parks & Wildlife Service, Department of the Environment, Heritage and Local Government, Dublin.
- Office of the Planning Regulator (OPR (2021) *Appropriate Assessment Screening for Development Management*. Office of the Planning Regulator, Dublin.
- Scottish Natural Heritage (2015) *Habitat Regulation Appraisals of Plans. Guidance for Plan-making Bodies in Scotland*. Version 3.0. January 2015.

1.4 Appropriate Assessment Process

Appropriate Assessment guidance (EC, 2002) promotes a four-stage process to completing AA. The four steps are summarised as follows:

Stage 1 Screening for Appropriate Assessment: Screening for Appropriate Assessment is the process of determining if a plan, project or in this case, the draft DEDP, is necessary for the management of the Natura 2000 network, or if it, alone or in-combination with other plans and projects, is likely to have a significant effect on one or more European sites. At this stage, mitigation measures to avoid or reduce the potential for significant effects cannot be considered.

Stage 2 Appropriate Assessment: Where the possibility of significant effects on one or more European site cannot be excluded, the process proceeds to Stage 2 Appropriate Assessment. This stage considers whether the plan, project or in this case the draft Wexford DEDP, in-combination with other plans and projects, will adversely affect the integrity of one or more European site, and includes any mitigation measures to avoid or reduce negative impacts. At Stage 2, the proponent is required to submit a Natura Impact Statement (NIS). This report must contain complete, precise and

definitive findings to enable the Competent Authority (Fáilte Ireland in this case) to carry out Appropriate Assessment.

Stage 3 Assessment of Alternative Solutions: Where adverse effects cannot be excluded, the plan, project or in this case the draft DEDP, must proceed to Stage 3, the Assessment of Alternative Solutions. This stage examines alternative options or solutions which avoid adverse effects. Once an alternative solution is selected, the process returns to Stage 2 Appropriate Assessment. If after examines all alternatives and establishing that adverse effects remain, the process proceeds to Stage 4.

Stage 4 Imperative Reasons of Overriding Public Interest (IROPI): IROPI is a derogation process which allows a plan, project or in this case the draft DEDP, to proceed despite the fact that it will have an adverse effect on one or more European sites. At Stage 4 it must be established that no alternatives exist. In addition to the mitigation measures permitted from Stage 2 of the process, at Stage 4 compensatory measures are also permissible. Where priority Annex I habitats are concerned, as defined in the Habitats Directive, the Competent Authority can only approve proposals relating to human health, public safety or beneficial consequences of primary importance to the environment.

1.5 Screening Methodology

At this stage of the process, the AA Screening Report assesses the potential effects from the draft DEDP on the European sites within the likely zone of impact and evaluates them in view of the sites' Conservation Objectives.

This AA Screening Report has had regard inter alia to the following matters⁴ :

- The threshold test is that an appropriate assessment will be required if the draft DEDP is likely to have a significant effect on (a) European site(s) either individually or in combination with other plans or protects.
- It is not necessary, in order to trigger the requirement to proceed to stage 2 AA that the draft DEDP will 'definitely' have significant effects on the protected site, but such a requirement will arise if it is a 'mere probability' that such an effect exists. The requirement to carry out an AA will be satisfied if there is a 'probability or a risk' that the draft DEDP will have 'significant effects' on (a) European site(s).
- Consequent upon the application of the precautionary principle, such a 'risk' will be found to exist if 'it cannot be excluded on the basis of objective information' that the draft DEDP 'will have significant effects' on (a) European site(s).
- An AA will be required if, on the basis of objective information, a 'significant effect' on a European site 'cannot be excluded'. An AA will not be required if, on the basis of objective information, a 'significant effect' on (a) European site(s) 'can be excluded'.
- In the case of 'doubt as to the absence of significant effects' an AA must be carried out.
- The requirement to conduct an AA will arise where, at the screening stage, it is ascertained that the draft DEDP is 'capable of having any effect' (albeit this must be any 'significant effect') on (a) European site(s).
- The 'possibility' of there being a 'significant effect' on (a) European site(s) will give rise to a requirement to carry out an AA for the purposes of Article 6(3).

⁴ See Eoin Kelly v. An Bord Pleanála [2019] IEHC 84; Kelly v. An Bord Pleanála [2014] IEHC 400; Connelly v. An Bord Pleanála [2018] IESC 31; [2018] ILRM 453

There is no need to 'establish' such an effect and it is merely necessary to determine that there 'may be' such an effect.

- In order to meet the threshold of likelihood of significant effect, the word 'likely' in Article 6(3) means less than the balance of probabilities. The test does not require any 'hard and fast evidence' that such a significant effect was likely. It merely has to be shown that there is a 'possibility' that this significant effect is likely.
- The assessment of whether there is a risk of 'significant effect' on the European site must be made in light, inter alia, of the 'characteristics and specific environmental conditions of the site concerned' by the relevant plan or project.
- Plans or projects or applications for developments which have no appreciable effect on European sites are excluded from the requirement to proceed to AA. If all applications for permission for draft DEDP capable of having any effect whatsoever on such sites were to be caught by Article 6(3) activities on or near the site would risk being impossible by reason of legislative overkill.

While the threshold at the screening stage of Article 6(3) is very low nonetheless it is a threshold which must be met before it is necessary to proceed to the stage 2 AA.

Accordingly, best practice in undertaking AA Screening involves five steps as follows:

1. The first step involves gathering the information and data necessary to carry out a screening assessment. These include, but are not limited to, the details of all phases of the plan or project, environmental data pertaining to the area in which the plan or project is located, e.g. rare or protected habitats and species present or likely to be present, and the details of the European sites within the likely zone of impact.
2. The second step involves examining the information gathered in the first step and a scientific analysis of the potential impacts of the project on the receiving environment, particularly the European sites in the likely zone of impact.
3. The third step evaluates the impacts analysed in the second step against the Conservation Objectives of the relevant European sites, thereby determining whether or not those impacts constitute "likely significant effects", within the meaning of Article 6(3) of the Habitats Directive.
4. The fourth step involves considering the potential for likely significant effects to arise from the combination of the impacts of the plan or project with those of other plans or projects. If it is determined in the third step that Stage 2 (AA) is required, consideration of potential cumulative impacts may be deferred to that stage.
5. The last step involves the issuing of a statement of the determination of the AA Screening. Notwithstanding the recommendation made in the AA Screening Report, the responsibility for completing this step lies solely with the competent authority.

2.0 DESCRIPTION OF THE DRAFT WEXFORD DEDP

2.1 Overview

The draft Wexford Destination and Experience Development Plan (Wexford DEDP) is a five-year tourism development plan for county Wexford developed through a programme of research and consultation guided by the V.I.C.E. (Visitor, Industry, Community, Environment) model for sustainable tourism. The approach within the plan is based on the views of visitors, the tourism industry and local community stakeholders.

The plan incorporates existing and new projects across the county while also exploring the potential for new tourism development opportunities to grow the value of the tourism sector across Wexford. The approach focuses on the need for greater levels of connectivity between Wexford's coastal, rural and urban experiences and how the county can increase its appeal to international visitors. The county will play a key role in achieving Ireland's Ancient East regional tourism development goals over the next five years. Developing the tourism experience across the county will ensure Wexford will become a key contributor to disrupting future regional visitor flows and ensure the region retains visitors for longer.



Figure 2-1 Visitor destination experiences across Wexford County (Source: Fáilte Ireland Draft DEDP).

The key objectives of the draft DEDP are:

- Ensure the visitor experience in Wexford is brought to life through a mix of tourism products and experiences that will attract domestic and international visitors and retain them in the destination for longer.
- Unlock the economic potential of tourism by progressing key initiatives that will disperse tourists across the county.
- Strengthen the value of tourism to local communities by providing sustainable employment opportunities.
- Develop a sustainable basis for commercial tourism development by enhancing and creating compelling destination experiences that excite consumers and buyers alike.
- Create more reasons to attract leisure visitors on a year-round basis to Wexford and providing the opportunity for visitors to interact with local people as part of an authentic Wexford experience.
- Develop the role of Wexford as driver of regional tourism development and influence visitor flows across the South East.

The implementation of the draft Wexford DEDP is based on stakeholder commitment to project delivery and is structured around a multi-annual action plan. The stakeholders will take ownership or partner on the delivery of the key tasks required to implement the draft DEDP. It represents a five-year operational plan providing a commercial destination development focus that builds on existing project plans and integrating all related activity for a co-ordinated programme of activity. This includes projects that are currently being implemented, projects featured in existing plans and new concepts to grow the destination's capacity to increase the value of tourism across Wexford.

3.0 IDENTIFICATION OF ADVERSE EFFECTS

3.1 Potential effects on the Natural Environment

The subsections below describe the potential effects that draft DEDP could have on the natural environment in general, as a pretext to the identification and assessment of adverse effects on European sites. A number of elements of draft Wexford DEDP have the potential to lead to environmental and ecological impacts. Potential risks to the natural environment arising from draft DEDP are as follows:

Habitat loss and fragmentation

The development of tourism infrastructure in Wexford to promote outdoor activities linked to natural heritage areas, and the ensuing increased visitor numbers could lead to the loss of habitats that are Qualifying Interests of European Sites, and also habitats that are not Qualifying Interests but support Qualifying Interest habitats and species. This can include habitats and species outside the Natura 2000 network, such as areas used for feeding by wintering birds which lie outside the boundary of an SPA.

Direct species mortality

Direct species mortality is possible as a result of site clearance, tree felling and vegetation removal as part of any infrastructure construction required to promote visitors to Wexford.

Disturbance (noise, vibration, movement, lighting)

Disturbance can occur during construction and operation of infrastructure as a result of noise, both within and outside the footprint of the development. Increased visitor numbers and events can result in disturbance to wildlife.

Changes in water quality and hydrology

Water quality impacts arising from both the construction and the operation of the required infrastructure have the potential to directly and indirectly affect a wide range of habitats and species. Accidental pollution events can result in sediment and pollutants entering sensitive watercourses resulting in a deterioration in water quality.

Introduction and spread of invasive species

Invasive species pose a threat to biodiversity and ecosystem functioning and could inadvertently be introduced or spread through increased visitor numbers or construction plant and vehicles during construction works.

3.2 Establishing the Zone of Influence

Section 3.2.3 of DEHLG (2010) guidance outlines the procedure for selecting the European sites to be considered in AA. It states that European sites potentially affected should be identified and listed, bearing in mind the potential for direct, indirect, and in-combination effects. It also states that the specific approach in each case is likely to differ depending on the scale and likely effects of the plan or project. However, it advises that the following sites should generally be included:

- All European sites within or immediately adjacent to the plan or project area;
- All European sites within the Zone of Influence of the plan or project; and,
- In accordance with the Precautionary Principle, all European sites for which there is doubt as to whether or not they might be significantly affected.

The “Zone of Influence” of a plan or project is the geographic extent over which significant ecological effects are likely to occur. In the case of projects, the guidance recognises that the Zone of Influence must be established on a case-by-case basis using the Source-Pathway-Receptor model (OPR, 2021). A plan or project may only lead to significant effects on the integrity of the European site where all three elements of Source-Pathway-Receptor are linked. In the absence of one element of this model, adverse effects cannot occur. The assessment should make reference to the following key variables:

- The nature, size and location of the plan or project.
- The nature of the impacts which may arise from the project.
- The sensitivities of the ecological receptors.
- The potential for in-combination effects.

For example, in the case of a project that could affect a watercourse, it may be necessary to include the entire upstream and/or downstream catchment in order to capture all European Sites with water-dependent Qualifying Interests. In the case of plans, however, the guidance (DoEHLG, 2010) states that this zone extend to a distance of 15 km in all directions from the boundary of the plan area.

The Zone of Influence for the draft Wexford DEDP was defined as County Wexford and a 15km buffer around the county.

A geographical representation of the Zone of Influence was produced in QGIS 3.28.8-Firenze using publicly available Ordnance Survey Ireland maps. This is used in combination with NPWS SAC and SPA shapefiles to identify the boundaries of European Sites in relation to the Zone of Influence (Appendix A).

There are 32 European sites within the Zone of Influence. Table 3-1 presents the number of SACs and SPAs in the Zone of Influence and Table 3-2 lists the names and site codes of the European sites.

Table 3-1 European Sites within the Zone of Influence

European Sites	No. sites
Special Areas of Conservation	21
Special Protection Areas	12
Total	33

Table 3-2 European Sites within the Zone of Influence

Site Code	Site Name
Special Protection Area	
004020	Ballyteige Burrow SPA
004033	Bannow Bay SAC SPA
004143	Cahore Marshes SPA
004118	Keeragh Islands SPA
004009	Ladys Island Lake SPA
004233	River Nore SPA

Site Code	Site Name
004002	Saltee Islands SPA
004237	Seas of Wexford SPA
004092	Tacumshin Lake SPA
004019	The Raven SPA
004027	Tramore Back Strand SPA
004076	Wexford Harbour and Slobs SPA
Special Area of Conservation	
000696	Ballyteige Burrow SAC
000697	Bannow Bay SAC
000770	Blackstairs Mountains SAC
002953	Blackwater Bank SAC
000729	Buckroney-Brittas Dunes and Fen SAC
000700	Cahore Polders and Dunes SAC
002269	Carnsore Point SAC
001952	Comeragh Mountains SAC
000764	Hook Head SAC
001741	Kilmuckridge-Tinnabearna Sandhills SAC
001741	Kilpatrick Sandhills SAC
000704	Ladys Island Lake SAC
002161	Long Bank SAC
002137	Lower River Suir SAC
000710	Raven Point Nature Reserve SAC
002162	River Barrow and River Nore SAC
000707	Saltee Islands SAC
000708	Screen Hills SAC
000781	Slaney River Valley SAC
000709	Tacumshin Lake SAC
000671	Tramore Dunes and Backstrand SAC

3.3 Conservation Status and Site Integrity

Article 1(e) of the Habitats Directive defines the conservation status of a natural habitat as “the sum of the influences acting on a natural habitat and its typical species that may affect its long-term natural distribution, structure and functions as well as the long-term survival of its typical species [...]”.

The conservative status of a natural habitat will be taken as "favourable" when:

- its natural range and areas it covers within that range are stable or increasing, and

- *the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and*
- *the conservation status of its typical species is favourable as defined in (i);".*

Article 1(i) defines the conservation status of a species as "*the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations [...]*";

The conservation status will be taken as "favourable" when:

- *population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and*
- *the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and*
- *there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis;".*

EC (2018), the European Commission stated that "*the integrity of a site involves its constitutive characteristics and ecological functions*". The site's integrity is therefore based on the Qualifying Interests for which the site is designated, along with their ecological requirements. When undertaking Appropriate Assessment, the integrity of a site is not affected as long as the conservation objectives for the site are not undermined.

3.4 Likely Significant Effects

This AA Screening has been carried out before specific projects or developments of the draft DEDP have been identified. However, given the likely provision for infrastructure including the construction, operation (maintenance/improvement) required to promote visitors to Wexford, likely significant effects cannot be ruled out on one or more of the European sites as illustrated in Appendix A.

4.0 IN-COMBINATION EFFECTS

Article 6(3) of the Habitats Directive requires that AA be carried out in respect of any plan or project which is likely to have a significant effect on one or more European sites, “either individually or in combination with other plans or projects”. Therefore, regardless of whether or not the likely effects of a plan or project are significant when considered in isolation, the potential for the plan or project to significantly affect European sites in combination with other past, present or foreseeable future plans or projects must also be assessed.

In the case of the draft Wexford DEDP, this AA Screening Report has found that the Plan individually, is likely to have significant effects on European sites. Therefore, the assessment of the draft DEDP must proceed to Stage 2 (AA). The assessment of likely significant effects on those European sites arising from the draft DEDP, in combination with other plans or projects will be undertaken at that stage.

5.0 CONCLUSION

In accordance with Article 6(3) of the Habitats Directive, Part 5 of the Birds and Natural Habitats Regulations, Part XAB of the Planning and Development Act 2000, as amended, the relevant case law, established best practice and the Precautionary Principle, this AA Screening Report has considered the draft DEDP and its potential to significantly affect European sites. This report has concluded, on the basis of objective information, that the draft DEDP, either individually or in combination with other plans or projects, is likely to give rise to impacts which would constitute significant effects on European sites, in view of their Conservation Objectives.

In light of this conclusion, it is the considered opinion of ROD, as the author of this AA Screening Report, that Fáilte Ireland, as the Competent Authority in this case, in completing its AA Screening in respect of draft Wexford DEDP, should find that the draft DEDP, either individually or in combination with other plans or projects, is likely to have a significant effect on European sites, in view of their Conservation Objectives.

6.0 REFERENCES

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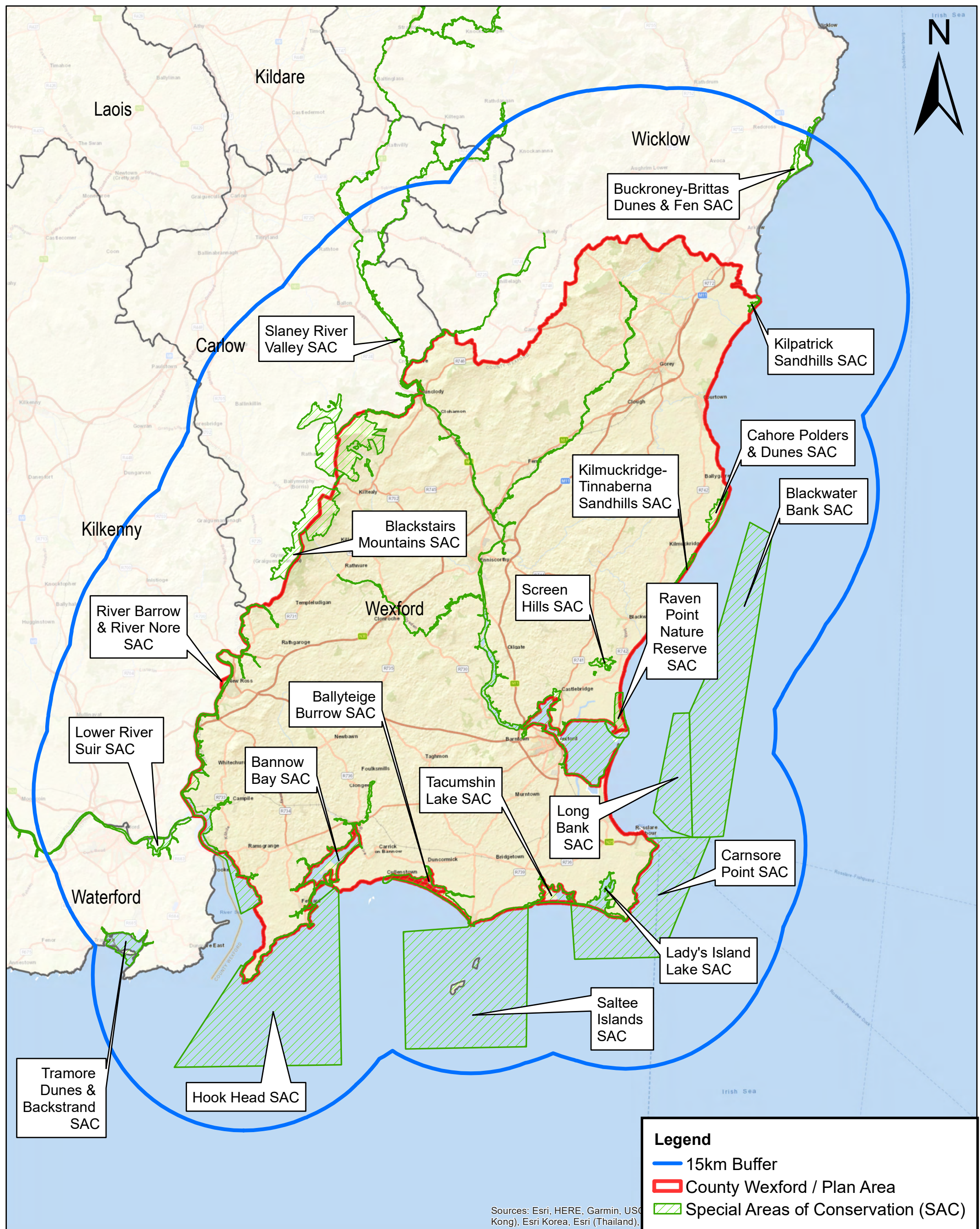
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APPENDIX A

European Sites and the Zone of Influence



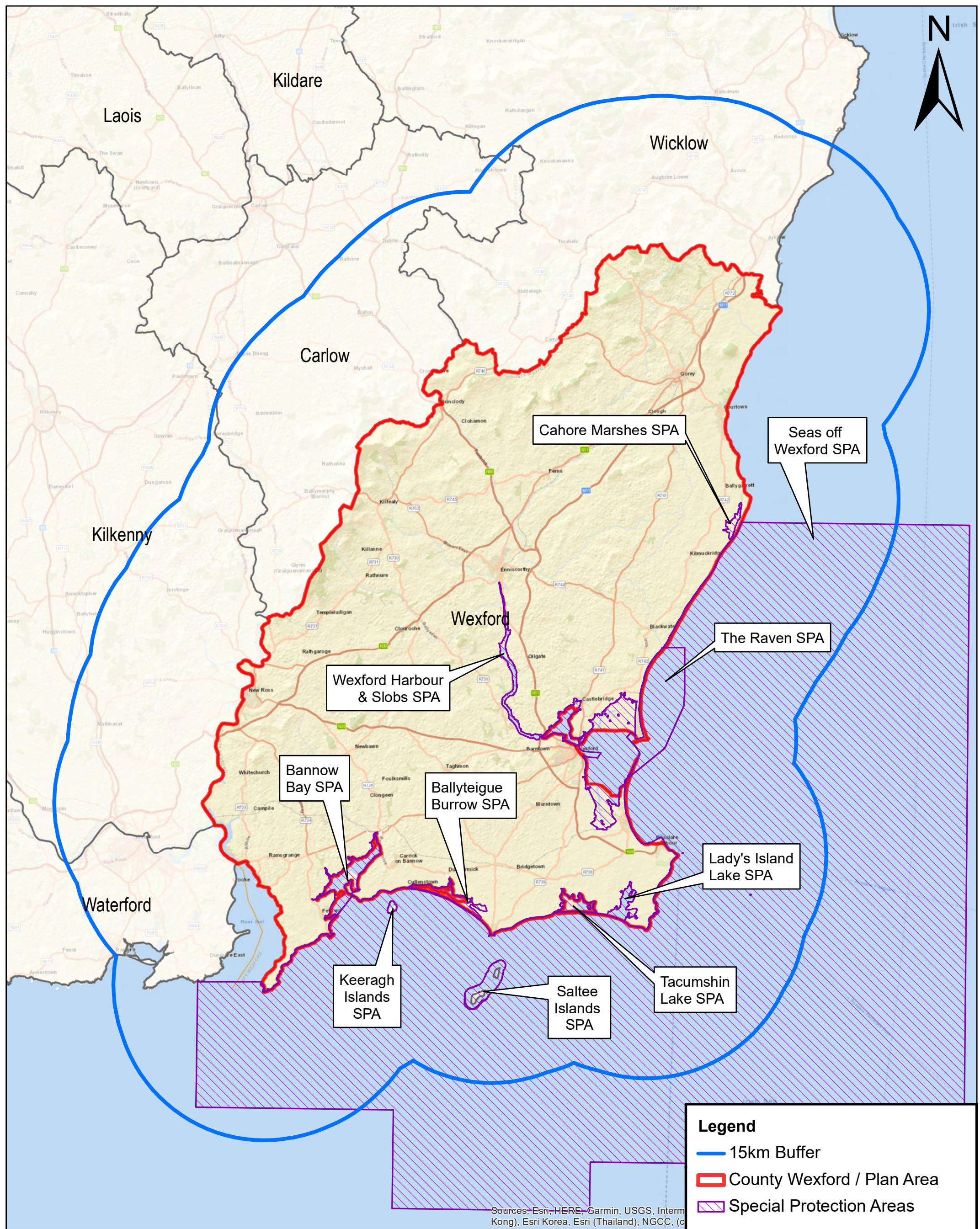
TITLE: Special Areas of Conservation (SAC) Within Co. Wexford & 15km Buffer

Sources:
Nature Reserves - National Parks and Wildlife Services (2015)

CYAL50320424

© Ordnance Survey Ireland/Government of Ireland.





TITLE: Special Protection Areas (SPA) Within Co. Wexford & 15km Buffer

Sources:
National Parks - National Parks and Wildlife Services (2017)

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