Environmental Pillar and Sustainable Water Network (SWAN) Submission to the Department of Agriculture and the Marine on the Review of S.I. No. 456/2011 - European Communities (Environmental Impact Assessment) (Agriculture) Regulations 2011

10th July 2023

1. Introduction

The Environmental Pillar and Sustainable Water Network (SWAN) welcome the review of the Environmental Impact Assessment (EIA) (Agriculture) Regulations 2011 (SI 456) as an important step towards addressing the inadequacy of the current Regulations to assess environmental impact and ensure environmental protection.

The current Regulations, introduced in 2011 with amendments in 2013 and 2017, are widely considered to be inadequate in terms of i) the insufficient detail of the Regulations, ii) the poor standard of current implementation, iii) the failure to carry out a regulatory impact assessment of the Regulations, and iv) gaps in monitoring and enforcement. To be fit for purpose, it is crucial that the Regulations are significantly tightened and that monitoring and enforcement processes are fully implemented.

Since the Regulations came into force in September, 2011 with amendments in September, 2017, there has been some important contextual change which point to an even greater need to ensure the Regulations are fit for purpose. In 2019, the Government declared a Climate and Biodiversity Emergency. In 2022, the Citizens' Assembly on Biodiversity Loss called out the State for comprehensively failing to "*fund, implement and enforce existing national legislation, national policies, EU biodiversity-related laws and directives related to biodiversity*".[1] The Assembly called on the State to "*take prompt, decisive and urgent action to address biodiversity loss and restoration*"... "*provide leadership in protecting Ireland's biodiversity for future generations*"... and significantly increase ambition to reflect the scale of the ecological crisis."[2]

[1] See: https://citizensassembly.ie/wp-content/uploads/ReportonBiodiversityLoss.pdf
[2] Ibid.

At the same time, indicators for aquatic and terrestrial habitats across Ireland point to a natural environment in worrying decline. Habitat fragmentation, land clearance, widespread land drainage of wetlands and damp pastures, hedgerow removal and reduction, and an increase in intensive management of grasslands have all contributed to the deterioration of Ireland's terrestrial and aquatic habitats in recent decades. In 2019, 85% of Ireland's protected habitats were in unfavourable condition, with 46% displaying trends of ongoing declines over the previous 12 years.[3] In addition, 43% of protected species were in an unfavourable status, and for the taxonomic groups that have undergone formal conservation assessments, more than one in five species were threatened with extinction in Ireland.[4] A recent review has shown that more than one quarter of Irish birds are now of conservation concern.[5] Within Ireland and across the EU, the loss of farmland biodiversity has been particularly severe over recent decades.[6] [7] Ireland's aquatic systems are in similar decline. More than half our rivers, lakes and estuaries are failing Water Framework Directive mandatory standards of 'good status', demonstrating that current policy and measures are not working.[8]

Whilst the Environmental Pillar and SWAN welcome the opportunity to make this submission to the review, the important opportunity to fully engage key stakeholders in the review process has been undermined by the inadequate approach to consultation, including the delay in publishing the terms of reference and the scope of the review and a limited timeframe to compile and make submissions. This is despite repeated requests made by members of both networks for timely information to facilitate an informed and effective stakeholder consultation. Civil society networks, such as SWAN and the Environmental Pillar already operate in an under-resourced capacity. Therefore, considering the reach and representation of both networks, as well as being key stakeholders on environmental regulations and information, it is essential that meaningful opportunity is provided by the Government, to inform legislative review.

To ensure the EIA (Agriculture) Regulations are fit for purpose, we call on DAFM to consider the following broad recommendations as part of their review:

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[3] EPA, *Ireland's Environment – An Integrated Assessment 2020*, B. Wall, A. Cahalane, and J. Derham, Editors. 2020: Johnstown Castle, Co. Wexford, Ireland.

[4] NBDC. *10 species at risk of losing*. 2021; Available from: https://www.biodiversityireland.ie/biodiversity-irelands-top-10/10-species-risk-losing/.

[5] Gilbert, G., A. Stanbury, and L. Lewis, *Birds of Conservation Concern in Ireland 4: 2020–2026.* Irish Birds, 2021. **9**: p. 523-544.

[6] For example, one-third of Irish bee species are threatened (30 of 100 species), with 10% critically endangered, 6% critically endangered and 3% already regionally extinct. See: Fitzpatrick, Ú., Murray, T. E., Byrne, A. W., Paxton, R. J., & Brown, M. J. F. (2006). Regional red list of Irish bees. National Parks and Wildlife Service (Ireland) and Environment and Heritage Service (N. Ireland).

[7] These threatened bees are usually associated with the presence of Annex I grassland and semi-natural habitats and the loss of semi-natural habitat due to agricultural intensification is a major threat and pressure on these species. See: Bignal, E M and McCracken, D I (2016) Low-intensity farming systems in the conservation of the countryside. Journal of Applied Ecology: 413-424.

[8] EPA (2021) Water Quality in 2020. An Indicators Report. https://www.epa.ie/publications/monitoring--assessment/freshwater-- marine/EPA_Water_Quality_2020_indicators-report.pdf

- That the Regulations be amended to make them fully aligned and consistent with European and national law, with integrated quality control, review and update mechanisms aimed at ensuring policy effectiveness and cumulative environmental protection and benefit.
- That the Regulations be amended to prioritise the precautionary principle and to state clearly and explicitly that any land-change activity should not have an overall negative environmental impact. This will require that screening thresholds be reduced, obliging landowners to seek approval where it cannot be excluded that there will not be an individual or cumulative environmental impact. Prioritising the precautionary principle will also require that failure to apply for screening becomes an offense under the Regulations.
- That DAFM enhances awareness and the level of understanding of the Regulations, including the rationale, importance of the Regulations, and need for compliance amongst all landowners and citizens. Any amendments to the Regulations will require a targeted communications campaign to ensure ongoing compliance and buy-in not just amongst farmers, but rural land holders more broadly.
- That DAFM undertakes an assessment of awareness and understanding of the Regulations amongst land holders, to improve future communication surrounding the Regulations. In addition, a comprehensive independent review is required on the practical effectiveness and operation of the Regulations in line with EU and national legislation.
- Prior to any amendments, a full, independent assessment of the Regulations, and their operation, standards and approaches to decision making needs to be undertaken. In the absence of this assessment going forward, it is our view that the current approach to the Regulations demonstrates a potentially problematic application of the EIA Directive in Ireland.

In addition to these recommendations, we make more detailed, specific recommendations below, on i) the restructuring of rural land holdings, ii) commencing to use uncultivated land or semi-natural areas for intensive agriculture; and iii) land drainage works on lands used for agriculture.

2. Restructuring of rural land holdings (boundary removal and/or recontouring of land)

Since the EIA (Agriculture) Regulations came into force in 2011, the scientific knowledge regarding the importance of hedgerows for a range of ecosystem functions has developed significantly. The contribution of hedgerows to climate mitigation and adaptation is now well acknowledged. Hedgerows that are maintained in a state favourable to conservation are vitally important to wildlife, water quality and flood risk management, in addition to acting as

field boundaries with benefits to farm activities and farm animals.[9] Hedgerows are even more important than what might have been recognised 15 years ago. Yet, estimates suggest that between 2,000km to 6,000km of hedgerows are lost annually in Ireland, and the majority of Ireland's hedges are classified as low quality.[10] [11]

Existing thresholds are failing to ensure that environmentally significant effects are addressed in the EIA process. The current threshold limits for hedgerow removal is currently set at 500 m below which no application for screening assessment is required. Any restructuring of field boundary projects involving hedgerow removal which do not rise to the stated threshold do not require screening, and therefore decision making is almost entirely within the landowners remit.

Since 2011, the Department of Agriculture has permitted the removal of up to 500 metres of hedgerow on every farm every year outside of the bird breeding period without any oversight, provided that the same length of hedgerow is planted elsewhere beforehand. This is despite the legal requirement under Good Agricultural and Environmental Condition (GAEC) 7 of the CAP regulation for every farmer receiving a CAP direct payment to retain landscape features, such as hedgerows. There is no wording in the CAP regulation which allows for features to be removed and then replanted elsewhere, which is what the Department of Agriculture currently permits.

An analysis of field boundary related screening applications in 2017 found significant issues with: low levels of consultation with NPWS during the applications process; a lack of opportunity for third party representation related to the application and decision process; a high approval rate of screening applications; an absence of precise clarity in the screening process; and a lack of ecological assessment on bat populations, climate mitigation, and cultural heritage. The same analysis also raised concerns over the speed at which applications were processed, leaving little time for proper assessment or public consultation; geographic bias in the applications (with most applications coming from counties not included in the County Hedgerow Surveys)[12]; data deficits; an absence of follow-up and a lack of assessment of the cumulative environmental impacts on the ground.[13] The level of information detail

[9] See, for example: https://www.teagasc.ie/media/website/environment/climate-change/signpost-programme/Carbon-Sequestration-in-our-hedgerows.pdf ; https://www.teagasc.ie/environment/biodiversity--countryside/farmland-habitats/value-of-hedgerows/ ; and https://hedgerows.ie/the-value-of-hedgerows/

[10] See: https://www.oireachtas.ie/en/debates/debate/joint_committee_on_agriculture_food_and_the_marine/2022-02-09/3/

[11] See: https://www.teagasc.ie/news--events/daily/environment/the-state-of-irelands-hedgerows.php#:~:text=For%20species%20diversity%2C%20in%202010,90%25%20displayed%20signs%20of%20dieback.

[12] A review of the statistics show inconsistent application of decision making under the Regulations. There appears to be a wide disparity in approval rates. Applications originating in Wexford, Leitrim, & Kilkenny over the period were 100% approved, whereas those from Donegal, Kerry & Roscommon were only approved in 33% or fewer cases.

[13] See: https://birdwatchireland.ie/app/uploads/2022/06/Assessment-of-Environmental-Impact-Assessment-Agriculture-Regulations-on-Field-Boundary-Removal.pdf

required by applicants to the EIA process is unacceptably low. In addition, the current standard of applications varies widely, with inevitable implications for ensuring quantitative consistency across applications.

This same analysis showed that between 2011-2017, of the 480 applications for EIA screening received by the Department of Agriculture, 411 were approved allowing for removal of 155 kilometres of hedgerow. However, almost a third of these applications were approved based on no information on hedgerow length. There are issues with the EIA screening application form - these include the failure to request information on the ecological quality of hedgerows proposed for removal, whether these hedgerows provide habitat to red- or amber-listed bird species, and on where replacement hedgerows will be planted.

As outlined in Hedgerows Ireland's submission to this Review, a recent analysis of numbers based on the DAFM's own reports indicates that there were 210 applications for screening between 2018 and the end of May, 2023. Of these, 82% were approved. However, these approvals represent 89% of the volume of metres of hedgerow removal for which screening applications were made. There is no central recording or data on the scale of removal of hedgerows which fall under the current threshold for screening.

As the Regulations relate to the restructuring of rural land holdings (boundary removal and/or recontouring of land), as part of DAFM's review, we fully endorse the recommendations put forward by our member organisation, Hedgerows Ireland, in their submission. These, and our other recommendations, urge:

Reducing the screening criteria and thresholds, and strengthening the screening application process

- The elimination of the screening threshold, requiring instead that screening be required irrespective of the length of hedgerow removal. This will help ensure the protection of a connected hedgerow network in favourable condition. If it is deemed implausible to eliminate the threshold for screening, the threshold should instead be reduced to an ecologically aligned threshold of between 10-50m.[14]
- That screening be required irrespective of hedgerow length in instances where the cumulative impact threshold has been exceeded in the previous two years. This should follow the threshold for unfavourable continuity in the Hedgerow Appraisal System, that is, any length of hedgerow above 5m. Cumulative impact assessments should be applied to any activities carried out during the period that the Regulations have been in force.
- That hedgerows classified as Heritage hedgerows under the Hedgerow Appraisal System require mandatory consent to be removed, irrespective of length or size criterion.
- That the length and area-based consent application thresholds be significantly reduced, and ecological criteria be added to the consent application. This will ensure

[14] This will ensure that the threshold is in line with species such as the Greater Horseshoe Bat and indigenous bat species.

that the consent application is dependent on the specific hedgerow's ecological significance and condition. Local or regional ecological conditions must be factored into the consent application process, whereby irrespective of thresholds, a consent application is required for hedgerows of value to local biodiversity and ecosystem services, or in areas with poor ecological indicators, including low or fragmented hedgerow density and connectivity.

- The screening application form should be reviewed and amended. A sufficient level of detailed information must be required before an application can be considered, including the ecological condition of the hedgerow proposed for removal. This should encompass an ecologist's report on the potential impact on species listed under Annex IV of the Habitats Directive and Annex 1 of the Directive where a site is within a Natura 2000 designation, or within a foraging range of species, such as the Hen Harrier. Details should also include the precise hedgerow location and relevant buffer zones, including for example, designated sites, aquatic zones and habitats, and sites of heritage value.
- Hedgerows proposed to be removed should be subject to a (recorded) field inspection by a suitably qualified party to a standard methodology – the Hedgerow Appraisal System is recommended as it was developed with such a purpose in mind.
- The EIA Screening form completed by the DAFM inspector should be based on a clearly defined standard operating procedure which sets out step-by-steps instructions for inspectors to ensure consistency and standardisation of decision making and assessment.
- Replacement hedgerows should be maintained to minimum dimensions, and consent required for the removal of replacement hedgerows, irrespective of the thresholds. Where hedgerow replacement is required, details should include Species composition (% of each species); Density of planting (number of plants per metre); the provenance of planting material; and construction dimensions (height and width of the bank and cross-sectional volume of the drain).

More rigorous assessment of impacts and enforcement of the Regulations

- Using the Hedgerow Appraisal System, the assessment process must adopt a more robust and verifiable methodology that is completed to a defined standard by the relevant ecological expertise. This should include a specific focus on impacts on species that have strong protection under European and domestic legislation, such as the Lesser Horseshoe bat. In addition to assessing ecological impacts, the assessment process should also include hydrological surveys assessing risks to aquatic environments and flood-risk due to hedgerow removal. Where field surveys are not possible, high-quality, verified images should be used to assess thresholds in line with the Hedgerow Appraisal System.
- The prioritisation of on-the-ground cross compliance by DAFM, and a quality assurance and peer review inspection system for approved applications are needed to improve the overall operation of the Regulations. Conducting an independent, annual

assessment on a reasonable proportion of screening decisions would build quality control and ensure the standard is being followed.

- To enhance monitoring and control, it is recommended that DAFM create and maintain a GIS layer comprising all applications under the Regulations. To complement this information bank, a procedure needs to be put in place that facilitates the following-up of cases where screening approval has been given, to i) determine if works have proceeded or not, ii) to assess whether works carried out are consistent with information provided in the screening application and in any conditions applied. DAFM should consider the introduction of a Commencement Notice Form for any removal works, which facilitates real time monitoring rather than monitoring after the works have been completed.
- A cross referencing system between the Regulations and Cross Compliance (Conditionality) is required. DAFM should establish a procedure whereby EIA Screening decisions which do not require consent under the EIA Directive should be referred to the Cross Compliance section and should require the applicant to submit confirmation to DAFM of the 2 x replacement hedgerow before works to remove the hedgerow/s applied for removal becomes active.

Greater facilitation of stakeholder consultation and decisions

- Ensuring that implementation of the Regulation is in line with Ireland's commitments to the Aarhus Convention will help ensure that public buy-in and engagement leads to better environmental outcomes. Stakeholder consultation and engagement must be central to screening and consent stages, and include the provision of timely, relevant information, from DAFM, about an application, in addition to an appropriate timeframe for public comment and a mechanism for third party challenges to decisions. It is recommended that the Agricultural Appeals Office be an initial mechanism for implementing Article 11 of the EIA Directive.
- All decisions - including screening decisions - must be published in a timely and accessible manner, and include the rationale underpinning the decision, in addition to where it has been decided that screening is not required.

3. Commencing to use uncultivated land or semi-natural areas for intensive agriculture

Over 50% of Europe's most highly valued biotopes occur on low-intensity farmland. Of Europe's most threatened habitats and species, 57 types of habitat and 257 species depend on or are associated with low intensity farming. Worryingly over 75% of these habitats and at least 70% of the species are in unfavourable conservation status.[15] There is a clear need to ensure that semi-natural habitats and farmland biodiversity are afforded much greater protection than is currently the case.

The concept of High Nature Value Farmland (HNVf) has been around since the early

[15] Keenleyside, C, et al. High Nature Value farming throughout EU-27 and its financial support under the CAP. London: DG Environment, Contract No ENV B.1/ETU/2012/0035, Institute for European Environmental Policy, 2014

1990's.[16] High Nature Value farmland has most commonly been defined as "*those areas in Europe where agriculture is a major (usually the dominant) land use and where that agriculture supports or is associated with either a high species and habitat diversity, or the presence of species of European, and/or national, and/or regional conservation concern, or both*."[17] Indeed "*the highest grade of HNV farmland is that which supports the presence of species of European conservation concern*."[18] HNVf is an important reservoir for biodiversity, ecosystem services, and cultural heritage.[19] In the EU, the need to identify and protect HNVf is part of an integrated approach to rural and environmental policy which regards farming as being about more than just comprising food production. The conservation of biodiversity on European farmland is also accepted at an EU level as being critical to the successful implementation of the Pan-European Biodiversity and Landscape Strategy (PEBLDS), the Bern Convention, the European Landscape Convention, the Birds and Habitats Directives, and Rural Development policy (Community Strategic Guidelines for Rural Development).

In many parts of Europe including Ireland, the farming systems that are of most value for biodiversity conservation are low-intensity raising of livestock on unimproved vegetation that is grazed, browsed, or cut for hay.[20] Although more intensively managed farmland can be considered HNVf due to the presence of populations of species of European conservation concern.[21] In general, HNVf systems are associated with low intensity land management, high levels of semi-natural land cover and habitats and species of conservation interest.[22] The association of HNVf with low agricultural production and marginal rural areas has meant that HNVf is being lost due to land abandonment, afforestation and agricultural intensification.

Significant progress has been made in mapping the distribution of HNVf, including semi-natural habitats, and this progress should be utilised more fully by DAFM in implementing regulation. There are a range of predictive and validated maps which are available to help identify the distribution of semi-natural habitats in Ireland. This improved knowledge provides an important tool to policy-makers to assist in decision-making for policy targeting and implementation, in addition to the monitoring of HNVf.

For example, Matin et al. (2020) have developed the most comprehensive predictive map of the distribution of HNVf likelihood in the Republic of Ireland, identifying that a high proportion of HNVf in Ireland is outside of the Natura 2000 network and in lowland

[16] Baldock,D., Beaufoy,G., Bennett,G., and Clark,J.(1993). Nature Conservation and New Directions in the Common Agricultural Policy. London: Institute for European Environmental Policy.

[17] Andersen,E.,Baldock,D.,Bennett,H.,Beaufoy,G.,Bignal,E., Brouwer,F.,et al. (2003). Developing a High Nature Value Indicator. Report for the European Environment Agency, Copenhagen.

[18] Cooper, T, et al. 2007 HNV Indicators for Evaluation, Final report for DG Agriculture. Brussels: European Commission, Institute for European, Environmental Policy

[19] Pointereau, P., Paracchini, M. L., Terres, J. M., Jiguet, F., Bas, Y., & Biala, K. (2007). Identification of High Nature Value farmland in France through statistical information and farm practice surveys. JRC Scientific and Technical Reports. EUR, 22786, 76.

[20] Bignal, E.M. and McCracken, D.I., 1996. Low-intensity Farming Systems in the Conservation of the Countryside. Journal of Applied Ecology, 33, 413-424.

[21] European Communities (2009). Guidance document. "The application of the High Nature Value Impact indicator. Programming period 2007-2003. https://bit.ly/2DG1Zo5

[22] Matin, S., Sullivan, C. A., Finn, J. A., Green, S., Meredith, D., & Moran, J. (2020). Assessing the distribution and extent of high nature value farmland in the Republic of Ireland. Ecological indicators, 108, 105700.

regions.[23] [24] It is clear on assessment of the methodology used for this map that there is considerable amounts of ecological data and expert evaluation underpinning its development. The indicators (and weighting) used were: semi-natural habitat cover (40%, from CORINE land cover), stocking density (30%, from Land Parcel Information System; LPIS), hedgerow/scrub cover (10%), river and stream density (10%), and soil diversity (10%).

It is plausible to suggest that the semi-natural habitat cover from CORINE land cover is something that should be utilised more greatly by DAFM, in the identification of HNVf. The map is further underpinned by validated data from the NPWS on the distribution of semi-natural habitats such as the national semi-natural grassland survey.[25] There is also validated data and maps available on the distribution of Flora Protection Order species, a variety of plant species which are protected under Section 21 of the Wildlife Act, 1976, as amended by the Wildlife (Amendment) Act, 2000. It is essential that these data sources are integrated more fully into ensuring decision making and the effective implementation of environmental regulation.

As the Regulations relate to commencing to use uncultivated land or semi-natural areas for intensive agriculture, we recommend the following:

- The existing 5 hectare threshold for mandatory screening of activities associated with the intensification of semi-natural areas be revised downwards. The existing subthreshold criteria afford insufficient protection to semi-natural habitats, HNVf and Flora Protection Order species outside of Special Areas of Conservation, Special Protection Areas, Natural Heritage Areas/ proposed Natural Heritage Areas or nature reserves. We argue that all areas known to host semi-natural habitats or areas with a high probability of hosting semi-natural and High Nature Value farmland should be subject to mandatory EIA.
- The existing definitions of semi-natural areas in the EIA (Agriculture) Regulations need to be made more explicit. As is, they are vague, and are based on a non-exhaustive list of semi-natural habitats.
- DAFM needs to engage and collaborate with the Forest Service to develop better guidance for farmers and foresters to help generate better identification of semi-natural habitats, including those covered by Annex I of the Habitats Directive. Currently, the accompanying guidance provided to landowners is totally insufficient and is based on an expectation that landowners will have the necessary expertise to carry out ecological assessments. Expecting landowners to self-regulate their own activities does not provide an effective system to protect semi-natural habitats from agricultural intensification.
- The safeguards relating to the commencement to use uncultivated land or semi-natural areas for intensive agriculture should be extended to all types of HNVf, as defined by

[23] Ibid.

[24] This is firstly a predictive map and, as the authors highlight, it does not imply that all green areas are HNVf or that all blue areas are not HNVf. Secondly, the resolution of the tetrads within the map are not finite enough to indicate the probability of HNV at field level.

[25] According to the authors the "*overlay of the NPWS priority areas also highlights the importance of supplementing modelling approaches with additional higher resolution data where available and relevant*". The NPWS priority areas are not predictive but validated data indicating the presence of rare and threatened species and habitats.

Matin et al. (2020). All areas known to host semi-natural habitats or areas with a high probability of hosting semi-natural and HNVf should be subject to mandatory EIA screening.

- To avoid the inappropriate afforestation of sensitive habitats, such as areas of high ecological value including areas under HNVf; DAFM must integrate all available data sets which indicate the presence of farmland areas that support rare species or a high proportion of European or global populations of plant or animal species. These data sets include, for example, the Irish Semi-Natural Grassland Survey, semi-natural habitat cover from CORINE, Article 17 survey data, and NPWS Priority Areas data sets. DAFM should use all available maps and data of the known and predictive distribution of semi-natural and HNVf to trigger a requirement for screening and a full EIA.

We are supportive of the existing list of proposed works in semi-natural areas that would enhance or intensify the agricultural productivity of such areas, namely:

- mechanically cultivating soil (for example, by ploughing, tine harrowing, or rotavating);
- addition of organic or chemical fertilisers to lands where none was applied previously;
- significantly increasing levels of organic or chemical fertiliser used (from a previously low level of use);
- sowing seed (e.g. grass, clover, other crop);
- clearing existing vegetation either mechanically or using herbicides.

4. Land drainage works on lands used for agriculture (excluding drainage or reclamation of wetlands)

According to Ireland's draft River Basins Management Plan (RBMP) (2022-2027), land alterations related to agricultural activities are a major pressure on the physical state of river channels.[26] Authorised and unauthorised land drainage has been found by LAWPRO to be a significant driver of silt loss to water bodies, with subsequent ecological impacts on freshwater habitats. This has direct Water Framework Directive (WFD) implications, with hydromorphology found to be the second most prevalent pressure on water bodies in Ireland. Ireland's draft RBMP Plan commits to an enhancement and improvement of the regulation of land drainage and river channel works.

To protect and restore water quality across Ireland, five overarching goals are identified in the draft Plan, of which Goal 2 is "Preventing instream habitat damage arising from land drainage and river channel drainage." To achieve Goal 1 (Agricultural Nitrate losses), Goal 2 on Land and River Drainage, and Goal 3 on point source pollution from farms, the draft Plan

[26] Hydromorphological alterations, including land drainage, have the potential to affect the ecology of water bodies across a large range of scales, and are associated with impacts that can change hydrology, hydraulics, geomorphology and surface and groundwater interactions. (Konstantina, K., Irvine, K. and Emerson, HPhysical *modifications of Ireland's water resources and implications for meeting Water Framework Directive objectives,* Unpublished Report for the Sustainable Water Network (SWAN) (in draft)).

states that "*significantly tighter regulation and more enhanced enforcement*" is required. A lack of regulation of these activities is in clear contravention of the Water Framework Directive and is currently subject to an EU infringement process. We are extremely concerned that the review of the EIA (Agriculture) Regulations is taking place in isolation from the proposed WFD measures put forward in the draft RBMP to address this issue. We believe, therefore, that the review of the Regulations should take place as part of a wider and more integrated approach.

The EIA (Agriculture) Regulations are sorely lacking in a clear definition of what constitutes agricultural land which requires drainage. The only description given in the Regulations is as follows (in Section 3):

> "3. (1) These Regulations apply to the following –
> (a) restructuring of rural land holdings
> (b) commencing to use uncultivated land or semi-natural areas for intensive agriculture, or
> (c) land drainage works on lands used for agriculture"

No definition is provided in the Regulations for what constitutes wetland, yet the Planning and Development Regulations, as amended, define a wetland as such:

> *""Wetlands" means natural or artificial areas where biogeochemical functions depend notably on constant or periodic shallow inundation, or saturation, by standing or flowing fresh, brackish or saline water."*

This leads to an inevitable confusion between these EIA (Agriculture) Regulations, administered by DAFM which govern drainage works on lands used for agriculture, (excluding reclamation, infill or the drainage and reclamation of wetlands) and the Planning and Development Regulations 2001 (S.I. No. 600 of 2001), as amended, which provide for planning controls on the drainage and reclamation of wetlands (including estuarine marshes or callows).

The lack of definition in the Regulations and the discrepancy between the two regulatory frameworks allows for wide scale misuse, given that under the current Regulations, an area of 15 hectares can be drained before screening is required, and 50 hectares or above for a mandatory EIA. Class 11 of Part 3 of the Planning and Development Regulations requires planning permission once the area to be drained exceeds 0.1 hectares.

> *"1. The area to be affected shall not exceed 0.1 hectares.*
> *2. Where development has been carried out within a farm holding under this class, the total area of any such development taken together with the area of any previous such development within the farm holding shall not exceed the limits set out in 1. above."*

This system has a built-in temptation for landowners carrying out drainage works in wetland areas above 0.1 hectares to deem the land 'used for agriculture' and not an actual wetland

and thus, not subject to planning permission. Under the current regulatory system, permission may be simultaneously granted for drainage within a wetland and on adjacent agricultural land, the combined effects of which may seriously damage the site and impact the status of adjoining watercourses.

The impact of reclamation of land for agricultural purposes, and its impact on the status of affected/adjoining waterbodies, is not also not addressed in the Regulations. There is no centrally administered system in place between DAFM and the Department of Housing, Local Government and Heritage (DHLGH) for cross-reporting and for integrated assessment of proposed drainage works. The separation of responsibilities between the two Departments leads to fragmentation in the system.

SWAN has recommended stricter controls on wetland drainage and the streamlining of controls under the Planning and Development Regulations 2001 (S.I. No. 600 of 2001) and the EIA (Agriculture) Regulations. Both Environmental Pillar and SWAN are of the view that the thresholds set within the current EIA Regulations are too high. This, when compounded by the lack of definitions as outlined, provides for the widespread drainage of land which is likely to be valuable wetland habitat. Providing for a screening exemption for an activity which has been found to be potentially damaging to water quality is likely to be in contravention of the requirements of Article 4 of the Water Framework Directive.[27]

As the Regulations relate to land drainage works on lands used for agriculture, as part of DAFM's review, we strongly recommend that:

- The Regulations be amended to provide for an authorisation process for drainage projects, to ensure they are assessed against the objectives of the Water Framework Directive. To do that, it is imperative that the screening thresholds be substantially reduced to fully align with the strict requirements of the Water Framework Directive. We endorse the recommendation by network member, An Taisce, that the same threshold be applied to drainage of agricultural land, as exists for wetland drainage under the Planning Regulations. This would require that any area greater than 0.1 hectares is subject to screening by an expert body, with a specific

[27] Article 4 (1) of the WFD provides:

"In making operational the programmes of measures specified in the river basin management plans: (a) for surface waters (i) Member States shall implement the necessary measures to prevent deterioration of the status of all bodies of surface water (ii) Member States shall protect, enhance and restore all bodies of surface water … "

In Case C- 461/13 Weser the CJEU held:

"Article 4(1)(a)(i) to (iii) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy must be interpreted as meaning that the Member States are required

— unless a derogation is granted

— to refuse authorisation for an individual project where it may cause a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by the directive."

focus on water quality and the potential impacts on WFD status, with particular regard to cumulative impacts.

- The Regulations account for the risks associated with cumulative draining projects. For Ireland to comply with Article 4 of the Water Framework Directive, it is essential that the cumulative impact of individual drainage activities, irrespective of scale, are captured within the regulatory process. The high thresholds for screening and mandatory EIA currently overlook these risks.

Conclusion

The Review of the EIA (Agriculture) Regulations provides an important step towards revising the Regulations and ensuring they are fit for purpose at a time when much greater commitment and action is required from the Government to halting Ireland's declining natural environment. In this submission to the Review, we have drawn on the expertise of our members to present key issues and concerns with the current Regulations and to present a comprehensive set of recommendations pertinent to the full set of activities within the Regulations. To be able to fully assess environmental impact and ensure environmental protection, we have argued that it is crucial that the Regulations are significantly tightened and that monitoring and enforcement processes are fully implemented. Finally, whilst we have welcomed this opportunity to make recommendations to the review, this review should be addressed within a much more comprehensive consideration of Ireland's implementation of the EIA Directive.

We are available to discuss these concerns and recommendations with the Minister as part of this important review process.

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Ireland (The Village), Vincent Wildlife Trust, VOICE, Wildlife Rehabilitation Ireland, and Zero Waste Alliance Ireland.

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