

Mr. Mark Bohan,
Review of Section 40,
Department of Arts, Heritage and the Gaeltacht,
7 Ely Place,
Dublin 2.

5th January 2015

Re: Invitation to comment on review of Section 40 Wildlife Acts 1976 - 2012

A Chara,

Thank you for your letter of 1st December 2014 inviting comment from Inland Fisheries Ireland (IFI) in relation to proposed amendments to Section 40 of the Wildlife Acts 1976 – 2012 governing the control of burning and hedge cutting.

Inland Fisheries Ireland (IFI) is the statutory agency charged with *"The conservation protection and management of Ireland's inland fisheries and sea angling resources"*. IFI is extremely conscious of the wider biodiversity considerations in relation to all habitats and particularly those that impinge on aquatic habitats and fisheries.

A first query of IFI is one of clarification – does the review relate to Section 40 *in toto* or does it solely relate to those portions of Section 40 dealing with control of burning and of hedge cutting? This response of IFI is based on a premise that the review relates to Section 40, as a whole, but with particular emphasis on the issues of cutting and burning. The terminology used in Section 40 identifies as an offence "...to cut, grub, burn or otherwise destroy.....any vegetation growing on any land not then cultivated". The term grub is taken to mean -

"(grub something up/out) Remove something from the earth by digging it up" (Oxford Dictionary on-line). Of particular interest to IFI is the issue of 'grubbing' or removal of vegetation.

IFI identifies a range of roles for soft and woody vegetation in the riparian zone of watercourses:

- The availability of food organisms and the amount of light penetration to drive primary production are linked to vegetative cover in the riparian zone
- vegetation and insects falling into the water are a source of food for invertebrates and fish and a vital part of the food web
- The absence of riparian vegetation or the presence of monocultures of invasive species, impact adversely on ecological quality, in the context of the Water Framework Directive (WFD). Loss of vegetation also means the loss of shade plants

- Direct sunlight and loss of shading will elevate water temperatures and have a serious effect on aquatic populations. This is highly relevant in the context of climate change – particularly for Atlantic salmon and for brown trout
- In the other extreme, watercourses may be covered with a dense canopy such that a tunnel effect is created with no light penetration to the watercourse and complete loss of primary production and food for invertebrates and fish
- Loss of vegetation particularly due to the application of pesticides or the physical removal of a vegetative layer by machinery can give rise to erosion. The erosion of soils contributes to the enrichment or eutrophication of water bodies as well as causing downstream siltation and growth of nuisance weeds – leading to further requirements for channel maintenance work
- The cumulative effects of continually spraying roadside verges and other vegetated areas creates bare areas of soil. Precipitation will wash soil particles and nutrients into small watercourses which run to larger rivers and streams – again leading to enrichment and siltation.

In the context of the riparian zone, the management of woody and of soft vegetation are areas where management by IFI, as permitted in the current wording of Article 40, is appropriate. This work is undertaken on sound scientific principles and the overall thrust of the work is to preserve the diversity of species and habitats and prevent degradation and deleterious impact. The current derogation, within Article 40 of the Wildlife Amendment Act of 2000, enabling the fishery authority to carry out its statutory functions must be maintained and the derogation should be as flexible as possible.

One of IFI's principal interface areas with vegetation 'management' is with the Office of Public Works (OPW) Drainage Division and the annual maintenance programme undertaken within OPW on up to 2,000 km of channel annually. Channel maintenance can involve removal of fallen timber, trees growing at a low level in the channel cross-section, siltation and associated growth of vegetation both instream and along the channel margins. Under the 1976 Wildlife Act, this work was exempted from Section 40, as it was being undertaken "... in the course of any works being duly carried out by a Minister of State or a body established or regulated by or under a statute..." .

IFI has worked with OPW since 1990 to examine the environmental impacts of OPW's channel maintenance programme on fish and the fisheries habitat and the environmental guidance thus developed has now been adopted as standard working practice in OPW. Training has been developed and rolled out to OPW staff and annual auditing of performance and implementation is undertaken by IFI on up to 50% of OPW crews engaged in river maintenance. Strict following of the guidance has led to altered work practices within OPW in regard to tree management. A 'double-handling' approach is now implemented where significant tree management is required on any channel. This practice addresses tree management issues over the autumn - winter period and subsequent work on the channel to address instream or riparian (non-tree) maintenance issues is

undertaken in summer. Soft vegetation (with associated silt accumulation) issues are not accorded the same rigour, in regard to close season, as woody vegetation and trees. However, a degree of protection for this soft vegetation is provided via the Fisheries Acts with IFI implementing start dates for in channel works, governed by spawning and emergence of juvenile Atlantic salmon and of brown trout. IFI commonly identifies the first day of June, or of July in some cases, as an appropriate start date for in channel works.

The exemption, in relation to vegetation (soft and woody), available to OPW under the 1976 Wildlife Act in undertaking channel maintenance operations was removed in the 2000 Act. Simultaneously, Inland Fisheries Ireland (the then Central and Regional Fisheries Boards) received an exemption in the 2000 Act in regard to “..the clearance of vegetation in the course of fisheries development works..”. In view of the environmental procedures implemented by OPW, and the synergies between OPW and IFI in regard to engineering works and river corridor management, IFI would see merit in providing OPW with a degree of exemption comparable to that provided to IFI under the present Section 1'cc' of the 2000 Act.

IFI has the following specific observations and recommendations to make in respect of this review:

Hedge cutting, management and vegetation removal.

- hedge cutting in the normal course of events should be done late in the year, particularly with regard to vegetation which may have seeds or berries and which form an important part of the diets of insects and other animals. The brash should be stockpiled for burning later in the year, unless it can be immediately chipped for mulch or composting. Brash retained unburned in the corners of fields creates a wildlife habitat and this practise is recommended by OPW and by Rivers Agency in Northern Ireland
- It is not always possible to carry out tree management work at specific times during the year. It is important therefore that a derogation be retained to enable IFI carry out any necessary pruning and or removal of vegetation in order to protect, maintain and develop the aquatic habitats and fauna.
- Section 'd' of Article 40 provides exemption in regard to management of noxious weeds. This exemption might usefully be expanded to cover invasive plant species as well (as listed in SI 477 (Schedule 3 Part 1) of 2011)
- legislation should be changed so as to require landowners to remove invasive plant species from their lands and along water corridors in their ownership (as per liabilities under Noxious Weeds Act of 1936). This area may also be addressed in the pending implementation of the new EU Invasives species regulation. This work should be carried out in a planned way, in consultation with the appropriate authority and in accordance with recommended guidelines practices and procedures. Where this type of work is being done by landowners a derogation may need to be available. IFI further recommends that, especially where pesticides are being used, the plan and appropriate method statement including health and safety considerations for the operator of the sprayer, must be produced prior to the commencement of work.

- failure to carry out the necessary invasive plant removal along his/her property and also for failing to consult with the appropriate authority prior to the commencement of the works should lead to liability to prosecution (as per liabilities under Noxious Weeds Act of 1936). This area may also be addressed in the pending implementation of the new EU Invasives species regulation.
- Guidelines for the disposal of invasive species should be included in this review of the regulations

Burning of vegetation.

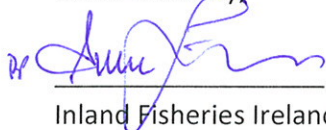
- Vegetation should be as dry as possible before burning, reducing air pollution and need for use of accelerants. It is important that vegetation around the "burning site" is assessed prior to lighting any fire so as to ensure that fire does not spread overland.
- flexibility should be introduced to allow dates to be changed, by Statutory Instrument or Ministerial Order, to extend the burning period or control the areas and times when burning may take place in any particular year.
- large fires may result from uncontrolled burning on unenclosed lands e.g. moorland bogs etc.. In such cases, large amount of water may be removed from rivers and streams to control the fire. This can be detrimental to fisheries and may give rise to large amounts of polluted 'fire water' coming from the blaze area. IFI considers that natural succession takes place in unenclosed areas, allowing for plant succession and providing additional forage areas for a wide range of species. However, it will be imperative that other control measures such as extra wide firebreaks are created.

Clearing of Vegetation for Road Construction or Other Development.

- In the course of consultations with contractors carrying out road construction and other infrastructure IFI endeavours to ensure that vegetative cover including hedgerows and trees are preserved for as long as possible. Vegetation, including hedgerows, provide filtration and physical barriers to the movement of pollutants, including soil particles, which may find their way into small rivers and streams.
- The preservation of hedgerows or even sections of hedgerows should be part of all developments including urban housing schemes, industrial estates etc. as hedgerow retention will greatly enhance the biodiversity of these areas and could be particularly important in the urban environment.

This concludes our observations and recommendations at this time. Should you require further clarification on any matter please do not hesitate to contact IFI.

Yours sincerely,



Inland Fisheries Ireland