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9th December 2014

**Mark Bohan
NPWS
7 Ely Place
Dublin 2**

Re: Review of Section 40 of the Wildlife Acts 1976 to 2012

Dear Mr. Bohan,

We refer to your correspondence dated 1st December 2014 addressed to Secretary General OPW, to review Section 40 of the Wildlife Acts 1976 to 2012. OPW has a number of comments as follows:

The original Wildlife Act 1976 included a derogation for all statutory activities but the Wildlife (Amendment) Act 2000 removed the same. OPW requires a derogation for statutory arterial drainage maintenance carried out under the Arterial Drainage Acts 1945 and 1995. With typical arterial drainage maintenance operations being within waterway corridors, this activity is on uncultivated ground where all vegetation removal is restricted. For example, under strict interpretation of the legislation, the removal of a blade of grass from the river bank in the summer season is in conflict with the Wildlife Acts. The current Section 40 as amended by the 2000 Act is unrealistic and has created a conflict with the statutory maintenance functions within the Arterial Drainage Acts 1945 and 1995.

OPW suggest that the most straightforward way to re-establish the derogation is to reinsert the original derogation from the 1976 Act which exempted all statutory works carried out by a Minister. Alternatively, OPW require a derogation specific to statutory arterial drainage maintenance activities carried out under the Arterial Drainage Acts 1945 and 1995. This would be similar in nature to the derogation afforded to the Fisheries as introduced by the Wildlife (Amendment) Act 2000. Statutory drainage maintenance activities already operate to a suite of Environmental Management Protocols & Standard Operating Procedures. These protocols and procedures have been developed through years of research with Inland Fisheries Ireland, environmental NGOs and other authorities. They have gone through public consultation as part of a national strategic environmental assessment, and as knowledge is expanded, are periodically updated as part of continuous environmental improvement. The procedures are publicly available on OPW's website www.opw.ie/en/floodriskmanagement/operations/environmentalactivities/. For example, in certain cases drainage maintenance is carried out in a two-phased approach with woody vegetation removal in winter and instream silt removal in summer, to maximise environmental performance. In parallel, there are a series of environmental practices as detailed in many public documents such as, internal and external on-site audits, operational staff training and an array of environmental assessments through to a national river enhancement programme. Arterial drainage maintenance activities currently operate within

an environmental framework, to ensure a minimalistic approach to vegetation removal is taken, which achieves a sustainable balance between vegetation management and drainage/ flood relief for arterial drainage channels within the State.

The construction phase of Arterial Drainage Schemes is currently exempt under the 2000 Act as construction and site development works. This would apply to the construction of future urban flood relief schemes under the Arterial Drainage Acts 1945 and 1995. Typically these future schemes will be conducting an EIA which will automatically entail mitigating measures to minimise potential impacts on vegetation management and nesting birds. It is understood that there are no proposals to alter the exemptions for construction works.

While the 2000 Act introduced a general derogation for health and safety driven works, this provision should be expanded to include the health & safety implications for workers in carrying out the works. The seasonal restriction has potential to raise the H&S risk to workers for certain activities by restricting the works to winter months, and it would be prudent to discuss with the HSA as to how this provision could be integrated. Some mechanism such as completing a H&S Risk Assessment for the works and where this demonstrates that works during the restricted season will be a significantly higher risk, the derogation should include the execution of the works in the lower risk bird season. It is reasonable that an activity should be able to proceed in the appropriate season to minimise H&S risks to workers without conflicting the Wildlife Acts.

Yours sincerely,

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