

Forest Service Appropriate Assessment Procedure (APP)

Information Note DRAFT 14July2011

General Overview

- The Forest Service Appropriate Assessment Procedure (AAP), required under habitat legislation, explores whether or not a proposed forestry project has the potential to adversely impact on a Natura site (SAC or SPA).
- The AAP only applies to applications for grant schemes, licences and consents relating to sites within or near Natura sites (SACs and SPAs). Sites elsewhere will not be subjected to the AAP.
- The first stage (screening) of the AAP is carried out by the Forest Service and will not require any extra information from the applicant.
 - If the project is not likely to have an impact on a SAC or SPA, no further information related to this procedure will be required, and approval may issue.
 - If a project is likely to impact on a SAC or SPA, the Forest Service will seek additional information from the applicant in the form of a Natura Impact Statement (NIS). The Forest Service will then assess this NIS, before arriving at a decision on the application, to either approve, approve with conditions, or refuse.

1. Legislative Background

The Habitats Directive (92/43/EEC) and the Birds Directive (2009/147/EC codified version of 79/409/EEC as amended) set out various procedures and obligations in relation to nature conservation management in EU Member States in general. Overall, there is a strong focus on Natura 2000 sites (Special Areas of Conservation (SACs) and Special Protection Areas (SPAs)). One of the key protection measures is to ensure that the possible nature conservation implications on a Natura 2000 site of any plan or project is considered before a decision is taken to allow that plan or project to proceed. The obligation to undertake an appropriate assessment derives from Article 6(3) and 6(4) of the Habitats Directive. This Directive is implemented in Ireland by the European Communities (Natural Habitats) Regulations, 1997 (S.I. No. 94 of 1997), the European Communities (Natural Habitats) (Amendment) Regulations, 1998 (S.I. No. 233 of 1998), and the European Communities (Natural Habitats) (Amendment) Regulations, 2005 (S.I. No. 378 of 2005).

2. Forestry Plans or Projects

The Forest Service Appropriate Assessment Procedure (AAP) applies to applications for Forest Service grant schemes, licences and consents relating to sites within a Natura site (SAC or SPA) or within the NPWS 0.5 km or 3 km (with hydrological connectivity) referral zone of a Natura site.

3. Appropriate Assessment Guidance

In 2001, the European Commission produced non-mandatory guidance on the undertaking and review of assessments as required by the Habitats Directive. In Ireland, the Department of the Environment, Heritage and Local Government (DoEHLG) produced a document entitled *Appropriate Assessment of Plans and Projects in Ireland, Guidance for Planning Authorities* in 2009 (DoEHLG, 2009). This guidance outlined four stages to complete the Appropriate Assessment procedure, with the outcome at each successive stage determining whether a further stage is required. The documentation highlights the importance of recording the results of the final stage reached in the process, especially if it ends at the first stage (Screening). This Forest Service information note is adapted from the DoEHLG publication.

4. Outline of Appropriate Assessment Procedure

There are four stages in the Appropriate Assessment procedure, namely:

- Stage 1: Screening
- Stage 2: Appropriate Assessment
- Stage 3: Alternative Solutions
- Stage 4: Imperative Reasons of Overriding Public Interest (IROPI)

Stages 1 and 2 deal with the main requirements for assessment under Article 6(3). Stage 3 may be part of Article 6(3) or a necessary precursor to Stage 4, which is the main derogation step of Article 6(4).

This information note was developed for forestry related activities. Consequently, it focuses primarily on Stages 1 and 2 of the Appropriate Assessment procedure, as these two stages are the most relevant to forestry.

5. Stage 1: Screening

Screening is the process that addresses and records the reasoning and conclusions in relation to the first two tests of Article 6(3) of the Habitats Directive, namely:

- i) whether a project is directly connected to or necessary for the management of a Natura 2000 site(s) (see Section 5.1); and
- ii) whether a project, alone or in combination with other plans and projects, is likely to have significant effects on the conservation objectives of that Natura 2000 site(s).

The steps involved in Stage 1: Screening are summarised in Figure 1.

5.1 Project directly connected to or necessary for the management of a Natura 2000 site(s)

A project that is directly connected to or necessary for the management of a Natura 2000 site does not require an appropriate assessment (i.e. AAP concludes at Stage 1: Screening). This only refers to specific measures to address the ecological requirements of Annex habitats and species (and their habitats) present on a Natura 2000 site(s). The relationship must be direct and **not a by-product** of the project or activity, even if the result is positive or beneficial for the Natura 2000 site. For example, the felling and replanting of a conifer plantation with native species might prove beneficial to a Natura 2000 site. However, if the proposed felling is driven by the crop reaching financial maturity, the ecological benefits are a by-product of the project, and the project may need to go to Stage 2: Appropriate Assessment. Alternatively, if the plantation is to be felled at thicket stage (before maturity) and not replanted in order to restore a raised bog SAC, then the relationship is direct and not a by-product. As such, the AAP concludes at Stage 1: Screening.

5.2 Projects to be screened

A forestry project can affect a Natura 2000 site even if it is not within the boundary of the Natura 2000 site(s). As set out above, the Forest Service AAP applies to applications for Forest Service grant schemes, licences and consents relating to sites within a Natura site (SAC or SPA) or within the NPWS 0.5 km or 3 km (with hydrological connectivity) referral zone of a Natura site. As the initial step in the AAP, all such projects will undergo Stage 1: Screening.

5.3 Steps involved in Stage 1: Screening

Screening involves determining whether a plan/project, alone or in combination with other plans and projects, is likely to have significant effects on the conservation objectives of a Natura 2000 site(s). The Forest Service undertakes the screening of the project, taking into account information provided by the applicant, information on the Natura 2000 site itself, and information provided by the consultation process.

To facilitate the screening process, it is important that applicants provide all relevant information with their application, and that it is clear and accurate. Applicants should also take account of the qualifying interests of any relevant designated areas when developing their project. Qualifying interests for SACs and SPAs are available on the National Parks and Wildlife Service website (www.npws.ie).

Screening, undertaken by the Forest Service, involves the following steps:

1. A review of the description of the proposal and local site or plan area characteristics. Most of this information will be provided by the applicant (e.g. application/licence form, relevant maps).
2. Identification of the relevant Natura 2000 site(s), and compilation of information on their qualifying interests and conservation objectives.
3. Assessment of likely effects – direct, indirect and cumulative – based on available information and undertaken as a desk study or field survey or primary research as necessary. The Forest Service will assess the likely effect of the project on the relevant Natura 2000 site(s), taking into account the information supplied by the applicant and other information such as aerial photos, inspection reports (including sub-threshold EIA assessment screening) and the results of consultation. A project may have a significant effect on a Natura 2000 site(s) if it:
 - reduces the area of Annex I habitat, habitat of Annex II species or Natura 2000 site(s);
 - damages the physical quality of the environment (e.g. water quality and supply, soil compaction) in the Natura 2000 site(s);
 - causes serious or ongoing disturbance to species or habitats for which the Natura 2000 site(s) is selected, e.g. increased noise, human activity;
 - results in direct or indirect damage to the size, characteristics or reproductive ability of populations in the Natura 2000 site(s); or
 - interferes with mitigation measures put in place for other plans or projects.
4. A decision on whether or not the project should proceed to the second stage of the AA procedure, i.e. the appropriate assessment itself. This decision is made by the Forest Service. Screening can result in four possible conclusions, namely:
 - The project is necessary for the management of the Natura 2000 site, and therefore, *AA not required*.
 - No potential for significant effects and therefore, *AA not required*. Project has no potential for significant effects. However, no change can be made to the project or it will invalidate the findings of the screening.

- Significant effects are certain, likely or uncertain, and therefore, *AA required*. Project must proceed to Stage 2: Appropriate Assessment (see Section 6). **OR**
- Significant effects are certain, regardless of what mitigation measures are proposed – project refused and requirement for AA nullified.

If the AA process is stopping at the screening stage, the decision is recorded in the form of a **Screening Conclusion and Statement**.

5.4 Screening Conclusion and Statement

It is the responsibility of the Forest Service to document the results of the Screening Stage. Screening should be undertaken without the inclusion of mitigation, unless potential impacts can be clearly avoided through the modification or redesign of the project. However, adherence to Forest Service environmental guidelines is a condition of all grant aided, approved or licensed activities. Consequently, adherence to measures covered in the guidelines is not regarded as mitigation. It is also important to note that where the project description includes measures above and beyond those set out in the Forest Service Guidelines (e.g. aquatic buffer zones greater than 25 m), these are part of the project (as submitted to the Forest Service) and are not considered to be mitigation. The greatest level of evidence and justification will be needed in circumstances where the AAP ends at screening stage on the grounds of no impact.

6. Stage 2. Appropriate Assessment

This stage considers whether a project, alone or in combination with other projects or plans, will have adverse effects on the integrity of a Natura 2000 site. Stage 2 also considers any mitigation measures necessary to avoid, reduce or offset negative effects.

The steps involved in Stage 2: Appropriate Assessment are summarised in Figure 2.

6.1 Steps involved in Stage 2: Appropriate Assessment

Steps involved in Stage 2: Appropriate Assessment are as follows:

1. The applicant submits a report of a scientific examination of the project and the relevant Natura 2000 site(s), to identify and characterise any possible implications for the Natura site in view of its conservation objectives, taking account of in-combination effects. The information submitted by the applicant is called the **Natura Impact Statement** (see Section 6.2).
2. The Natura Impact Statement, in combination with other information (e.g. consultation opinions from the screening stage) should provide sufficient information to enable the Forest Service as the competent authority to

carry out an assessment of the likely effects of the project on a Natura 2000 site(s), taking into account proposed mitigation measures.

3. The Forest Service decides whether or not the project will have a significant effect on the integrity of the Natura 2000 site(s). There are three possible outcomes, namely:
 - The project will not have a significant effect on the integrity of the Natura 2000 site and **may proceed** (provided there are no other outstanding issues or considerations).
 - The project will have a significant adverse effect even with mitigation and **may not proceed**.
 - There is insufficient information or evidence so adverse effects must be assumed – the project **may not proceed**.

In the latter two cases, the AAP comes to an end and the project is refused (subject, of course, to the normal Forest Service Appeal Process) or it must proceed to Stage 3 Alternative Solutions. The Forest Service documents the results of Stage 2: Appropriate Assessment in the form of an **AA Conclusion and Statement**.

6.2 Natura Impact Statement (NIS)

This document is provided by the applicant following notification by the Forest Service that it is required (Stage 1: Screening result). The purpose of the Natura Impact Statement is to provide adequate information to the Forest Service to enable it to complete Stage 2: Appropriate Assessment. If the information provided in the Natura Impact Statement is inadequate, further information may be sought from the applicant.

The Natura Impact Statement must address the following:

- Identify the **conservation objectives** (e.g. protection, maintenance or enhancement of the qualifying interests) of the Natura 2000 site and identify those aspects of the project (alone or in combination with other plans or projects) that may affect those objectives.
- Identify the types of **possible impact per qualifying interest**, e.g. direct and indirect effects; short- and long-term effects; effects of all operations associated with the project. Potential impacts include sedimentation, nutrient enrichment, disturbance, hydrological effects, habitat degradation and loss. Note that the whole forest cycle must be considered, e.g. the future clearfelling must be considered as part of the assessment of an afforestation application. In order to determine the possible impact on a qualifying interest, it may be necessary to carry out an ecological (terrestrial habitat and/or species) survey or a hydrological survey. For example, if a project is within a designated area that has a terrestrial qualifying interest such as wet heath, it will be necessary

to carry out a habitat survey to identify whether or not the habitat occurs in the project area. Similarly, if a project is within a designated area that has a terrestrial qualifying interest such as *Vertigo moulinsiana* (Desmoulin's whorl snail), it will be necessary to carry out a species survey or a species habitat survey to determine if the species occurs or has the potential to occur in the project area. Additional information on surveys is given in Appendix 1.

- Apply the **precautionary principle** and should demonstrate objectively, with supporting evidence, that there will be no adverse effects on the integrity of the Natura 2000 site. Where this cannot be demonstrated, adverse effects must be assumed and the NIS must reflect that.
- **Mitigation measures:** These are measures aimed at minimising, cancelling out or avoiding the negative impact of a project before, during or after its completion or implementation. Mitigation measures include specific conditions and measures not covered in the Forest Service guidelines. For example:
 - Specific time period for the operation, e.g. operations to be restricted to the period outside the breeding season of a particular species.
 - Buffer zones or water protection measures over and above those in the Forest Service guidelines, e.g. aquatic buffer zone greater than 25m.
 - Protection of existing habitat, e.g. proposing ABE greater than 15% of the project area.

7. Stage 3: Alternative Solutions

This stage examines any alternative solutions or options that could enable the project to proceed without adverse effects on the integrity of a Natura 2000 site(s). The process must return to Stage 2 as alternatives will require appropriate assessment in order to proceed. Demonstrating that all reasonable alternatives have been considered and assessed, and that the least damaging option has been selected, is necessary to progress to Stage 4.

8. Stage 4: Imperative Reasons of Overriding Public Interest (IROPI)

Stage 4 is the main derogation process of Article 6(4) which examines whether there are imperative reasons of overriding public interest (IROPI) for allowing a plan or project that will have adverse effects on the integrity of a Natura 2000 site to proceed, in cases where it has been established that no less damaging alternative solution exists. The protection mechanism is stricter in the case of priority habitats (Ireland does not have any priority species), and in such cases, the only reasons that may be raised are those relating to human health, public safety or beneficial consequences of primary importance to the environment. Compensatory measures must be proposed

and must be practical, implementable, likely to succeed, proportionate and enforceable. They must also be approved by the Minister of the Environment, Heritage and Local Government. In addition, the European Commission must be informed of the compensatory measures.

Alternative solutions should normally have been identified within the framework of Stage 1: Screening or Stage 2: Appropriate Assessment (including the Natura Impact Statement). Consequently, this information note has focused primarily on Stages 1 and 2.

9. References

Department of the Environment, Heritage and Local Government, 2009. Appropriate Assessment of plans and projects in Ireland. Guidance for Planning Authorities. Department of the Environment, Heritage and Local Government, Dublin.

European Commission, 2002. Assessment of plans and projects significantly affecting Natura 2000 sites: Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC. Office for Official Publications of the European Communities, Luxembourg.

10. Glossary

Appropriate Assessment: An assessment carried out under Article 6(3) of the Habitats Directive of the implications of a plan or project, either individually or in combination with other plans or projects, on a Natura 2000 site in view of the site's conservation objective.

Appropriate Assessment Conclusion Statement: Statement of a competent authority of its decision on an appropriate assessment and the reasons for its decision.

Conservation objectives: To maintain or restore the favourable conservation condition of the Annex I habitat(s) and /or the Annex II species for which the SAC has been selected **or** To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for the SPA.

Natura 2000 site: Network of Special Areas of Conservation and Special Protection Areas.

Natura Impact Statement: Report of a scientific examination of a plan or project and the relevant Natura 2000 site(s), to identify and characterise any possible implications for that Natura site in view of its conservation objectives.

Qualifying interest: Habitat or species for which the Natura 2000 site is designated. The qualifying interest for SACs and SPAs are available on the National Parks and Wildlife Service website (www.npws.ie).

Site synopses: Summary descriptions of the Natura 2000 sites and the key conservation interests of sites.

Special Areas of Conservation (SACs): Sites designated under European Communities Directive 92/43/EEC, also known as the Habitats Directive. This requires the conservation of important, rare or threatened habitats and species across Europe.

Special Protection Areas (SPAs): Sites designated under the European Communities Directive 79/409/EEC, also known as the Birds Directive, to conserve the habitats of certain migratory or rare birds.

Figure 1. Stage 1 Screening

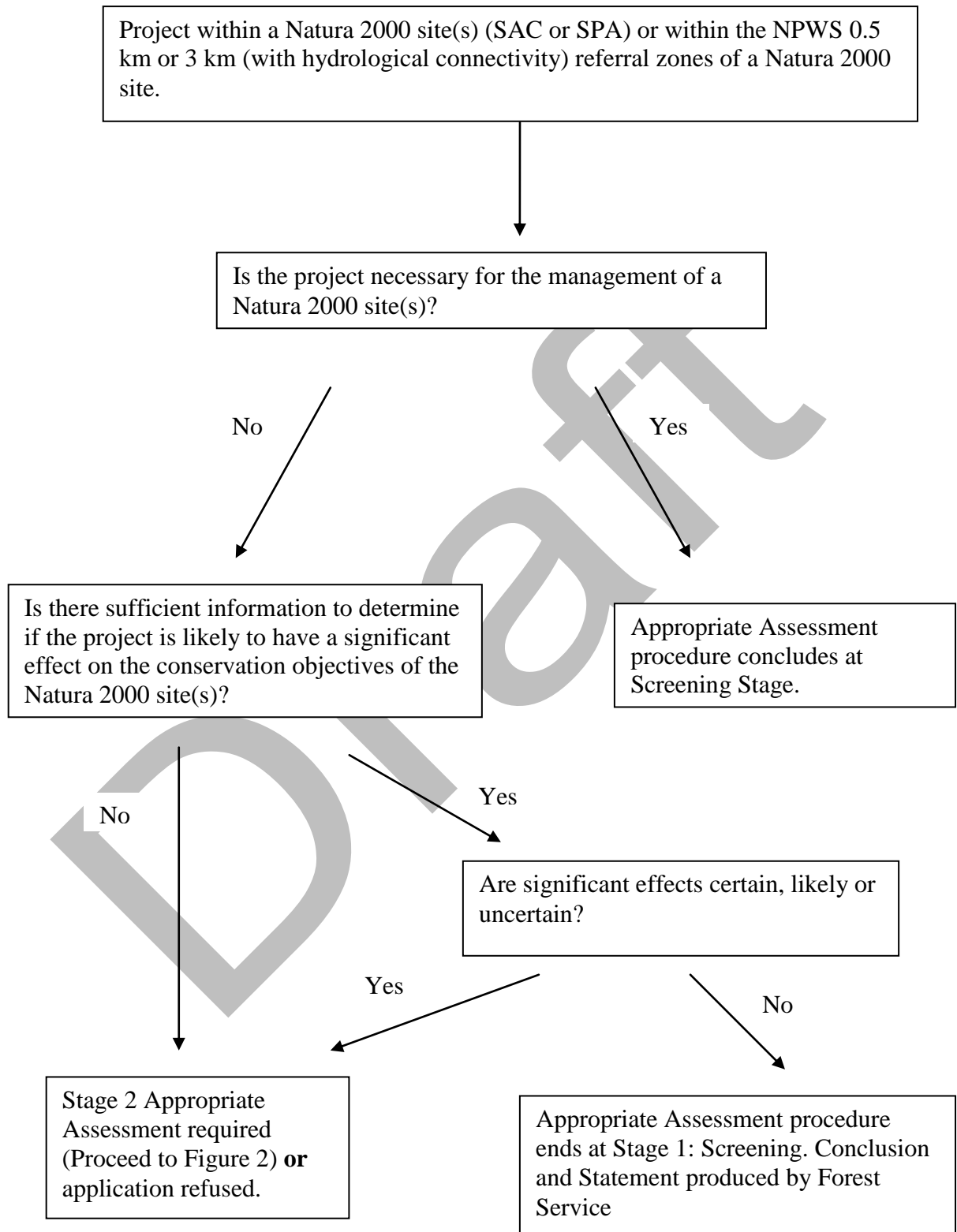
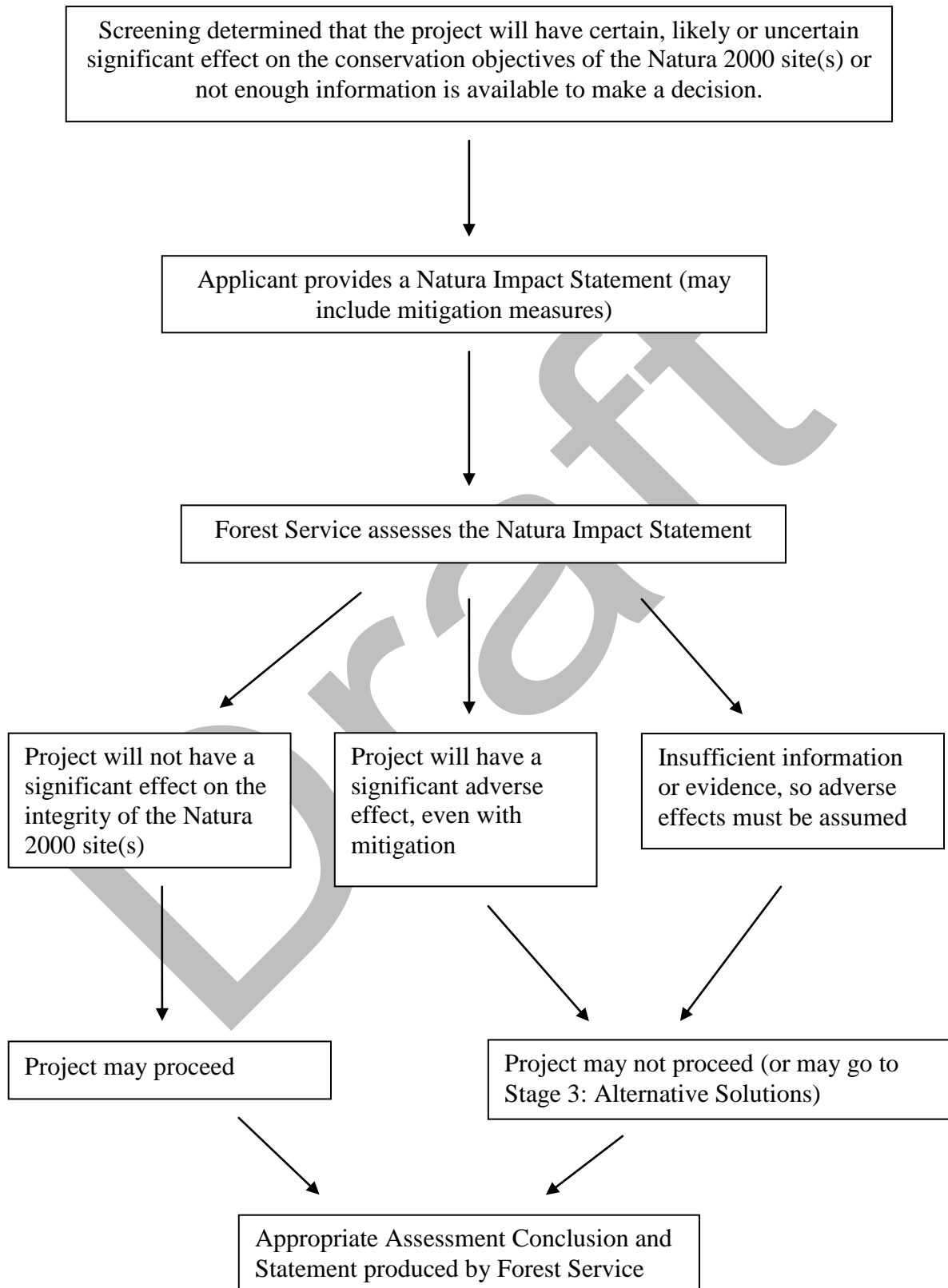


Figure 2. Stage 2 Appropriate Assessment



Appendix 1. Natura Impact Statement Ecological Surveys

The **Natura Impact Statement** is the scientific examination of the project and the relevant Natura 2000 sites, to identify and characterise any possible implications for the site in view of its conservation objectives, taking account of in-combination effects. The conservation objectives of Natura 2000 sites are to maintain or restore the favourable conservation condition of the Annex I habitat(s) and /or the Annex II species for which the SAC has been selected **or** to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for the SPA.

The qualifying interests of a Natura 2000 site may be broadly classed into aquatic or terrestrial habitats and species. In general, an ecological survey will not be necessary where aquatic qualifying interests only will be potentially affected by the forest project. In this case, the focus of the NIS should be on minimising or eliminating any potential impacts (e.g. sedimentation and nutrient enrichment) on the aquatic habitats or species. The terrestrial qualifying interests of a Natura 2000 site will determine the type of survey(s) required. Given the range of Annex habitats and species it is not possible to outline the survey method for each habitat/species. Some Annex II terrestrial species require specialist expertise or may not be present or easily observed during the ecological survey. In such cases, the ecological survey may focus on identifying suitable habitat for the species. If the habitat is present, it may be assumed that the species is present, and appropriate mitigation should be proposed.

The ecological survey of the project area should satisfy the following:

- Identify the habitats present on the project site, especially any Annex I habitats.
- Identify if any Annex species are present (if qualifying interests or Annex IV species).
- Take cognisance of the fact that some Annex species may not be present or easily observed and as such should identify if suitable habitat for the species is present. It may then be assumed that the species is potentially present on the site.
- Identify any potential impacts that the project may have on the conservation objectives of the Natura 2000 site.
- Assess the likely significance of any impacts on the qualifying interests.
- Identify, if possible, appropriate mitigation that may be incorporated into the project to protect the habitat/species.
- Be accompanied by appropriate mapping

Reference should be made to the following publications:

- European Commission, 2002. *Assessment of plans and projects significantly affecting Natura 2000 sites: Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC*. Office for Official Publications of the European Communities, Luxembourg
- Smith, G. F., O'Donoghue, P., O'Hora, K., Delaney, E., 2011. *Best Practice Guidance for Habitat Survey and Mapping*. The Heritage Council, Kilkenny.

- Fossitt, J., 2000. *A Guide to Habitats in Ireland*. The Heritage Council, Kilkenny.
- The National Roads Authority. *Ecological Surveying Techniques for Protected Flora and Fauna during the Planning of National Road Schemes*. NRA.

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