

12th January, 2015

Mr. Mark Bohan

National Parks and Wildlife Service

Department of Arts, Heritage & the Gaeltacht

7 Ely Place

Dublin 2

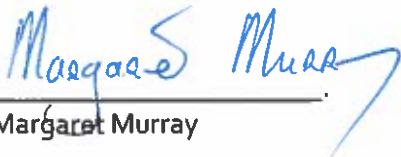
Re: Review of Section 40 of the Wildlife Act – Burning/Cutting Controls: Public Consultation

Dear Mr. Bohan,

I refer to your correspondence of the 1st December, 2014 regarding the above.

Please find attached the Department of Agriculture, Food and the Marine's submission in relation to the Review of Section 40 of the Wildlife Acts 1976 to 2012 governing the control of burning and hedge cutting.

Yours sincerely,



Margaret Murray

Climate Change Section
Climate Change & Bioenergy Policy Division
Department of Agriculture, Food & the Marine
Johnstown Castle Estate
Wexford
(053) 91 65592

Review of Wildlife Act (Section 40)

- DAFM comments

1. Introduction

The Department of Agriculture Food and the Marine (DAFM) welcomes this timely review of section 40 of the Act, as one of the commitments identified under Ireland's National Biodiversity Plan 2011-2016. Agriculture and Wildlife protection are intertwined, as evidenced through DAFM's support for the implementation of the National Biodiversity Plan in a number of ways. For example through the enforcement of certain aspects of the Wildlife Act through cross-compliance, but more particularly through the agri-environment schemes as well as through a number of other initiatives such as involvement in a number of Life+ projects, environmental research etc. Moreover, the DAFM has technical competence in relation to Forest Fire management and Prescribed Fire Management, with the Forest Service Division representing Ireland on the European Commission Forest Fire Expert Group. The current review of the Wildlife Act must be viewed in the light of increasing wildfire incidence in recent years, and a recent tendency towards larger, more intense and destructive wildfire events, including extensive destruction of forests. A number of events of this type have recently been recorded in Ireland, particularly in western counties.

Notwithstanding the background challenges to addressing biodiversity loss nationally, it is also important that the provisions of the Act are appropriate, balanced and in keeping with the management of the agricultural landscape. Therefore it is critically important that any proposed changes can have a positive impact on both wildlife conservation and be conducive to best farming practice. Proposed amendments should have a sound scientific basis, whilst at the same time there is also a need to address practical implementation issues at farm level. There is also an opportunity to provide increased legal clarity on certain aspects of this law. DAFM is available to elaborate further on any issues outlined below as required.

2. Specific comments

2.1 Permitted burning period

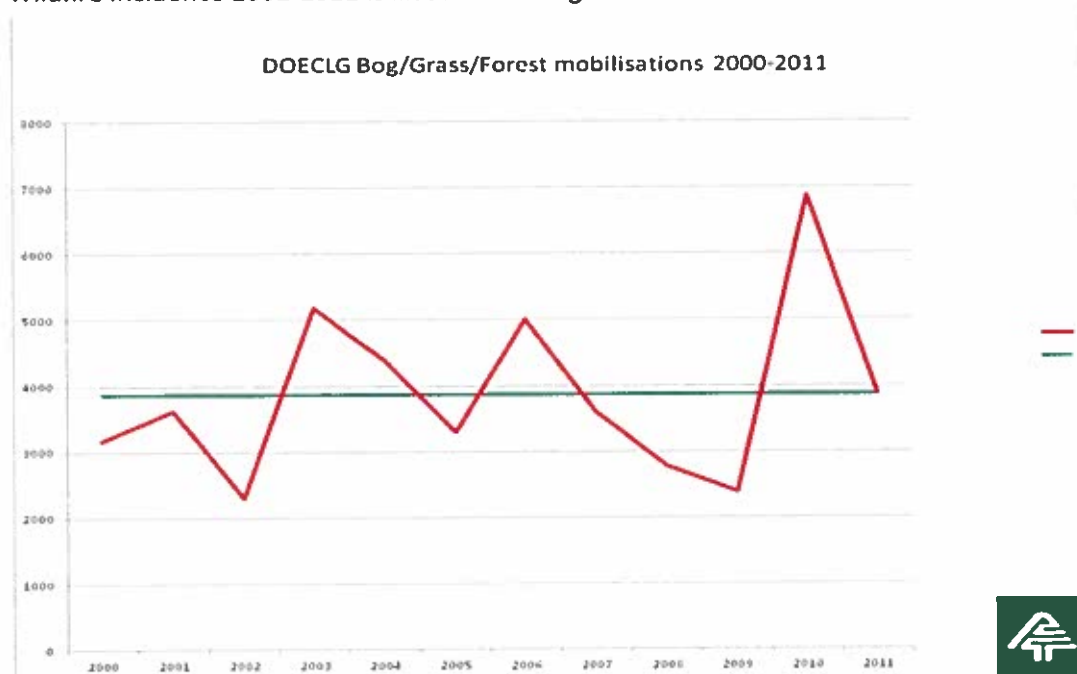
While hedgerows and upland vegetation are important as wildlife habitats, it is also acknowledged that they need to be carefully managed in the interests of maximising both farming and biodiversity values. Well-managed heather is an important asset to the farm but also a valuable wildlife habitat. Controlled burning is one of the oldest and traditional land-management tools for the management of heather. It encourages the production of nutritious new shoots to improve grazing for sheep and cattle. If left unmanaged, heather eventually grows long and woody, reducing its overall nutritional value. Burning on a small scale will produce a 'patchwork' of differently aged heather stands that provide shelter and cover for a range of species especially ground nesting birds. The assistance of landowners and managers is critical if these areas are to be optimised for both agriculture and nature conservation needs and it is therefore vital that all stakeholders cooperate with landowners towards such aims.

In this regard, it is acknowledged that landowners and professional fire managers have often stated that the closed period for burning is too inflexible and have suggested that the closed period be amended in order to take account of land management issues which arise on a regular basis. It is noted that some habitats may be adversely affected by burning of growing vegetation especially in the short-term. However, in many cases burning is a necessary management control tool to restoring certain habitats to optimum condition for both agriculture and for wildlife resulting in longer-term benefits overall. In 2013, 75% of burned lands were designated as Natura sites (European Commission, 2013). Satellite data suggests that Ireland's National Parks network also appears to be increasingly at risk from fire in recent years. Given recent climate change projections, fire is likely to be a significant, if somewhat episodic threat to Irish upland habitats in the future, in areas where high levels of hazardous fuels are allowed to accumulate.

The total area of land burned varies annually, and is largely dependent on weather conditions. Recent burned area estimates varied in recent years from 25,000 ha (2011), 5,000-7000 (2012) and 10,000ha (2013)(European Commission, 2012-2014). These estimates are derived from NASA and European Commission Satellite data, and via the European Forest Fire Information System (EFFIS). Generally, satellite monitoring and detection under Irish conditions under estimates the actual area affected.

Wildfire policies and legislation to date, including Section 40, have largely been based on fire exclusion regardless of their specific context. Nowadays, this approach is widely recognised to be neither ecologically desirable nor economically feasible (Montiel and Kraus, 2013).

Wildfire incidence 2001-2011 is illustrated in Figure 1.



Total fire exclusion has significant consequences on wildfire magnitude and frequency, through an increase of fuel accumulation, loss of resilience to fire and alteration of pre-existing fire regimes (Montiel, 2013). While efficient fire suppression actions have resulted in a reduction in total burned

area per year in the last three fire seasons, aided by favourable spring weather, the potential for major disasters remains with the fuel accumulated during this period, and there is an ever-increasing potential for large fire events should suitable conditions prevail in future seasons. Although this fire suppression approach is deeply rooted within forestry and conservation sectors, a national fire policy should consider all aspects of wildfire management as a whole and with a long-term view (FAO, 2006). A major challenge is presented in developing resilience to fire in the sectors most affected by fire, while also developing an improved fire management culture in the sectors that use fire regularly as part of their yearly cycle of land management activities, particularly upland agriculture (Nugent and Casey, 2014).

The DAFM supports the use of carefully planned and managed prescribed burning to favourably reduce and restructure fuel loads and habitats in conjunction with appropriate prescribed grazing and other sustainable management activity. The Department defines prescribed burning as:

“the controlled application of fire to a predetermined area, at a specified time of day and season, and under specified weather and fuel conditions, so as to ensure that the intensity, rate of spread and extent of spread of the fire meet planned land management objectives, and comply with legal, environmental and social constraints” (Forest Service, 2012).

DAFM is currently engaged in capacity building measures to support the development of a modern prescribed fire/fire management culture in Ireland. Current measures include introducing a Prescribed Burning Code of Practice, and development and delivery of pilot training programmes for land use professionals and landowners who use fire to manage land. Local level Fire management Groups, such as the Cork Wildfire Cooperative and Kerry Wildfire Partnership, can play a key role in coordinating and communicating fire management activities and enhancing awareness at local levels and should thus be supported by the relevant Departments and Agencies. In this regard, a national steering group, with representatives from the Departments and agencies concerned with Wildfire management issues, could be established to coordinate wildfire policy and implementation of activities at national level. Similar Structures exist in most European Countries where wildfire is an issue, and in Australia, New Zealand, Canada and the United States. DAFM would support discussions between the relevant parties, on the merits and feasibility of establishing such a group in Ireland.

Allowing landowners more opportunities to burn hazardous vegetation, and ensuring that prescribed fire operations are carried out in a planned, professional environment will reduce wildfire risk during more dangerous weather conditions. A mosaic of smaller, less intense and carefully contained prescribed fires can help protect upland landscapes, habitats and species from the damaging effects of wildfires in the long term. The fire weather warning system developed by Met Eireann can provide a useful tool to indicate suitable burning conditions. This system colour codes the week ahead (5 days) on the basis of very low to extreme risks. Forest Service protocol directs that burning must not take place at orange or red levels (high and extreme risk).

Anecdotal evidence suggests that the opportunities for burning, in terms of number of suitable burning days, during the September to February period are often very limited, with the actual number varying from season to season. DAFM intends to introduce a support measure for the

sustainable management of commonage lands under the proposed new Green Low-carbon Agri-environment Scheme (GLAS). As part of this measure it is intended to enhance the understanding of the potential role of burning through the provision of training for both planners and farmers, and to facilitate it as a management tool within commonage management plans, where appropriate, whilst meeting NPWS conditions as well as other legal obligations.

Key advantages of longer burning season include:

- offers more opportunities to train landowners to manage fire safely, and ensure that impacts of fires are mainly beneficial.
- permits the strategic use of prescribed fire at critical control points in the landscape, to prevent fire spreading and intensifying, thus limiting potentially more dangerous conditions in late spring
- allows wider window for more effective suppression of wildfires before they become large wildfires.

2.2 Hedge cutting

Remedial works for health and safety

There appears to be an inconsistency between the Road Act 1993 and the Wildlife Act Section 40, sub-Section (2) (c). The Road Act 1993 not only allows, but obliges landowners to take all reasonable steps to ensure that trees, shrubs, hedgerows etc are not a hazard to road users. Yet sub-section (2) (c) from Section 40 of the Wildlife Act only provides for a Local authority or body established and acting on their behalf to carry out such remedial works in the interests of safety during the prohibited period. An amendment to sub-section (2) (c) should be considered to allow farmers or other landowners to carry out such necessary works to meet their obligations under the Road Act 1993 to include side-trimming of hedgerows/shrubs and topping of dangerous overgrowth beside roadsides.

2.3 Section 40 subsections (2) (a)

This subsection provides for an exemption in relation to:

“the destroying, in the ordinary course of agriculture or forestry, of any vegetation growing on or in any hedge or ditch”

Greater clarity could be provided to ensure that the phrase “in the ordinary course of agriculture” is interpreted in a harmonised way. The word “open drain” could also be added here for clarity, even though it can sometimes have the same meaning as ditch. The destruction of vegetation during the removal of silt from such ditches/open drains is considered an activity “in the ordinary course of agriculture” and should be explicitly provided for. It is also important that the regular trimming requirements for example around electric fence wire be considered as within “the ordinary course of agriculture”.

3.0 Comments on consultation document questions

3.1 Hedge Cutting

Should the closed period for cutting hedges be changed? If so to which dates?

Any change in the closed period for hedge cutting should be considered in the context of scientific evidence to substantiate that such a change does not overtly impact on the wider functional ecosystem services provided by hedgerows. Notwithstanding, it must be noted that the current closed period for hedge cutting can sometimes disrupt establishment operations of certain crops such as winter oilseed rape because farmers are restricted from trimming hedges before they sow their crop (i.e. where ideal sowing dates for these crops are in August/early September). If hedge-trimming is done on arable fields when it's wet, soil disturbance and compaction issues can arise, so it is not practical to carry out hedgerow maintenance following establishment. Hence a derogation should be strongly considered to allow hedge trimming on fields/parcels destined for early autumn sowing. The health and safety aspect of roadside hedge trimming, identified under 2.2 above must also be provided for.

3.2 Burning of Vegetation

a) Should the current dates be maintained – if so why?

The current dates should be changed to extend the Burning season to at least include the month of March. Further consideration is required to allowing this activity in early April. It may be the case that burning could be permitted in early April in certain circumstances. Increasing the available open season would provide better opportunities to conduct burning activities during more suitable and safer weather conditions than is available under the current period. Any measures to extend the burning season, should be supported by suitable measures aimed at enhancing enforcement of relevant regulations on the ground. See also comments under 2.1 above and Appendix 1.

b) Should different closed periods be introduced for burning as opposed to hedge cutting?

Hedge cutting and Prescribed Burning of land are two distinctly different operations, generally occurring on different types of land and with inherently different operational conditions, equipment, safety and environmental factors to consider. Accordingly, different periods should apply for burning and hedge cutting as different operational conditions are required for both types of activity. Hedge cutting is less weather dependent than burning and has a wider operational envelope as a consequence. The introduction of different closed periods for burning as opposed to hedge cutting should also take into account any available scientific evidence and practical implementation issues. Climate change also needs to be considered. For example the impact of allowing burning during drier periods can have a significant impact on the release of carbon. Ideally such burning should only take place when peat/soil is not too dry underneath to prevent damage/release of carbon from peat/soil.

c) Should different rules apply in different areas eg., between enclosed lands and unenclosed land – if so why?

Unenclosed land and enclosed land should not be treated differently. Any fire has the potential to pose a risk where conditions and poor management permit, regardless of land type. Recent years have seen several large fire incidents develop from fires originating on enclosed land. All prescribed fire potentially poses a risk, and therefore all fires must be treated in a similar manner. Adequate training on burning as a land management tool may

be more effective than differentiated rules in this instance. Too much differentiation could also lead to confusion and implementation issues.

- d) *Should derogations or licencing for burning be introduced during the closed periods – if so why?*

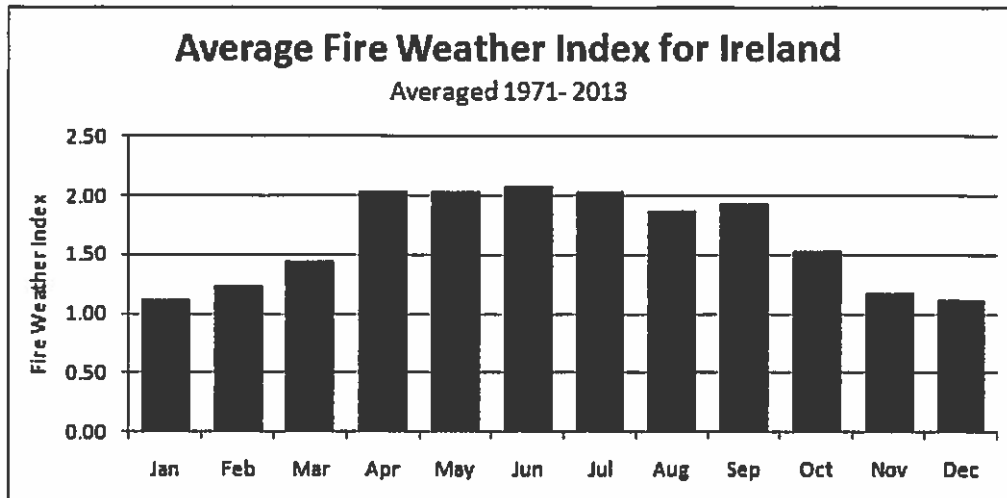
Derogations should be considered during the closed period under licence, and only where there are other overriding public interest, or valid scientific or civil protection requirement (i.e. protective burning to reduce dangerous fuel loads, sanitary burning to destroy harmful pests or other organisms), or where weather conditions during the preceding open season have not been suitable for planned prescribed burning such as strategic fuel reduction to take place.

- e) *Should flexibility be introduced to allow dates to be changed by statutory instrument, or by allowing a Ministerial order to extend the burning period in any particular year?*

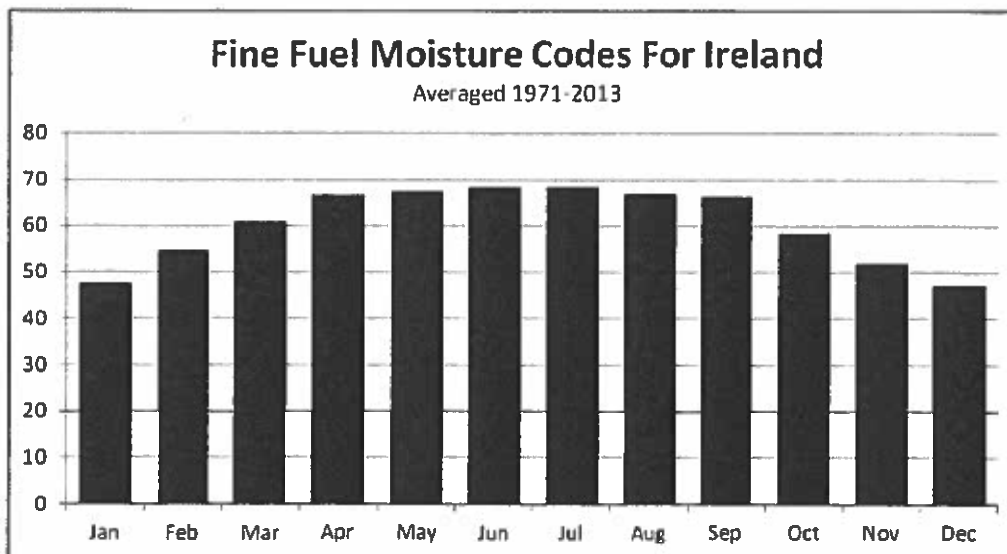
As identified earlier, the absence in certain years of suitable opportunities for burning during the current open period justifies an extension to this period. It is the view of this Department that the prescribed dates for both Burning and Hedge Cutting should be removed from primary legislation within the Wildlife Act. Thereafter, prescribed dates should be set by regulation (SI), and be subject to periodic review in conjunction with relevant stakeholders. In such a scenario appropriate communication streams will be critical to ensuring clarity for farmers, if dates are to be reviewed/alterd periodically.

Appendix 1

Aggregate Fire Weather Index 1971-2013



Aggregate Fine Fuels Moisture Codes 1971-2013



REFERENCES

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