April 2021

BirdWatch Ireland submission to the SEA Scoping Report of the CAP Strategic Plan and the AA

1. **Publication of Birds of Conservation Concern in Ireland 2020-2026**

BirdWatch Ireland and the RSPB Northern Ireland recently published the fourth Birds of Conservation Concern in Ireland list 2020-2026 (BoCCI4) in the BirdWatch Ireland journal *Irish Birds*. The findings of this the fourth review of the conservation status of Ireland's birds is stark. Both the SEA and the AA of the CAP Strategic Plan must both very carefully assess the impacts of measures on the status of Red and Amber listed birds. We are at a tipping for Ireland's birds. The rules and conditions in the conditionality of the Basic Income Support Scheme, and proposed new EcoSchemes, must not only do not harm but set the foundation for effective conservation which will turn around the fate of farmland and upland birds in particular. Significant investment is required in targeted results-based agri-environment measures which effectively halt the continued declines in farmland and upland birds in particular.

A total of 211 species were assessed in BoCCI4 as having Red, Amber or Green conservation status in Ireland. Of the 211 species, BoCCI4 placed 54 (25.6%) on the Red list, 79 (37.4%) on the Amber list and 78 (37%) on the Green list. Of the 211 regularly occurring bird species 63% are now Red or Amber-listed birds of conservation concern. Since the previous assessment in 2013, 23 species have moved onto the Red List and only six species have left it. Many breeding birds of farmland and bog habitats continue to fare very poorly. When grouped by habitat, upland (50%) and farmland (35%) have the highest proportions of Red-listed species.

Very significantly, the Kestrel (Falco tinnunculus) a recently common and generalist bird of farmland is now Red-listed. The Kestrel, once the most common and well-known bird of prey in our countryside due to its characteristic and conspicuous hovering flight, also now finds itself on the Red List. **Between 2006-2016, it suffered a 31% decline in breeding distribution & a decline of 28% in breeding population trend**. These are staggering declines and extremely worrying. Changes in land use and in farming practices have affected their prey, and illegal shooting and poisoning, as well as secondary poisoning via the use of rodenticides to control rats and mice, have all taken their toll. Breeding Snipe, a wader, which were Amber-listed in the previous assessment, are now on the Red List, with small-scale ongoing drainage and reclamation of marginal farmland and bog habitats likely to be a key factor in their continued decline. Breeding waders continue to be the species group faring worst and not only has there been ZERO recovery in populations since the Bird Atlas 2007-2011 including one full round of agri-environment schemes, the status of all of Ireland's breeding waders is worsening.

BirdWatch Ireland suggests that the consultants closely review the attached BoCCI paper to inform both the SEA and AA of the CAP Strategic Plan. In addition, while the Countryside Bird Survey does not cover all of the farmland and upland birds assessed under BoCCI, it would also be important for consultations to review the *Countryside Bird Survey: Status and trends of common and widespread*

breeding birds 1998–2016 report[1]. In addition, the impacts from the intensification of farmland go beyond the farm boundary. Water pollution can affect waterbirds of lakes, wetlands and estuaries. The consultants should in addition read and evaluate the *Irish Wetland Bird Survey: Waterbird Status and Distribution 2009/10–2015/16*[2]. In addition, other reports have been published by the NPWS including one on geese and swans as well as the critical Article 12 reporting to the European Commission.

Scoping report specific points:

1. The Potential Significant Environmental effects for SEA Environmental Report does not include the decline in bird species associated with farmland, upland or associated waterbirds. This needs to be rectified.
2. Table 5 under the subheading of **Biodiversity, Flora and Fauna:** the following needs to be included, **'Will the draft CAP Strategic Plan 2023-2027'** Reverse the decline of farmland and upland birds?
3. Table 5 under the subheading of **Water Resources :** the following needs to be included, **'Will the draft CAP Strategic Plan 2023-2027'** Reverse the declines in water quality?
4. Table 5 under the subheading of **Climate Change :** the following needs to be included, **'Will the draft CAP Strategic Plan 2023-2027'** Cut greenhouse gas emissions from agriculture to meet the Paris Agreement?
5. The SEA and AA must take into account Ireland's continued failure to comply with the rulings of the European Court of Justice in the Birds Case (C-418/04). The fourth ruling required Ireland to **Take a coherent approach to protecting the needs of important Irish and European birds (partial isolated measures are not enough) due to** *Failure to apply the second sentence of Article 4 (4) of the EU BD - Appropriate steps to avoid deterioration of habitats outside SPAs (para 176 – 193).* As part of compliance with this ruling, Ireland must put in place agri-environment schemes which are both ambitious in goal and resourcing to halt and reverse the catastrophic losses of farmland and upland birds.
6. When assessing cumulative impacts the impacts on farmland and upland birds from afforestation in particular but peatland drainage should be assessed. In 2020 Corkery et al published a paper outlining the Changes in forest cover result in a shift in bird community composition[3] (attached). The findings should be taken into account. In addition BirdWatch Ireland has published a report called Greening Irish Forestry[4] which includes substantial background information on the impacts of afforestation on Ireland's birds. Predation by corvids, foxes, badgers and other species as a result from increased tree cover also needs to be assessed for impacts to breeding waders and other ground nesting bird species.
7. Assessment must include the data and findings in the NPWS monitoring reports on EU - Protected grasslands outside of Natura sites. Any proposed measures to ensure protection of these must be iron clad.
8. Flora protection order species must also be included under the flora and fauna assessment.
9. **Commonage Management Plans:** Most commonage occurs on Natura sites. CMPs do not contain any reference to the Conservation Objectives (COs) of said Natura 2000 sites. CMPs must be based on the requirements of the conservation interests of Natura sites and these must be monitored. Farm advisors must be ecologists to undertake the assessment required

[1] Lewis, L. J., Coombes, D., Burke, B., O'Halloran, J., Walsh, A., Tierney, T. D. & Cummins, S. 2019b. *Countryside Bird Survey: Status and trends of common and widespread breeding birds 1998–2016.* Irish Wildlife Manuals, No. 115. National Parks and Wildlife Service, Department of Culture, Heritage and the Gaeltacht, Ireland.

[2] Lewis, L. J., Burke, B., Fitzgerald, N., Tierney, T. D. & Kelly, S. 2019a. *Irish Wetland Bird Survey: Waterbird Status and Distribution 2009/10–2015/16.* Irish Wildlife Manuals, No. 106. National Parks and Wildlife Service, Department of Culture, Heritage and the Gaeltacht, Ireland.

[3] Corkery, I., S. Irwin, J. Quinn, U. Keating, J. Lusby & J. O'Halloran (2020). Changes in forest cover result in a shift in bird community composition. Journal of Zoology 310: 306-314. Corkeryetal2020JZool

[4] https://birdwatchireland.ie/publications/birdwatch-ireland-2019-greening-irish-forestry-report/

for management of these sites in accordance with COs. If this does not happen, if plans are not put in place to change the current situation then, the consultants must reflect this in their assessment of impacts in the AA. 85% of Ireland's EU protected habitats have 'bad' or 'inadequate' conservation status.

10. Any mitigation measures listed in the SEA or the AA must be scientifically proven to work, otherwise they should not be included.
11. **TAMs and on farm investments funded under CAP:** In the current CAP 2014-2020 the TAMS scheme has funded significant investment in farm buildings and technology.

    The AA of the 2014-2020 Rural Development Programme stated that 'Building developments may impact on Natura 2000 sites through direct or indirect habitat loss, water quality impact or disturbances to sensitive fauna. Most on-farm developments would require planning permission under the Planning and Development Acts prior to grant-aid approval, in which case planning authorities are obliged to carry out AA. Very small developments would not automatically require planning permission. DAFM will require Notice of Planning or Notice of Exemption from Planning under Section 5 of the Planning and Development Act 2000, however, for all fixed investments under the scheme. As such, sub-threshold building developments funded under the TAMS II scheme would be subject to AA screening by the planning authorities'.

    Following a review of planning applications for farm developments by BirdWatch Ireland, we are concerned that the application of the AA screening procedure within local authorities is not in line with best practice. Of the number of farm building applications reviewed to examine the processes being undertaken, many are screened out for AA without adequate ecological assessment. Few applications required full Appropriate Assessment of significant impacts to Natura sites. Further there is patchy and unstandardised assessment of impacts to water quality.

    The AA of the 2014-2020 Rural Development Programme identified intensification accompanying investments under TAMS II as a potential source of significant effects on the conservation objectives of Natura 2000 sites supporting a wide range of terrestrial, freshwater, coastal and marine habitats and species. Certain agricultural intensification work, including improving semi-natural habitats, hedgerow clearance and land drainage, would be subject to AA screening and possibly full AA under the EIA (Agriculture) Regulations 2011. This regulation applies whether the land in question is within a Natura 2000 site or not, as long as there is the risk of a significant effect on the site. With respect to nutrient inputs and water quality, the Nitrates Regulations specify maximum allowable inputs, buffer strips and additional safeguards. Together, these statutory requirements were to greatly reduce the risk posed by intensification of agricultural activities outside Natura 2000 sites.

    The **European Communities (Environmental Impact Assessment) (Agriculture) (Amendment) Regulations (SI 407) (September 2017)** include thresholds that are too high and have resulted in the loss of hedgerows. Please see attached report by the Hedgelaying Association of Ireland outlining significant concerns with these regulations and their implementation. Issues with the lack of clear and effective processes within the Department of Agriculture are described in the report and are very problematic. This should be taken into account during the assessment.

    The RDP states that 'the DAFM monitoring of the RDP, EPA water quality monitoring under the Water Framework Directive and Natura 2000 site monitoring undertaken by NPWS <u>will</u>

add further safeguards. Water monitoring data will highlight rivers where water quality is being negatively affected, despite the Nitrates Regulations. Monitoring will allow detection of negative effects and provide opportunities to safeguard conservation objectives of Natura 2000 sites. These mitigation measures will act in combination with catchment-scale Water Framework Directive plans, GLAS scheme targeting towards farmers in High Status and Vulnerable water areas, in Natura 2000 sites and intensive farmers, and knowledge transfer actions on water quality. Statutory requirements and monitoring along with these factors will ensure that there will be no significant effects on the conservation objectives of Natura 2000 sites arising from intensification under TAMS II, including but not limited to:

- Coastal and marine community distribution and water quality
- Population trends of waterfowl, waders and other birds
- Freshwater habitat water quality, vegetation composition, area and distribution
- Water quality, substratum quality, spawning habitat, juvenile density and other attributes of freshwater fauna, such as freshwater pearl mussel, lamprey and salmon
- Water quality of freshwater wetlands
- Terrestrial habitat area, distribution, vegetation structure or vegetation composition'

However, water quality has declined and there has been no improvement in the status of EU protected habitats during the period of the RDP 2014-2020 with agriculture being the most significant driver of declines. It will be important for the consultants undertaking SEA and AA to have regard to the findings of the High Court decision on the Bradán Beo case **2018 740 JR** when it undertakes assessment of the impacts of measures on water quality. The central significance of the *Bradán Beo* decision is that it represents the first application of the *Weser* ruling (ECJ Case C-461/13) in an Irish context. The High Court has decisively held that ensuring compliance with Art 4(1) of the WFD is a threshold requirement to be satisfied before development consent can be granted.

Any mitigation measures suggested to proposed schemes where a likelihood of significant impacts must be cast iron and be qualified by due diligence on the capacity of the local authorities, or other authorities, to undertake assessment of any applications for farm buildings or restructuring or other, and the quality of those assessments.

BirdWatch Ireland staff are happy to discuss this submission with the consultants if they have any questions.

ENDS

[redacted]

BirdWatch Ireland