
From: Kieran Doherty
Sent: Monday 12 December 2016 10:17
To: Lianna Slowey
Subject: FW: 7476 - GHE Compensatory Measures - Tripartite Meeting 13.12.2016 (PI Ref PA 61.0033) [Email 1 of 4]
Attachments: 7476 091216 Compensatory Measures V2.1.pdf; Appendix 1 - TGV Est France Nied Valley.pdf

From: John P Kelly (Galway) [mailto:John.Kelly@tobin.ie]
Sent: Friday 9 December 2016 16:46
To: Kieran Doherty <K.Doherty@pleanala.ie>; Ciaran.OKeeffe@ahg.gov.ie
Cc: Brendan Rudden <Brendan.Rudden@tobin.ie>
Subject: 7476 - GHE Compensatory Measures - Tripartite Meeting 13.12.2016 (PI Ref PA 61.0033) [Email 1 of 4]

Dear Sirs,

We wish to send you the attached documents in advance of the meeting on Tuesday next for review and to assist with the meeting.

The main report and appendix 1 are attached to this first email.

There will be 3 further emails.

We would be very grateful if you can confirm receipt of all 4 emails.

We look forward to meeting with you on Tuesday next.

Best Regards,

John

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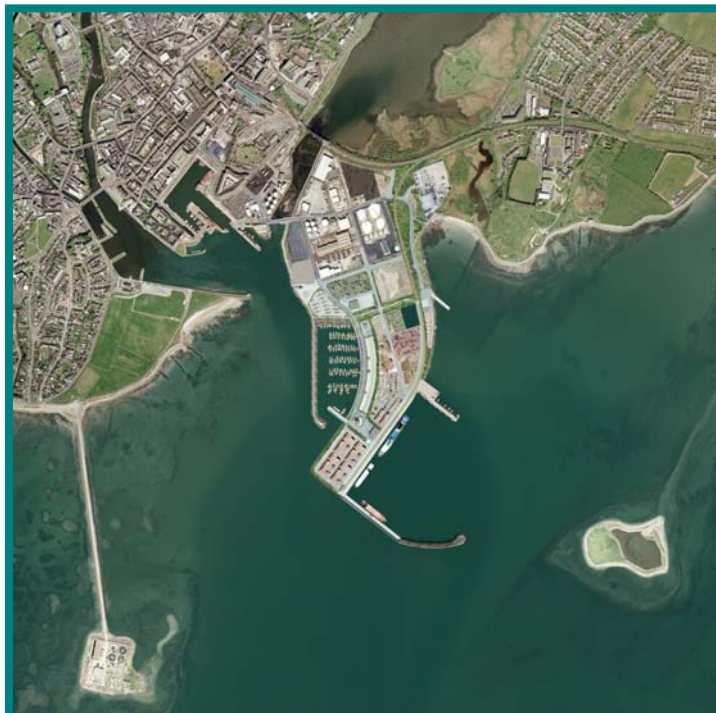
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7476 091216 Compensatory Measures V2.1



Galway Harbour Company

Galway Harbour Extension



**Proposed Compensatory Measures (Version 2.1) in relation to the
proposed Galway Harbour Extension,**

An Bórd Pleanála (Ref: 61.PA 0033)

December 2016



DOCUMENT AMENDMENT RECORD

Client:	Galway Harbour Company
Project:	Galway Harbour Extension
Title:	Proposed Compensatory Measures (Version 2.1)

PROJECT NUMBER: 7476				DOCUMENT REF: Request for Further Information			
Revision	Description & Rationale	Originated	Date	Checked	Date	Authorised	Date
A	December 2016 Meeting	BOC	07.12.16	BOC	08.12.16	JPK	09.12.16
Aquafact International Services Ltd							

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1 INTRODUCTION

1.1 BACKGROUND

This is the second report on proposed compensatory measures for habitat loss arising from both the Galway Harbour Extension (GHE) project and the Galway Harbour Enterprise Park (GHEP). It follows a request from An Bord Pleanála (ABP) dated 29.09.2015 for such a report and also a 15 page responding document from NPWS dated 27.05.2016 to the first report and minutes of the meeting between ABP and NPWS dated 03.08.2016 on that first report.

This December 2016 report sets out the proposed compensation plan.

The approach to the identification of compensatory measures involved firstly identifying potential replacement habitats for those lost, followed by the identification of measures which, together with the replacement designated habitats, are considered to constitute compensatory measures.

In the first report (AQUAFAC, 2015), the overall approach to the identification of compensatory measures considered the request from ABP together with the Board's Statement of Appropriate Assessment including the report of the Board's specialist marine ecological consultant, Dr. Bastreri of Thompson Unicomarine. The identification of compensatory measures was informed by the EU Guidance on Article 6(4) and a summary of the relevant provisions/criteria from this guidance document was presented in that (AQUAFAC, 2015) report.

Also, in that report (AQUAFAC, 2015), the habitat types and areas that were lost by the development of the GHEP and those that will be lost if the GHE project is given planning permission were presented. That report also identified potential replacement habitats similar to those lost and options for the provision of such replacement habitats. These included the engineering of replacement habitats and alternatively, the identification of similar existing habitats to those lost for subsequent designation. Locations both within and outside Galway Bay cSAC were assessed in that same report.

The identification of compensatory measures follows the criteria set out in the EU document on Article 6 (4) and these criteria were applied to the 3 relevant habitat types *i.e.* intertidal habitats (mud and sand flats and reef), stony bank and saltmarsh.

1.2 AN BORD PLEANÁLA FURTHER INFORMATION REQUEST

The Board confirmed that it had completed an appropriate assessment of the proposed GHE project in accordance with Article 6(3) of the Habitats Directive and concluded that the approval of the proposed development could not be considered under Article 6(3) given that a significant adverse impact on the integrity of the Galway Bay cSAC would occur.

The Board identified the impacts on the integrity of the European Site as follows:

- The direct and permanent loss of a complex of fucoid-dominated reef habitat [1170] and mud and sand flat habitat [1140] in Galway Bay cSAC that will result in the conservation objectives for these features not being met. The direct and permanent loss of a habitat, which is part of the conservation objectives of the site, is in general, a significant adverse effect on the integrity of the site.
- The loss of perennial vegetation of stony banks [1220] due to the sheltering effect of the harbour extension will also have significant adverse effect on the integrity of the cSAC.

During the development of the Galway Harbour Enterprise Park (GHEP), an area of salt marsh was lost as part of this development. For this reason Atlantic salt meadow (*Glauco-Puccinellietalia maritimae*) [1330] has been added to the above two habitats.

None of these 3 habitats are listed as Priority Habitats in the EU Habitats Directive (EU 1992).

Compensation areas for loss of qualifying interest (QI) habitats in the Galway Bay SAC due the proposed expansion of Galway Port and the development of the GHEP are as follows:

GHE

Intertidal habitats (mud and sand flat and reefs):14.51 ha

Stony bank: 0.63 ha

GHEP

Salt marsh: 7.39 ha.

ABP invited Galway Harbour Company to confirm that it wished to have the project considered for approval under Article 6(4) of the Directive and this confirmation was issued to ABP on 1st October, 2015.

The letter of 29.09.2015 states that the Board proposes that the development of compensation measures be addressed in two phases:

Phase 1 – *“the proposals for compensatory measures should be set out by Galway Harbour Company for initial consideration. Galway Harbour Company was advised to liaise with the National Parks and Wildlife Service (NPWS) of the Department of Arts, Heritage and the Gaeltacht in this regard”*. As advised above, informal meetings were held in NPWS office on 21.10.2016 and 30.11.2016.

Phase 2 – *“pending the outcome of Phase 1, the applicant will be afforded further time to develop the compensatory measures in more detail leading to submission of a completed proposal for consideration by the Board”*.

ABP stipulated that there should be liaison with the NPWS to enable *“close co-operation”* between the Galway Harbour Company and the NPWS as encouraged in the Guidance Document on Article 6(4) of the Habitats Directive 92/43/EEC, published by the European Commission (DG Environment).

This present document has progressed the proposals on that basis and in light of NPWS (27.05.2016) and ABP (03.06.2016) feedback and meetings referenced above.

1.3 STATEMENT OF APPROPRIATE ASSESSMENT

In its Statement of Appropriate Assessment, ABP noted that it had regard to the documentation submitted by the applicant which included a comprehensive list of Natura 2000 sites potentially coming within the influence of the proposed port extension. ABP has also advised that it has agreed with the screening assessment and conclusion reached in the report of the specialist ecological consultant (Dr. Bastreri of Thomson Unicmarine) appointed to assist the Board's Inspector) that the following sites:

- Galway Bay Complex c SAC (site code 000268),
- Inner Galway Bay SPA (site code 004031) and
- Lough Corrib c SAC (Site code 000297)

are the relevant European sites for which there is a likelihood of significant effects, requiring a 'Stage II' assessment¹ and that other sites can be discounted from further consideration, owing to the separation distances involved and lack any likelihood of significant effects arising.

1.4 PROFESSIONAL COMPETENCY OF THE AUTHOR

This latest report was prepared by Dr. Brendan O'Connor of AQUAFACt who also prepared the previous report. Dr. O'Connor has been working in Galway Bay since 1972 as a researcher in NUI Galway and following that since the foundation of AQUAFACt in 1986. He is therefore very familiar with the different types of habitats that occur throughout inner Galway Bay. Dr. O'Connor and AQUAFACt has been a member of the project team on the proposed Galway Harbour Extension since the inception of the project and has contributed to the project EIS, NIS and other application documents.

¹ Stage II requirement was addressed by NIS and accepted by ABP

2 EU GUIDANCE ON COMPENSATORY MEASURES

2.1 GUIDANCE CRITERIA

2.1.1

ABP in its request for Further Information of the 29th September, 2015 has referred the applicant to the guidance in relation to compensatory measures set out in the European Commission (DG Environment) Guidance Document entitled: “Guidance document on Article 6(4) of the ‘Habitats Directive’ 92/43/EEC” (2007/2012), as may be updated.

2.1.2

This EU guidance notes on page 10, bullet 2, that “*compensation measures sensu stricto are independent of the project (including any associated mitigation measures). They are intended to offset the negative effects of the plan or project so that the overall ecological coherence of the Natura 2000 network is maintained*”.

2.1.3

It also states (page 11, line 2) that compensatory measures “*should be considered only after having ascertained a negative impact on the integrity of a Natura 2000 site*”. Compensation measures are aimed at offsetting the negative impact of a project and to provide compensation corresponding precisely to the negative effects on the species or habitats concerned (page 11, text box).

2.1.4

The EU document states (page 13, text box, para. 1) that “*in order to ensure the overall coherence of Natura 2000, the compensatory measures proposed for a project should therefore*

- a) *address, in comparable proportions, the habitats and species negatively affected;*
- b) *provide functions comparable to those which had justified the selection criteria of the original site, particularly regarding the adequate geographic distribution.”*

2.1.5

It also notes (page 13, text box, para. 2) that “*the distance between the original site and the place of the compensatory measures is not necessarily an obstacle as long as it does not affect the functionality of the site, its role in geographical distribution and the reasons for its initial selection.*”

2.1.6

On page 14, para. 2 of the document, it states that compensation “*could, similarly, consist of the recreation of a comparable habitat or the biological improvement of substandard habitat within an*

existing designated site, or even the addition to the Natura 2000 network of a new site of comparable quality to the original site” and this is reiterated on the same page, para.3, final bullet, where the Guidance Document notes that measures ... can consist of ... “proposing a new site under the Habitats and Birds Directive”.

2.1.7

Further on in the document (p.18, para. 3), it notes that “...*locating compensation within or nearby the Natura 2000 site concerned in a location showing suitable conditions for the measures to be successful seems the most preferred option*”.

2.2 GUIDING PRICIPALS

The criteria used to identify compensation measures for the GHE project follow the principles set out in the Commission’s Guidance on Article 6(4) (see pages 15 – 20), which are:

2.2.1 Targeted Compensation

Having identified the habitats and extent of the damage that the project or plan will cause, the compensation measures must specifically address such effects so that the elements of integrity contributing to the overall coherence of the Natura 2000 network are preserved in the long term. Measures must clearly refer to the structural and functional aspects of the site integrity and the related types of habitat and species populations that are affected.

2.2.2 Effective Compensation

Compensation measures must be feasible and operational in reinstating the ecological conditions needed to ensure the overall coherence of the Natura 2000 network.

2.2.3 Technical Feasibility of the proposed compensation

To overcome intrinsic difficulties associated with reinstatement of ecological conditions, compensatory measures must be designed following scientific criteria and evaluation in accordance with best scientific knowledge and taking into account specific requirements of the ecological features to be reinstated.

2.2.4 Extent of Compensation

Compensation ratios are set on a case-by-case basis and take account of the areas that will be lost by the plan or project. At minimum, compensation should be based on the areas lost by the project.

The EU Guidance document on 6.4 (p. 18) states...*“There is wide acknowledgement that ratios should be generally well above 1:1. Thus, compensation ratios of 1:1 or below should only be considered when it is demonstrated that with such an extent, the measures will be 100% effective*

in reinstating structure and functionality within a short period of time (e.g. without compromising the preservation of the habitats or the populations of key species likely to be affected by the plan or project)”.

2.2.5 Location of Compensatory Measures

The location of compensatory measure required to be as per paragraphs 2.1.5 – 2.1.7 above which are extracts of the EU Guidance Document on 6(4) *i.e.* the distance between the original site and the place of compensatory measured is not necessarily an obstacle, a new site may be added to the Natura 2000 network or locating compensation within or nearby to the Natura site are all given as options.

2.2.6 Timing of Compensation

The EU Guidance on 6(4) notes that a site must not be irreversibly affected *i.e. commencement of development works* before compensation is in place² and that the results of the compensation should be effective at the time damage occurs. If this cannot be achieved, then overcompensation would be required for the interim losses. Time lags might only be admissible when it is ascertained that they would not compromise the objective of “no net losses” to the overall coherence of the Natura 2000 network. Time lags are not permitted if they lead to population losses for any species protected in the site under Annex II of Directive 92/43/EEC or Annex I of Directive 79/409/EEC requiring particularly attention when it entails priority species.

The purpose and timing of the compensatory measures proposed is to ensure that all necessary provisions, technical, legal or financial, necessary to implement the compensatory measures must be completed before the plan or project implementation starts, so as to prevent any unforeseen delays that may hinder the effectiveness of the measures³.

2.2.7 Long-term Implementation

Compensatory measures being proposed must take into account a number of different aspects of what the Commission regards as long term implementation and these include:

- devising binding enforcement methods at the National level aimed to ensure the full implementation and effectiveness of compensation
- devising the necessary legal means in case land or rights purchase is deemed essential for the effective implementation of the compensation and
- establishing monitoring programmes for the life of the project, including objectives, responsible bodies and requirements on reporting to the Commission.

² See section 1.5.6 of the Guidance Document

³ As required under Section 1.5.6 of the Guidance Document.

3 THE NIED PRECEDENT

3.1 NIED TGV COMPENSATION

As part of the process in formulating a compensation package for the Galway Docks project, a review of previous successful compensatory plans throughout the EU was undertaken. To date, 20 such compensation plans in the EU (excluding examples from the U.K.) have been carried out and an example from Eastern France in relation to the construction of a section of railway track is of relevance. Proposed compensatory measures for the loss of ca 3.75 ha of salt meadow and subhalophytic meadow (which are listed as a PRIORITY habitats in the EU Habitats Directive) in the Nied Valley in Eastern France that arose due to the construction of a new section of high speed rail (TGV) connecting France to Germany (EU, 2004) (See Appendix 1), there were three different approaches. These were (quoted verbatim from EU (2004)):

1. Preservation of remaining 31 ha of salt meadows near the line by means of a management agreement between the contracting authority and a nature protection body. The latter was to draw up individual agreements with each of the farmers concerned.
2. Restoration of the site and re-establishment of salt meadows. A restoration trial had been carried out in 2003 on 20 ha of land and involved preparation of the site, sowing of local seeds and implementation of scientific monitoring over 5 years focussing on salinity and vegetation. It was planned to fill in drainage ditches so as to better preserve the special character of these areas.
3. Preservation of Nied Valley salt meadows not adjacent to the TGV line but included in the Natura site. Mapping of the natural habitats in the area proposed for the Natura 2000 network in the Nied Valley carried out by the University of Metz and financed by the contracting authority (RFF) identified 6 halophytic sites in the valley. A site at Aubécourt, which was the most remarkable, had been selected for RFF to purchase 3.5 ha of land for heritage management via an agreement concluded with the specialised body already approached to manage and preserve the 31 ha.

4 PROPOSED COMPENSATORY MEASURES

4.1 GALWAY BAY DESIGNATED AREA STUDY

The proposed package of compensatory measures focusses on three separate geographic areas within the Galway Bay SAC *i.e.* Tawin, the area of stony bank near Renmore Lagoons and two aquaculture sites in Inner Galway Bay at Parknahalla, Kinvarra Bay and Shanmullen in the southeastern part of Tawin.

The NPWS advice on 27.05.2016 in the form of their submission to the board was to study Renville and Tawin. A desk based study was undertaken to review existing literature (McCorry, 2007; McCorry and Ryle, 2009; NPWS, 2013) on the distribution of the 3 habitats required for compensation in the Galway Bay Area including the North shore of County Clare. The results of this desk based study showed that the eastern part of Galway Bay contains the largest areas of these habitats.

The field survey work undertaken commenced at Oranmore and extended southwards through Renville, Ardfry and terminating at the south eastern corner of Tawin. The survey effort comprised walking the shoreline to record stony banks and areas of salt marsh. The habitats were then mapped in general nature for future detailed study (see Figure 1 below).



Figure 1 - Overall Study Area

Based on the findings of these initial field surveys, which showed that extensive areas of saltmarsh, stony bank and intertidal reef / mudflat / sandflat were present in Tawin (see Figure 2), this area was selected as the area for the proposed management plan based on literature on the NPWS website (NPWS, 2006; McCorry, 2007; McCorry and Ryle, 2009; NPWS, 2013), published papers and information held in-house in AQUAFACT (see Appendix 2 for more detailed mapping).

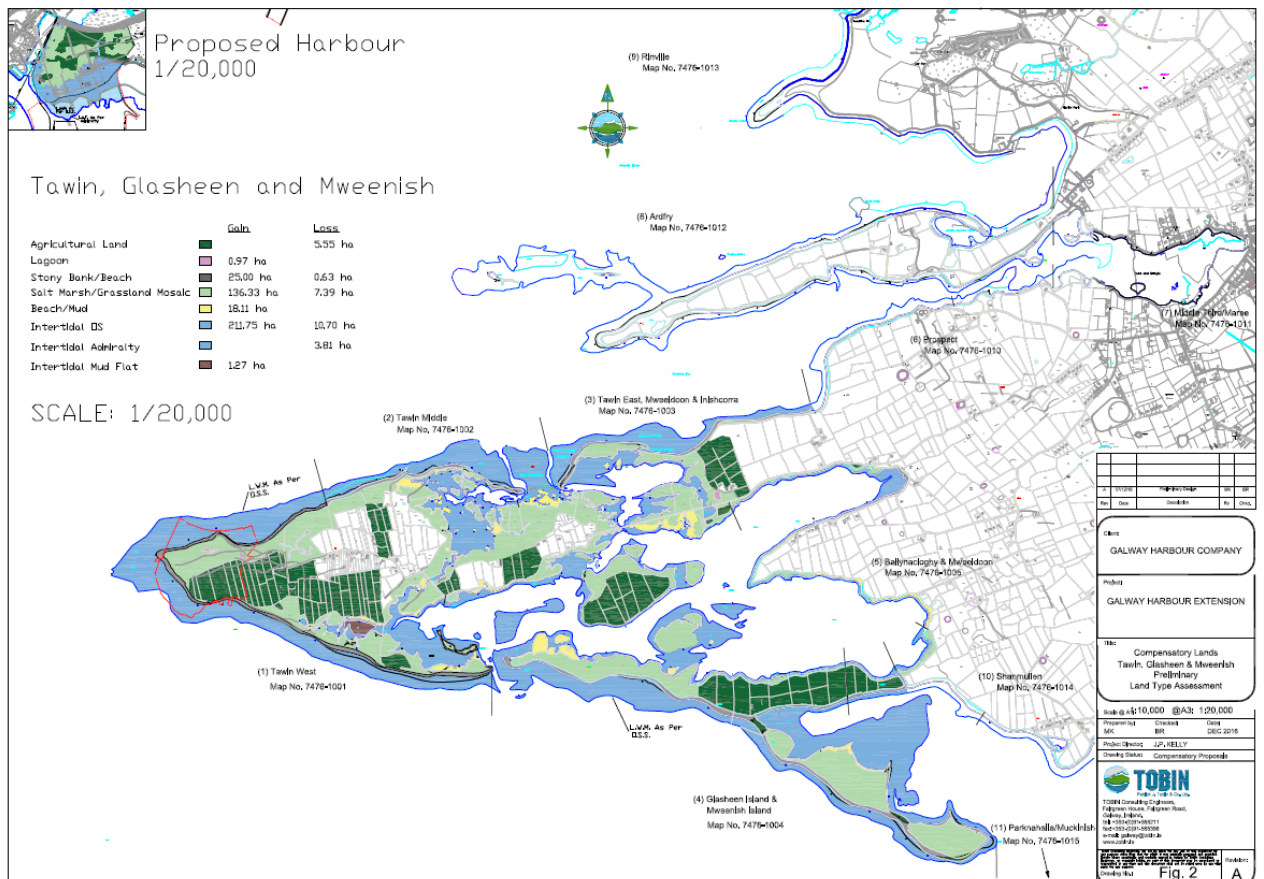


Figure 2. Tawin peninsula showing locations and areas of difference habitats including stony bank, saltmarsh and intertidal habitats.

4.2 GALWAY / TAWIN EXISTING CONDITION

It is proposed to develop a management plan for parts of the Tawin area (see map above) of Inner Galway Bay (within the boundary of the cSAC) where stony bank, salt marsh and intertidal complexes of fucoid-dominated reef, sand and mud flat habitats occur to bring about the improvement of these habitats which in places have been described as being of “unfavourable/inadequate” status in a report commissioned by National Parks and Wildlife (NPWS Saltmarsh Monitoring Programme Project, 2006, Tawin Island; attached as Appendix 3). There are several references in this report to pressures on salt marsh and stony bank habitats arising from a variety of agriculture pressures such as grazing (p. 7, p. 8, p. 11, p. 12, p.17 and p. 19),

poaching by cattle (p.9, p.11, p. 12, p. 19), grazing tracks (p.12), dumping (p. 13), excavation of stones and gravel (p. 14).

On p.14 of this report, the overall all status of this area is described as “*unfavourable/inadequate*” while on p.17 under the heading *Habitat structure and function* for saltmarsh, this is also described as “*unfavourable/inadequate*” and on p.19 under the heading *Future prospects*, this too is described as “*unfavourable/inadequate*”.

On p.21 under the heading *Management Recommendations* at the end of this report, the authors state “*In some specific areas, the grazing intensity should be reduced*” and go on to note that “*Removing grazing as an impact from a small part of the site would also be beneficial as this would increase the sward diversity particularly in the middle and lower marsh areas, which are generally preferentially grazed and so are even affected at low stocking densities*”.

4.3 COMPENSATORY MANAGEMENT PROPOSALS

Ecological restoration as a form of compensation is specifically described in the EU (2007) Guidance document on Article 6(4) of the Habitats Directive 92/43/EEC and is shown in 2.1.6 (p.6) above *i.e. “biological improvement of substandard habitat within an existing designated site”*.

4.3.1 Tawin

In relation to the proposed management plan for Tawin, this will include:

- Control of grazing levels by horses, cattle and sheep to give the level of seasonal grazing to best suit the plant species of the habitat,
- Cease fertilizer and slurry spreading,
- Livestock using the lands are to be outside of the withdrawal period for medicines and anthelmintics,
- Prevention of the use of herbicides within or close to the three habitat types,
- Maintain the salt marsh and stony bank habitats that are subject to management agreements / possible purchase in accordance with organic principles,
- Prevent removal of cobbles,
- Prevent the construction of any drainage channels,
- Prevent the construction of any further sea defence works or dumping of materials to act as a sea defence,
- Cease repair of any sea defence works to allow for ingress by the sea,
- Regular removal of flotsam and jetsam and other refuse,
- Control of access to the shore by tractors,

- Control of the use of round feeders and related poaching and rutting of lands and feeding and gate sites,
- Annual biological surveys of the habitats to document any changes in their extent and their characterising species,
- Erection of signage including drawings demonstrating what the project comprises and what species are contained with each habitat.

4.3.2 *Renmore*

In addition to the above compensation plan, it is proposed to develop a management plan designed to prevent the disappearance of the stony bank habitat and its characterising species at Renmore Lough by:

1. Regular (annual) low-level reworking of the seaward strip of cobbles e.g. light harrowing,
2. More aggressive harrowing/raking over a longer time frame e.g. once every 10 years,
3. Spraying the area on an annual basis with sea water during late Autumn, Winter and early Spring,
4. Manual control of emerging shrubby plants such as briars, willow and other woody plants,
5. Regular removal of flotsam and jetsam and other refuse,
6. Undertake an annual biological survey to assess the effect of the harrowing and spraying with sea water on the stony bank habitat,
7. Undertake additional surveys immediately after significant “post-storm” events such as the 2014 January storm to document their impacts,
8. Erection of signage including drawings demonstrating what the project comprises and what species are present within the stony bank and surrounding salt marsh habitats.

4.3.3 *Shanmullen & Parknahalla / Muckinish*

An additional and separate part of the proposed management plan which relates solely to the complex of intertidal reef, mud flat and sand flat habitat is to develop a programme to eradicate the non-native tunicate taxon *Didemnum* at 2 aquaculture sites (Parknahalla, east side of Kinvarra Bay and Shanmullen Channel, Tawin South) within the Galway Bay cSAC.

Dr. Tasman Crowe of the Department of Zoology in T.C.D. directed a Ph.D. project on successfully controlling *Didemnum* in oyster farms in Westport Bay (which is an SAC) by regularly spraying the tunicate with vinegar. Dr. Crowe will act as a consultant in the part of the proposed range of management options.

4.3.4 *Compliance with EU Guidance on 6(4).*

This proposed suite of compensatory measures complies with all aspects of the information and recommendations contained in the EU Guidance document (EU 2007).

The suite of plans for the 3 **non-priority** habitats that require compensation due to impacts arising from the proposed expansion of the Galway Harbour, far outweighs those proposed by the developers for the TGV line for **priority** habitats and that were accepted by the Commission.

5 NEXT STEPS

For this package of management plans to be developed to the phase 2 stage as per ABP 29.09.2015, detailed surveys by agreed suitably qualified botanists and zoologists are required. These will include initial site surveys by the relevant specialist to qualitatively assess the Tawin area in terms of site suitability for the habitats in question.

This will then allow for the selection of the most suitable areas for quantitative survey work to be carried out at a suitable time of the year to document the plant and animal species present in each habitat. This will document pressures and impacts from existing land and aquatic use, on lands where the owners will have agreed that the enhanced management plans proposed would be acceptable to them.

Confirmation in principal is required that the package of measures presented above forms an acceptable method to compensate for the loss of the 3 habitats in question arising on foot of the Galway Harbour Extension and Galway Harbour Enterprise Park developments. This will then allow the further qualitative and quantitative studies to progress as soon as possible.

6 REFERENCES

AQUAFAC International Services Ltd. (2015). Proposed compensatory measures associated with the Galway Harbour Extension, Renmore and Townparks townlands, Galway.

Curtis, T. and Sheehy Skeffington, M. (1998). The salt marshes of Ireland: an inventory and account of their geographical variation. *Biology and Environment: Proceedings of the Royal Irish Academy*. Vol. 98B, No. 2 (Dec., 1998), pp. 87-104.

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McCorry, M. (2007). Saltmarsh Monitoring Project 2006. NPWS.

McCorry, M. and Ryle, T. (2009). Saltmarsh Monitoring Project. Final Report. NPWS.

NPWS (2006). Site report, Saltmarsh Monitoring Project, Tawin Island. Pps 22.

NPWS (2013). Galway Bay Complex. Conservation objective supporting document.

Appendix 1 - TGV Est France Nied Valley



COMMISSION EUROPÉENNE
SECRETARIAT GÉNÉRAL

Bruxelles, le 9 septembre 2004

FDE

C(2004)3460

NOTE POUR LES MEMBRÉS DE LA COMMISSION

E/1795/2004

NORMALE

Délai:

JEUDI 16 SEPTEMBRE 2004 - 11 H

Observations éventuelles : service des procédures écrites SG-A-2
Fax : 64316 - Tél.: 52362 / 52363

Objet : Directive "Habitats"
- avis de la Commission (France)

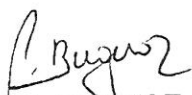
Proposition de Mme WALLSTRÖM

Décision proposée :

- approuver le projet d'avis de la Commission, émis conformément à l'article 6, paragraphe 4, deuxième alinéa, de la directive 92/43/CEE du Conseil, du 21 mai 1992, concernant la conservation des habitats naturels ainsi que de la faune et de la flore sauvages (directive "Habitats"), en ce qui concerne la demande d'avis et d'échange d'informations adressée par la France à la Commission européenne dans le cadre de la directive "Habitats", en relation avec le projet de construction d'une Ligne Grande Vitesse (TGV Est) ;
- le texte en langue française est le seul faisant foi.

Commentaire :

Selon le service responsable, ce projet ne comporte pas d'incidences financières sur le budget communautaire.


Patricia BUGNOT
Directeur du Greffe

Destinataires : Mme DAY, MM. LAMOUREUX, MEADOWS, PETITE

NOTE DU SECRETARIAT GENERAL

PREPARATION DU DOCUMENT

Direction générale responsable

ENV Environnement

Services Associés

pour accord

SG	Secrétariat général	: Accord
TREN	Energie et Transports	: Accord
REGIO	Politique régionale	: Accord

pour avis

SJ	Service juridique	: Avis favorable
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Langue originale : FR

En cas de demande de corrigendum/suspension de cette procédure, les cabinets et/ou le Service juridique sont invités à envoyer leurs observations à la boîte fonctionnelle "SG A-2 ACCORDS CABINETS".

Dossier traité par Ulrike TRAUTENBERGER - BREY 13/17 - 67372

Info-point PROCEDURE : SG/A/2 (52362- 52363)

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MEMORANDUM TO THE COMMISSION

1. **SUBJECT: OPINION ACCORDING TO ART. 6 (4) OF COUNCIL DIRECTIVE 92/43/EEC OF 21 MAY 1992 ON THE CONSERVATION OF THE NATURAL HABITATS AS WELL AS THE WILD ANIMALS AND PLANTS^[1], DELIVERED UPON REQUEST OF THE REPUBLIC OF FRANCE**

Natura 2000 is a Community-wide network of nature protection areas established under the 1992 Directive 92/43/EEC on the conservation of the natural habitats as well as the wild animals and plants (the 'Habitats directive'). It aims to promote the maintenance of biodiversity by assuring the long-term survival of Europe's most valuable and threatened species and habitats. The network is composed by sites that have been classified by Member States as Special Protection Areas (SPAs) according to the Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds^[2] (the 'Birds directive') or proposed as Sites of Community Importance according to the Habitats Directive.

Natura 2000 sites are subject to the protection regime laid down in article 6 (3) and (4) of the Habitats directive: Any plan or a project having a significant negative effect on a site may only be authorised, if there is no alternative solution and if it is justified for imperative reasons of overriding public interest, including those of a social or economic nature. In this case the Member States shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. If the site hosts a priority natural habitat type and/or a priority species, and if considerations relating to human health, public safety or beneficial consequences of primary importance for the environment cannot be invoked, **the project must be justified by other imperative reasons of overriding public interest, further to an opinion from the Commission.**

The subject of this decision is to adopt an opinion relating to a French project, according to article 6 of the Habitats directive. Corresponding request was submitted to the Commission by the Republic of France. In the following, a short summary of the opinion is given.

The Commission is hereby invited to adopt the above mentioned opinion and approve the notification to the Republic of France.

COMMISSION OPINION

delivered pursuant to the second subparagraph of Article 6(4) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (Habitats Directive), concerning the request from France for advice and exchange of information with the European Commission within the framework of the Habitats Directive in relation to the project to build a high-speed line (TGV East)

1. Legal background

Article 6(3) of Directive 92/43/EEC¹ stipulates that any plan or project not directly connected with or necessary to the management of a Natura 2000 site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, must 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 its implications for the site and subject to the provisions of paragraph 4, the competent national authorities may 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.

Article 6(4) of Directive 92/43/EEC stipulates that a plan or a project may be carried out in spite of a negative assessment of the implications for a Natura 2000 site, in the absence of alternative solutions, if it is justified for imperative reasons of overriding public interest, including those of a social or economic nature. In this case, Member States must take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected and must inform the Commission of the compensatory measures adopted. Where the site concerned hosts a priority natural habitat type and/or a priority species, and if considerations relating to human health, public safety or beneficial consequences of primary importance for the environment cannot be invoked, the project can be justified, further to an opinion from the Commission, by other imperative reasons of overriding public interest.

2. France's request

On 12 March 2004 the Permanent Representation of France to the European Union sent DG Environment an official notification, in accordance with Article 6(4) of the Habitats Directive, concerning the project to build a high-speed line (Section F – TGV East), together with a request for advice addressed by France to the European Commission in the framework of the Habitats Directive (hereinafter “the notification”).

Accompanying the notification, the French Government sent the documentation required by DG Environment, namely the impact document relating to Section F of the TGV East.

An account of the exchanges with the French administration and other stakeholders that led to the drafting of the present text is given in **Annex 1**.

¹ JO N° L 206 dated 22.07.1992, p.7

The documentation received from the French Government is listed and numbered in **Annex 2**. Reference will be made to these numbers in the remainder of this document.

3. The project

The TGV East project was declared to be of public utility on 14 May 1996. It involved the construction of a new 406 km railway line between Vaires-sur-Marne (Paris region) and Vendenheim (near Strasbourg) to enable high-speed trains to connect Paris with the cities of eastern France and with neighbouring countries and to connect the eastern regions of France with the country's western, south-western and northern regions without having to go via Paris.

In January 1999 France decided to implement the project in phases, starting with the construction of the new 300 km line between Vaires-sur-Marne and Baudrecourt.

This phased approach requires the construction of an additional 4.6 km of track to link the high-speed line to the existing Metz-Réding line so that the TGV can run to Strasbourg. The new link branches off from the original Hery link (allowing trains to run to Saarbrücken) and crosses the municipalities of Baudrecourt, St Epvre and Vatimont in the Moselle department. This is where the TGV East line cuts across the Natura 2000 site at two points: the link to the Metz-Strasbourg line cuts through the salt meadows of Baudrecourt, while the original link to Saarbrücken (contained in the 1996 declaration of public utility) cuts through the mesophilic and hygrophilous meadows at St Epvre and Vatimont.

The Baudrecourt link was declared to be of public utility on 29 April 2002.

4. The Natura 2000 sites directly involved

There is no doubt that the project will significantly affect, within the meaning of Article 6(3) of Directive 92/43/EEC, the integrity of several sites of Community interest proposed for the Natura 2000 network and the habitats and species occurring in them, as well as areas of major ornithological interest which should have been proposed as Special Protection Areas under Directive 79/409/EEC. In these circumstances, the project may be carried out only if it complies with the requirements of Article 6(4) of Directive 92/43/EEC and the provisions of Directive 79/409/EEC.

Judging by the notification, the project to build the high-speed line (Section F) will significantly affect a priority habitat listed in Annex I to Directive 92/43/EEC – Habitat 1340 “Inland salt meadows” as it crosses a site of Community interest – FR 4100231 “Secteurs halophiles et prairies humides de la vallée de la Nied” – proposed by France under Directive 92/43/EEC.

5. Assessment of the project's effects on Natura 2000 sites

5.1. The direct effects forecast for the project

With the construction of the additional link under the phased approach, the European TGV East line will, in crossing the Natura 2000 area, destroy 3.75 hectares of salt meadow and subhalophytic meadow. This represents 0.55% of France's mainland halophytic areas and 18.6% of the halophytic areas included in the French Nied Valley area proposed for the Natura 2000 network. In terms of mesophilic meadow, the project will affect 0.02% of the mesophilic meadow area included in the Nied Valley Natura 2000 area.

The Commission believes these assessments can be considered appropriate within the meaning of Article 6(3) of Directive 92/43/EEC.

The Commission believes that the expected implications for these habitats may affect the overall coherence of Natura 2000 and that, subject to compliance with other requirements of Article 6(4) of the Habitats Directive, adequate compensatory measures therefore need to be taken. Such measures must be seen as a precondition for the project to go ahead.

6. Alternatives – other options for the project

The advantage of France's decision to phase construction of the high-speed line in Baudrecourt was the proximity to lines already in operation and the fact that work on the Saarbrücken link planned in the initial project was already under way in this area. Having the additional link branch off from the Saarbrücken link, which crosses the Metz-Réding line, would greatly reduce the length of new infrastructure required (4.6 km) and thus have the least impact on the natural environment. Alternative routes for the new link further south would not have avoided the Natura 2000 area.

7. Imperative reasons of overriding public interest

In its notification, the French Government refers in particular to the abovementioned lack of options for linking the existing lines in support of its declaration that the project has to be implemented for an imperative reason of overriding public interest other than those related to human health, public safety or beneficial consequences of primary importance for the environment.

In addition, the European TGV East project was viewed favourably in the Council of Ministers of the European Community on 14 and 15 December 1990 and was chosen as a priority project by the European Council in 1994, having benefited from Union decisions regarding the priority of infrastructure projects to be implemented.

8. Proposed mitigation and compensatory measures

To offset the project's likely effects on Natura 2000 as described in the notification, the French authorities propose a series of mitigation and compensatory measures planned as follows:

Mitigation measures:

- *Adaptation of the longitudinal section:* to minimise the project's impact on the area concerned, the route has been optimised so as to reduce the longitudinal section and thus limit the surface area occupied by the embankments; the construction of a 300 m viaduct where the existing railway track is crossed also serves to reduce the surface area needed for the project.
- In the work phase, precautionary steps are to be taken to protect the site from any additional harm: for example, ground marking to prevent site machinery moving off the site proper.

Compensatory measures and timetable:

In addition to the effort to reduce the project's impact through the project design, compensatory measures have been planned by the contracting authority and validated by

DIREN Lorraine (decentralised department of the Ministry of the Environment). Designed to perpetuate the salt environment, they operate on three fronts:

- preservation of the remaining salt meadows near the line over a surface area of around 31 hectares by means of a management agreement between the contracting authority and a nature protection body. The latter will draw up individual agreements with each of the farmers concerned. Moves are already under way with the farmers, who have given their agreement in principle. The agreements should be finalised during 2004.
- restoration of the site and re-establishment of salt meadows. A restoration trial was carried out in 2003 on 20 ares of land (preparation of site, sowing of local seeds and implementation of scientific monitoring over 5 years focusing on salinity and vegetation (still under way)). Drainage ditches will be filled in as part of the work associated with the land consolidation in 2005 so as better to preserve the special character of these areas.
- preservation of the Nied Valley salt meadows not adjacent to the TGV line but included in the Natura site. Mapping of the natural habitats in the area proposed for the Natura 2000 network in the Nied Valley, carried out by the University of Metz and financed by the contracting authority (RFF), identified 6 halophytic sites in the valley. The Aubécourt site, which is the most remarkable, has been selected for RFF to purchase 3.5 hectares of land for heritage management via an agreement concluded with the specialised body already approached to manage and preserve the 31 hectares. Purchase of these areas of land should be completed during 2004.

All the compensatory measures and the grounds justifying them are described in detail in the impact document for Section F of the TGV East.

The Commission considers that the proposed compensatory measures, as described in the notification and the documents mentioned in Annex 2, are sufficient to make up for the project's effects on Natura 2000 provided that they are executed in a timely manner corresponding to the phasing of the project and that the proposed management plans assure their long term effectiveness.

9. Opinion of the Commission

Taking into account the arguments set out above, the Commission takes the view that the TGV East high-speed line project, as described in the notification and in the documentation mentioned in Annex 2 to this text, especially the impact document for Section F of the TGV East line, can be executed for reasons of overriding public interest on condition that all necessary compensatory measures to ensure the overall coherence of Natura 2000 are taken in good time.

With regard to the opinion expressed in this document the Commission notes the following:

- this opinion is valid for this particular project, as described in the abovementioned additional documents submitted to the Commission by the French authorities, and cannot be considered applicable to possible effects of the TGV construction project on other Natura 2000 sites;

- this opinion presumes that the compensatory measures will be implemented and monitored as described in the abovementioned documents submitted to the Commission by the French authorities;
- this opinion presumes that the results of the accompanying monitoring programmes regarding Natura 2000 will be taken into account in the sense that they may, if need be, lead to appropriate rectifications in project design or to additional compensatory and mitigation measures.

ANNEX

Annex 1: Sequence of exchanges between the Environment DG of the Commission and the French authorities

At the beginning of November 2003, DG Environment was consulted by DG Transport in relation to an application for Community funding for the TGV East project. DG Environment requested additional information and concluded that the project might have implications for several sites of Community interest and for important bird areas, and decided to open an own-initiative case in order to address the French authorities regarding this matter.

The Commission has analysed the impact studies of the sites in question. The proposed mitigation measures reduce the impact for most of the sites of Community interest. However, in the case of the Nied Valley site, which was proposed by France for the Natura 2000 network, the project will lead to the destruction of a priority habitat and, where it crosses the Meuse Valley, may have an impact on bird species in an area which, although not yet proposed by France as a Special Protection Area, deserves to be listed as such.

On 13 January 2004, at a technical meeting of representatives of the Commission and the Ministries of Infrastructure and Ecology, the French authorities were advised to notify the Commission of the project in accordance with Article 6 of the Habitats Directive. To avoid presenting the Commission with a *fait accompli*, the authorities were also advised to request its opinion as a pre-condition for the decision to go ahead with the project.

The Commission also reminded the authorities that, although the Meuse Valley has not been designated as an SPA, Article 4 of Directive 79/409/EEC nevertheless applies. The area must therefore be strictly protected and the construction of infrastructures that may have an impact on protected species is not permitted.

On 12 March 2004, an official notification was sent in accordance with Article 6(4) of the Habitats Directive, together with an impact study for section F of the TGV East. France requested the Commission's opinion on the compensatory measures for the priority habitat affected and informed it of the measures to mitigate the effects on non-priority species and habitats.

Annex 2: documents sent by the French authorities to DG Environment:

- Impact study for section F of the TGV East (sent on 12 March 2004)
- Request for opinion in accordance with Article 6 of Directive 92/43/EEC (sent on 12 March 2004)
- The Commission has also received all the impact studies carried out in the framework of the TGV East project (a copy was sent by the project owner but has not yet been officially forwarded by the French Ministry of Infrastructure).

¹¹¹ In the different language versions of Article 6(4) of Habitats Directive, the following terms are used for the English “opinion”: “advies” in Dutch, “avis” in French, “Stellungnahme” in German, “consulta” in Spanish and “parere” in Italian. The term “opinion” will be used throughout this document.