

**Implementation of De-designation Proposals of the Review of Raised Bog
Natural Heritage Area Network**

REGULATORY IMPACT ANALYSIS

JULY 2016

1. INTRODUCTION

1.1 The Review of Raised Bog Natural Heritage Area Network, published in January 2014, proposes the establishment of a reconfigured raised bog Natural Heritage Area network. The areas of active raised bog and degraded raised bog still capable of natural regeneration will be greater in this new network. At the same time a considerably smaller number of turf cutters will be required to cease turf cutting resulting in a lower level of compensation payments from the State.

1.2 This is a Regulatory Impact Analysis (RIA) of the implementation of de-designation proposals of the Review of Raised Bog Natural Heritage Area Network. This RIA has been prepared in respect of the proposed Wildlife (Amendment) Bill in order to meet the requirement that proposals for primary legislation be subject in advance to at least a screening RIA.

1.3 The Bill proposes to give legal effect to the proposals of the Review and related matters. This RIA has been drawn up by the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs.

1.4 This RIA will be subject to further amendment and refinement, if applicable.

Table 1 General Summary of Regulatory Impact Analysis (RIA)	
Department: Arts, Heritage, Regional, Rural and Gaeltacht Affairs	Title of Legislation: Wildlife (Amendment) Bill
Stage: Complete	Date: July, 2016
Related Publications: Wildlife (Amendment) Act 2000, Review of Raised Bog Natural Heritage Area Network (NPWS 2014), Draft National Raised Bog SAC Management Plan (NPWS 2014), National Peatlands Strategy (NPWS 2015)	
Available to view or download at: http://www.ahg.gov.ie and http://www.npws.ie	
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What policy objectives are being pursued?

The overall objective is to implement the proposals from the Review of Raised Bog Natural Heritage Area Network (NPWS 2014) which concluded that 39 NHAs should be de-designated and a further 7 NHAs amended and related matters

What policy options have been considered?

The following 2 options were considered:

Option 1. No Change (retain current Raised Bog NHA network)

Option 2. Create new NHA network as set out in the Review.

The preferred option is option 2.

OPTIONS			
	COSTS	BENEFITS	IMPACTS
OPTION 1	Cost implications arise for: - The State (€58m) -Land owners/users - Competent Authorities (DAHRRGA , Planning Authorities)	- Landowners receive compensation if agree to cease turf cutting on NHAs - Landowners/users can continue to cut turf until 2017 - Regulatory/Consent Framework in Place - Wider social benefits	- Potential negative impact on national reputation - Possibility of further litigation against Ireland in the ECJ with a risk of what could be very substantial fines - Negative Environmental Impact- continued turf cutting in high numbers will lead to further degradation of lands - Impact on habitat level of turf cutting static/increasing - Incoherent National Network of raised bog NHAs - Potential impact on landowners/users who would be subject to restrictions on certain activities/projects/plans - Positive and negative impacts on national and local economies

<p>OPTION 2</p>	<p>Cost implications arise for:</p> <ul style="list-style-type: none"> - The State (€3.2m) - Competent Authorities – (DAHRRGA, Planning Authorities) - Land owners / users 	<ul style="list-style-type: none"> - More coherent national network and greater range across the country - Strengthen the protection of our natural heritage - Reduce the possibility of further litigation against Ireland in the ECJ and the risk of what could be very substantial fines due to continued turf-cutting on designated sites. - Management complexity in the new network will be lesser due the lower number of sites, high bog area and number of active turf cutters and landowners - Substantial savings to the State as smaller number of turf cutters will be required to stop turf-cutting and be awarded compensation - Conservation of sites is not required to achieve national conservation objectives (turf cutting may continue) - Restrictions on landowners/users/licence holders for certain activities will not come into effect - Increase in carbon credits 	<ul style="list-style-type: none"> - Positive and negative impacts on national and local economies - Positive impact on the environment-greater area of active raised bog and degraded raised bog suitable for restoration than previous network - Positive impact on Ireland's national emissions
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2. DESCRIPTION OF POLICY CONTEXT, OBJECTIVES AND OPTIONS

2.1 Policy Context

Ireland has designated 75 Natural Heritage Areas (NHAs) under national law (the Wildlife Acts 1976 to 2010) for the protection of raised bog habitats. The NHAs complement the main areas of protected raised bog in Ireland which have been nominated as Special Areas of Conservation (SACs) in accordance with the Council Directive on the Conservation of Natural Habitats and of Wild Flora and Fauna (92/43/EEC), which is commonly known as the Habitats Directive. The sites were designated in part response to an infringement action brought against Ireland by the European Commission relating to the application of the Environmental Impact Assessment Directive to the extraction of peat.

In July 2010 the European Commission submitted a complaint to the Irish Authorities through the EU pilot process in relation to the implementation by Ireland of Articles 6(2),(3) and (4) of Directive 92/43/EEC ("Habitats Directive") in relation to sites of Community importance (SCIs) hosting the habitat types active raised bog (7110), degraded raised bog (7120) and blanket bog (7130) and Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment ("Environmental Impact Assessment Directive") in relation to both SCIs and Natural Heritage Areas (NHAs) protected under Ireland's European Communities (Natural Habitats) Regulations 1997, as amended and the Wildlife Act 1976 as amended, respectively.

Subsequently, in January, 2011 the European Commission issued a Letter of Formal Notice outlining its view that Ireland had failed to meet its obligations under EU law relating to the SACs and NHAs in terms of the regulation of turf-cutting. The letter included a threat to take "interim measures" against the State, which is similar to seeking an injunction forcing the State to protect these sites. This was followed by a Reasoned Opinion in June 2011 under the first paragraph of Article 258 of the Treaty on the Functioning of the European Union to Ireland in relation to infringement from 2010.

On 14 January, 2014 the Government approved the Minister for Arts, Heritage and the Gaeltacht to publish the outcome of the review of Ireland's network of raised bog NHAs and to address a number of measures arising from that review including, allowing continued cutting on 46 NHAs, with a view to eventual de-designation of these sites. This was in fulfilment of a commitment in the Programme for Government and in response to the infringement proceedings related to continuing alleged non-compliance with the Environmental Impact Assessment (EIA) Directive in respect of peat extraction (following the previous adverse findings by the European Court of Justice). The current Programme for Government (the Programme for a Partnership Government) provides that "the Government will publish new legislation to de-designate 46 NHAs within the first 100 days of Government".

The review of Ireland's network of raised bog NHAs (entitled Review of Raised Bog Natural Heritage Area Network) was published in January 2014. Its objective was to fundamentally review the current NHA network and set out a series of measures to ensure that Ireland meets its obligations under the Habitats Directive to maintain or restore raised bog habitat to favourable conservation status and its Environmental Impact Assessment Directive obligations relating to the regulation of turf cutting on NHAs; whilst avoiding unnecessary impacts on the traditional rights of landowners and users and minimising the cost to the State. As part of the review over 270 raised bog sites were scientifically examined and evaluated including 53 raised bog Special Areas of Conservation (SACs), the existing 75 raised bog NHAs and over 100 other non-designated sites.

Along with examination of sites from a nature conservation and management perspective; environmental, technical and socio-economic criteria was used for the NHA review to identify the bogs most suitable as replacement SAC habitat and those most suitable for a new reconfigured NHA network.

The review concluded that a reconfiguration of the NHA network was required in order to meet nature conservation objectives more effectively whilst having regard to economic, social and cultural needs. This newly configured network would have many advantages over the current network including:

- Greater area of both active raised bog and degraded raised bog still capable of regeneration compared to the current NHA network
- An improved geographical range of protected sites to the East, South, West and North
- Contribute to the return to more favourable conservation status for Ireland's raised bogs which is a requirement of the EU Habitats Directive
- Short to medium term losses of active bog would be reduced due to the lower intensity of recent turf cutting in the new network
- Costs to the tax payer would be greatly reduced due to the smaller number of turf cutters required to stop turf cutting and requiring compensation
- Increased potential for more rapid restoration of raised bog due to inclusion of State owned lands into the network

In order to meet the recommendations of the NHA Review a number of steps are required to be implemented including:

- Effective cessation of turf cutting on 36 NHAs (known as Category 1 sites) by 1 January 2017 in order to preserve their conservation value and preparation of management plans for these sites. A compensation scheme in place for raised bog SACs was extended in 2014 to these 36 sites.
- Designation of 25 currently undesignated raised bogs as NHAs in order to compensate for those NHAs where cutting is proposed to continue. This will be done in conjunction with the development of management plans and expansion of the compensation scheme to these sites.
- De-designation of 39 NHAs and amendment of 7 NHAs (known as Category 2 sites) which have some ecological value but whose conservation value is not required to achieve national conservation objectives and/or whose restoration would be prohibitively expensive for the conservation benefits achieved.

In order to implement the Government decision to approve the publication of the Review and to address a number of measures arising and in line with a commitment in the current Programme for Government, it is now proposed to implement the outcome of the Review through primary legislation while taking account of related matters.

2.2 Objectives

The purpose of the Bill is to provide for the implementation of a reconfiguration of the Raised Bog Natural Heritage Area Network arising from (i) the proposals from the Review of Raised Bog Natural Heritage Area Network published in January 2014 (ii) an assessment including public consultation of the effects on the environment of the proposals arising from the Review, under the European Communities (Environmental Assessment of Certain Plans and Programmes) Regulations 2004 (S.I. No. 435 of 2004) and, if required, any other screening for an assessment or as the case may be, assessment, including public consultation undertaken and (iii) observations or submissions received during the course of public consultation.

2.3 Identification of Options

1. No change (retain current raised bog NHA network)

The current 46 NHAs (39 NHAs and parts of a further 7 NHAs) would remain designated under the Wildlife Acts as part of the current 75 raised bog network of NHAs. The network would complement the areas designated as Special Areas of Conservation but would have less potential for restoration than the new NHA network and may be further degraded over time.

Certain actions by landowners/users or licence holders would continue to require consent from the Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs or the relevant consent authority e.g. peat extraction above a certain area would require consent from a planning authority or the Environmental Protection Agency. Domestic turf-cutting would be required to cease on these sites in order to meet Ireland's obligations under the Habitats Directive and the Environmental Impact Assessment Directive. Restoration works would be undertaken as necessary. The State would be obliged to compensate turf cutters who cease to cut turf on these sites.

2. Creation of new NHA network

The contribution of the 46 raised bogs sites recommended for de-designation or amendment, under the Review, to the attainment of the national conservation objective (national target for active raised bogs) is expected to be marginal and/or restoration of the sites would be prohibitively expensive for the conservation benefits achieved. In accordance with the de-designation proposals of the Review, restrictions on turf cutting for domestic purposes would not come into effect on these sites.

The Review also recommends that 25 additional raised bog sites should be designated as NHAs to compensate for the loss of area arising from the de-designation of 39 NHA sites and the amendment of 7 NHA sites. The proposed new, more coherent network of 61 NHAs would include more area of protected habitat and have higher potential for restoration.

It is estimated that in the region of 140 active turf cutters may be affected by the designation of the additional sites. Compensation will have to be provided to these turf cutters at an estimated cost of €3.2 million.

3. IDENTIFICATION OF COSTS, BENEFITS AND IMPACTS

3.1 Costs

3.1.1 Option 1: No Change - Retain current Raised Bog NHA Network

Maintenance of the current raised bog Natural Heritage Area network has certain cost implications for affected stakeholders. Certain works within NHAs may only be carried out with the consent of the Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs. These works vary depending on the type of habitat that is present on the site. Other works or activities may only be undertaken with permits or licences.

In 2014 the Cessation of Turf Cutting Compensation Scheme in place for 53 raised bog SAC sites was extended to include land owners and turbary right holders affected by the restrictions on turf cutting on 36 raised bog Natural Heritage Areas (NHAs). Turf cutters on these sites may, if they wish, continue to cut turf until 2017, provided there is no intensification of cutting, or receive compensation for ceasing turf cutting. As an alternative to financial payments and, where feasible, qualifying applicants will be facilitated in relocating to non-designated sites to continue turf cutting.

As of December 2015, since the scheme was extended to NHA sites, 221 applications had been received and 199 compensation payments have been made at a cost of over €302,000 to applicants from these sites. It is estimated that there are in the region of 2,500 turf cutters within the 46 sites identified for de-designation on foot of the NHA review. Should these turf cutters need be compensated if this sites are not de-designated this will incur a cost to the State of €58m over a period of 15 years.

If the existing network continues to degrade and cannot be adequately restored this may have implications for the ability of Ireland to address the complaints submitted by the European Commission to the Irish authorities regarding the implementation of the EIA Directive and the Habitats Directive.

3.1.2 Option 2: Create new Raised Bog NHA network

The estimated costs associated with option 2 would be considerably lower than option 1.

The proposed new network consists of a significantly reduced number of landowners and turbary rights holders which would greatly reduce any exposure to compensation costs. The number of turf plots in the network will reduce from in the region of 3,000 to in the region of 500. Thus, there will be significantly less turf cutters to compensate, which will be a considerable saving to the State.

The cost of revocation of the natural heritage orders for the 39 identified raised bog NHAs would incur a charge to the State of approximately €8,000 in total. The owners or occupiers affected by the 7 amended NHA's would also have to be notified of the changes to the boundaries of the relevant NHA and this process would also incur a cost of approximately €1,500. In addition there would be costs of advertising the changes in the media of approx. €15,000. These costs exclude staffing and administration costs for this process.

No costs would be incurred to landowners/users affected by the de-designation of the NHAs.

3.1.3 Multi Criteria Analysis

To integrate the cost-effectiveness analysis above into an overall assessment, a multi-criteria analysis is required. A multi-criteria analysis enables comparison of a range of alternative options against pre-specified assessment criteria, with each option scored in multi-criteria analysis.

The criterion chosen for this exercise were: 1. Environment, 2. Economy and 3. Citizens/Social. As a result of this exercise Option 2 is considered as the preferred option.

3.2 Benefits

3.2.1 Option 1: No Change – Retain current Raised Bog NHA Network

The current Network would remain designated and complement the areas designated as Special Areas of Conservation but would have less potential for restoration than the new network and may be further degraded over time.

Under the current NHA network arrangements, turf cutters may continue to cut on NHAs but will be required to cease cutting by 1 January 2017 in order to preserve their conservation value. The Cessation of Turf Cutting Compensation Scheme would be extended to turf cutters within the 46 NHAs (scheduled for de-designation/amendment) at a rate of €1,500 per annum, index-linked, for a maximum of 15 years for each eligible turf cutter (or relocation to a non-designated bog, where feasible).

3.2.2 Option 2: Create new Raised Bog NHA network

Under the Habitats Directive Ireland has a responsibility to maintain or restore to favourable conservation status its raised bog habitats. The new Raised Bog NHA Network will have several advantages over the current network. The main benefit of its creation is that it will contribute, along with the raised bog Special Areas of Conservation, to the national target for active raised bog in Ireland. When these targets are reached, the SACs and NHAs will contain twice the current national resource of the habitat (1,639ha) and almost 1,000ha more active raised bog than existed in 1994 (2,630ha). This new network will also improve the range and the number of sites of the habitat within protected areas and significantly improve the protection of its biological and physical diversity. The larger and increasing area of more high quality habitat, in a large number of widely dispersed protected sites (over 100 SACs and NHAs) would make this network resistant to short term or local impacts and thus assisting in securing the future of active raised bog habitat in Ireland.

The new network has been scientifically determined through consideration of environmental standing, restoration potential, most socially appropriate and economically advantageous. The new network will significantly improve the geographical range of protected sites to the East, South, West and North. Due to the lower number of NHA sites and the number of active turf cutters, management complexity will be much lower. In the short to medium term losses of active bog will be reduced, due to the lower intensity of recent turf cutting in the new network. The de-designation will give legal certainty to landowners/users/license holders, consent and planning authorities.

The threats of censure against Ireland within the European Union will be reduced in terms of the NHA sites.

As stated earlier, the number of turf plots within the new NHA network will be down from in the region of 3,000 to 500. Thus, there will be significantly less turf cutters to compensate, which will be a considerable saving to the State.

3.3 Impacts

3.3.1 Option 1: No Change - Retain current Raised Bog NHA Network

The most significant potential negative impact is on Ireland's national reputation in terms of implementation of the EIA and Habitats Directive. Ireland must make significant strides in reaching its national conservation objectives for its priority habitats of active raised bog. If this is not achieved it could lead to the possibility of further litigation against Ireland in the European Court of Justice with a risk of what could be very substantial fines for the State.

Currently the national network of raised bog NHAs is incoherent with a low level of ecological or geographical diversity of raised bogs with improvements required on the geographical range of protected sites. There is a negative environmental impact with this option as continued turf cutting in high numbers on the current network will lead to further degradation of lands and losses of active bog. The effective management of the NHA network would be impacted by the continued turf cutting on the sites.

From a landowner or land user impact perspective, Option 1 would lead to restrictions on certain activities as long as the sites would remain designated under the Wildlife Acts.

The economic impact with Option 1 is also high for the State as the number of those eligible to apply for compensation would rise considerably. It is arguable that local economies would be positively impacted through funding received by turf cutters under the Cessation of Turf Cutting Compensation Scheme.

3.1.2 Option 2: Create new Raised Bog NHA network

As set out above, there will be a positive impact on the national conservation objectives through Option 2. There will be a positive impact on the environment with a greater area of active raised bog and degraded raised bog suitable for restoration than the previous network. Restoration of active bog in the new network can contribute to Ireland's objectives in terms of climate change mitigation.

In terms of economic impact it is recognised that nationally the State will achieve significant savings as the number of turf cutters requiring compensation will be lower. However, it is arguable that this compensation to turf cutters would have impacted positively on local economies. On the other hand turf extraction can contribute to local economies, for example, in terms of income for turf contractors.

When considering the impacts for landowners/users it can be seen positively in some respects that there will not be a regulatory framework/consent process in place for certain works requiring the consent of the Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs. However, peat extraction over a certain threshold on de-designated sites will remain subject to other consent authorities (such as planning authorities or the Environmental Protection Agency).

3.4 Summary of Costs, Benefits and Impacts

It can be concluded that maintaining the status quo by retaining the current NHA network and not implementing the recommendations of the Review has the potential for the highest

costs to the State. There would also be significant negative impacts on the environment and risks to Ireland's reputation. Based on the detailed analysis and assessment undertaken in this report, implementing the NHA Review is the best performing option overall in terms of benefits and impacts and delivers the most economical advantageous and preferable option.

4. CONSULTATION

The Review of Raised Bog Natural Heritage Area Network has been well publicised including the undertaking of a public consultation process. The Review identified all 46 sites proposed for de-designation (some fully, others partially). Over 1,500 submissions were received by the then Department of Arts, Heritage and the Gaeltacht and its external experts as part of the public consultation process for a series of draft peatlands documents - the Raised Bog Conservation Study, the National Peatlands Strategy, the NHA Review and the National Raised Bog SAC Management Plan. Some stakeholder meetings were also undertaken by the Department's external experts tasked with assisting with the NHA Review and other draft peatlands documents.

In respect of the submissions received during the consultation process a large number did not favour the designation of peatlands for conservation purposes and the consequent restrictions on turf cutting. A number of concerns were noted in relation to the designation process for peatlands, changes to boundaries and activities requiring consents. Concerns were also raised about national raised bog conservation targets.

Landowners and turbary right holders were written to in February 2014 to inform them of the outcome and consequences of the NHA Review.

The development of the Review, along with its conclusions, has also been subject to discussions within the Peatlands Council, a non-statutory body which contains representatives of affected stakeholders.

Under the Bill it is proposed that an assessment including public consultation of the effects on the environment of the proposals arising from the Review, under the European Communities (Environmental Assessment of Certain Plans and Programmes) Regulations 2004 (S.I. No. 435 of 2004) will be undertaken

5. ENFORCEMENT AND COMPLIANCE

Once the sites are de-designated certain activities on the sites will not be subject to Ministerial (Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs) consent under the Wildlife Acts. Some of these sites, however, may still be subject to other consents systems or licensing processes, for example, afforestation which is a function of the Minister for Agriculture, Food and the Marine.

6. REVIEW

The implementation of the Review is a once-off action with a new NHA network being put in place. Any future changes to the network would require a new process.

7. PUBLICATION

This Regulatory Impact Analysis will be published on the Department's websites www.ahrrga.gov.ie and www.npws.ie once the Bill is published.

Peatlands Issues and Land Designation Section
National Parks and Wildlife Service
Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs

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Appendix 1

General Summary of the Wildlife (Amendment) Bill 2016

The review of Ireland's network of raised bog NHAs (entitled Review of Raised Bog Natural Heritage Area Network) was published in January 2014.

The purpose of the Bill is to provide for the implementation of a reconfiguration of the Raised Bog Natural Heritage Area Network arising from (i) the proposals from the Review of Raised Bog Natural Heritage Area Network published in January 2014 (ii) an assessment including public consultation of the effects on the environment of the proposals arising from the Review, under the European Communities (Environmental Assessment of Certain Plans and Programmes) Regulations 2004 (S.I. No. 435 of 2004) and, if required, any other screening for an assessment or as the case may be, assessment, including public consultation undertaken and (iii) observations or submissions received during the course of public consultation.