Guidance on managing woodlands with otter in England

1. Background and purpose of document

The Habitats Directive[1] aims to conserve various species of plant and animal which are rare across Europe, and it requires Member States to provide legal protection for these species. Most of the protected species which are found in the UK (European Protected Species, or EPS) are associated with woodland, in particular dormice, otters, many of the species of bat, great crested newts, smooth snake and sand lizard. The EU Directive was transposed into UK law by the Habitats Regulations in 1994. However, the Regulations were amended in August 2007, and this has removed the 'incidental result' defence under which many forestry operations were carried out.

This document is one of a series providing guidance for woodland managers and operators on how to conserve these European protected species and reduce the risk of anyone committing offences under the Habitats Regulations. It focuses on the European otter (*Lutra lutra*).

Guidance is given on routine and on-going forestry and woodland operations and activities. For more unusual operations, such as development, construction or land-use change (i.e. removal of forest) you should seek further advice from the Forestry Commission (FC). Similarly, whilst it covers low-key recreational usage, expert advice should be sought for more unusual or intensive activities in woodlands.

This guidance should be used in conjunction with wider guidance on forestry and woodland management, and should not be followed in isolation. Sources of more detailed information on conserving the species are given in the final section.

The FC and Natural England (NE), with assistance from relevant conservation organisations, have produced this suite of guidance to help you understand the legislation. Following the guidance will show that you have taken all reasonable steps to comply with the Regulations. If the guidance has been followed, but you nevertheless do inadvertently cause damage, disturbance or harm to this protected species, a prosecution is unlikely to be considered to be 'in the public interest'[2]. However, you are reminded that it remains your responsibility to ensure all your actions do comply with the law.

This is 'interim' guidance that will be reviewed in the light of experience over the first 6 months after publication. We therefore welcome suggestions from users during that period on how it could be improved.

[1]The formal title is: Council Directive 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora.
[2] The public interest test is used by the regulators to decide whether it is appropriate to take a matter any further bearing in mind all the circumstances of the case.

2. Complying with the Habitats Regulations

There is an inherent difficulty in complying with the Habitats Directive, because whilst habitat management is often needed to conserve rare species, carrying out such management could contravene the strict protection that the Directive requires. This contradiction is recognised in a guidance note issued by the EC (see reference list below). This recommends that Member States produce codes of conduct, or guidance, and that these should: *"offer flexibility, i.e. while recognising that absolute protection for all individuals of a species cannot be guaranteed, ensure that any harmful action takes full account of the conservation needs of the species/population concerned".* The EC also states that anyone complying with such codes of conduct should be protected from prosecution, but conversely there must be a legal process for enforcement in cases of non-compliance with the legislation.

Conserving rare species present in a wood requires a careful and well-planned approach to woodland management. Ensuring that the requirements of the Habitats Regulations are also satisfied is an additional challenge. A systematic approach will be required in order to minimise the risk of committing an offence. This guidance is structured around the following six stages:

- Is a protected species **present** in the wood?
- What woodland **habitats** does this species use?
- What activities and operations could potentially cause **damage, disturbance or harm** to the species?
- What operations can go ahead as **'good practice'**?
- When, and how, should I seek a **licence**?
- What else can I do to help **conserve** this species?

The phrase 'causing damage, disturbance or harm' is actually a simplification, and it is important to understand the precise offences that can be committed. These can be summarised as follows:

- *Damaging or destroying the breeding site or resting place of a protected species (even if unintentional or even when the animal is not present)*
- *Deliberately killing or injuring a protected species or destroying its eggs*
- *Deliberately disturbing a protected species in a manner that:*
  - either significantly affects it's ability to survive and breed;
  - or, as a consequence, significantly affects the local population.

In the Directive, the term 'deliberate' is interpreted as being somewhat wider than just intentional and could be thought of as including an element of recklessness.

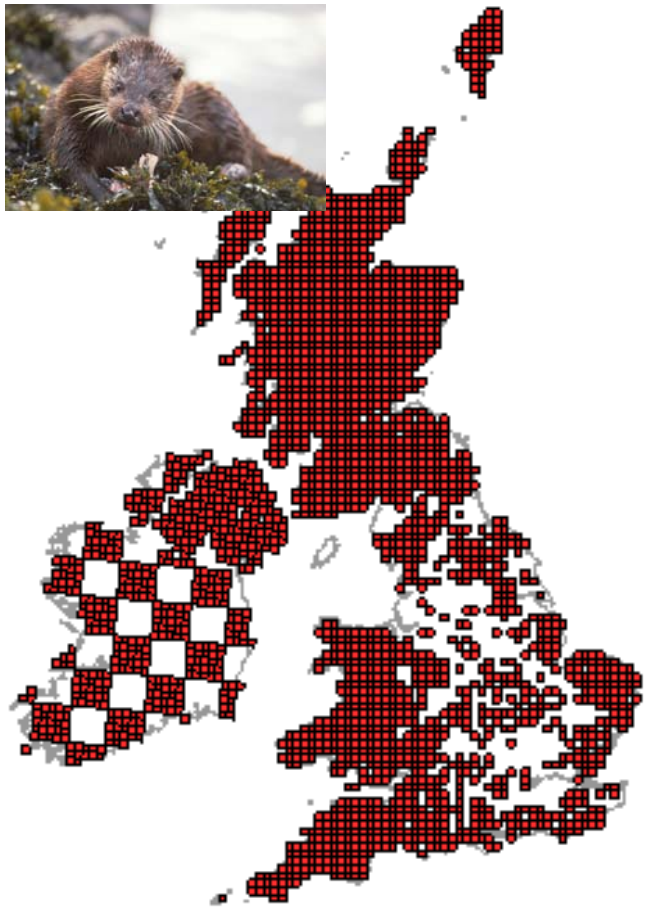
You should be aware that there is the potential for more than one protected species in your woodland, which for example may support otter and bats, and you will need to follow the good practice guidance for each of the species present.

3. Are otters present in the woodland?

There are a number of ways of determining the likelihood of otters being present in a woodland:

a. Is the woodland approximately within the current known range of the otter?

The map below shows the known distribution of the otter. You will see that this species is very well distributed across the UK. Please note that this species has been recolonising rivers across the UK over the last few decades and not all recent occurrences of otter may be mapped.



Otter (*Lutra lutra*) distribution.
Source: National Biodiversity Network copyright C Crown Copyright. All rights reserved NERC 100017897 2004

b. Are there records of otters in your woodland?

The National Biodiversity Network (NBN) is available on the web and can be checked for presence of otters near or in your woods. The interactive map www.searchnbn.net/interactive/map.jsp?srchSp=NBNSYS0000005133, can be used to zoom to your area of interest (please note that not all recent occurrences of otter may be shown on the map. A lack of records does not necessarily confirm otter absence). Your local Natural England, County Wildlife Trust, or Environment Agency representative, is also likely to be able to give site specific information on likelihood of otter presence, as may the Local Biological Records Centre (www.nfbr.org.uk), Natural History Societies and Mammal Societies www.abdn.ac.uk/mammal/localgroups.shtml.

c. Confirming the presence of otters by looking for signs or indicators

From the distribution maps you will see that for the majority of England it is likely that otters will have been recorded in your local area. Therefore, should you manage a woodland in close proximity (50m) to a watercourse, there is the potential for otters to be frequenting your woodland. However, what needs to be established is whether there are any holts or resting places in the woodland you manage.

Sightings: otters are large animals that are easily distinguished from the smaller mink because the former are approximately 1m long, have spiky fur when wet, a broad, flat muzzle and long, tapering tail which is thick at the base. Otters give a general impression of being dog-sized, whereas mink are at most cat-sized.

One of the best signs of otter presence are their spraints (excrement) which are usually seen within a metre of the water's edge at regular signing sites such as at the foot of bridges, the saddle of overhanging bankside trees or large bankside and in-channel rocks. Other signs that may be identified include footprints and feeding remains. Finding proven resting sites and holts is usually very difficult and requires experience.

If otters have been recorded in your locality, and your woodland adjoins a river, then it may be best to assume they are, or soon will be, using your woodland. Alternatively you may wish to consider engaging local specialists to carry out a site visit in your woodlands and assist in identifying likely holts and resting places.

If by self-assessment (following the guidance above) and/or specialist survey you are confident that otters are not present then no further action is necessary and the operation may proceed. It would be sensible to keep a record of your decision and the information used to reach it. If evidence of otters is subsequently discovered during operations (especially active holts), you should stop work, consult the FC and review your plans as required. It is therefore important for operators to remain vigilant for otters while undertaking work.

4. What woodland habitats do otters use?

Woodlands, particularly small patches of wet woodlands, carr and thick scrub or woods that are generally within about 50m of rivers, canals, ponds, lakes, and wetlands, may be used by otters. Small streams and ditches are used as foraging habitat and corridors if they are within the home ranges of individuals. Otters often have a home range of 10-40km or more of a waterway. In landscapes where waterside vegetation and undisturbed wetlands are very restricted, woodlands often provide the best, and sometimes the only cover in which otters can lie-up and breed.

Breeding sites can either be subterranean dens (holts) or above-ground specially constructed 'couches'. Breeding sites are more likely to occur in woodlands if they are:

- relatively undisturbed by humans,
- ungrazed by stock,
- close (<50m) to water,
- rarely flooded or are just above the floodplain level,
- contain large patches (at least 0.5ha) of dense cover such as scrub thickets, weedy young plantations, timber stacks and log piles, groups of windblown trees, large bankside root systems, hollow trunks, and stands of tussocky tall fen vegetation.

Above-ground resting sites can occur in similar habitats to subterranean holts and tend to be close to water (<50m) but are less restricted, and may be found in woodlands as small as 0.5ha or less provided they contain patches of dense (at ground level) scrub, thickets or features as listed above. The less disturbed a site, the higher the possibility that otters may use sites which are otherwise sub-optimal for resting.

Otter holts may be used more often in winter and above ground resting sites are used more in the summer when growth of vegetation provides cover. Breeding takes place in the summer months, but holts can be used at any time of year. Further information on habitat requirements of otters is available from the reading list below.

5. What activities and operations could cause damage, disturbance or harm to them?

Where otters are present any woodland management close to water courses requires careful thought. Typical operations such as timber harvesting, coppicing, scarifying, mowing and ground-works both within and close to this corridor have a high risk of causing damage, disturbance or harm. Even when carrying out work to improve the riparian vegetation and habitat (e.g. pollarding old willows or coppicing alders) there may be a risk to otter holts. Changes in the way the woodland is used should also be carefully considered. The level of risk will depend on several factors:

- **Location of operation:** within the 50m corridor the risk of damage to undiscovered holts and resting places is high, whereas beyond the 50m corridor the only risk is disturbance.
- **Type of operation:** in the short-term clearfelling effectively removes the habitat valued by otters to rest in and so is damaging, whereas thinning and coppicing activities are likely to have less impact.
- **The nature of the habitat:** a relatively bare forest floor below a mature conifer canopy will contain few potential resting places compared to semi-natural woodland with a dense shrub layer and abundant deadwood.
- **Indirect impacts:** in wetter areas of the woodland sediment run-off arising from woodland operations can damage the stream habitat for otters and other wildlife.
- **Intensity of use:** – a significant increase in the number of people visiting the woodland (or using the river) could be disturbing, as could increases in livestock stocking densities.

6. Good practice guidance for woodlands with otters

Ultimately the intended outcome of management in these riparian corridors should be to protect existing holts and achieve a continuity of suitable habitats, whilst limiting levels of disturbance. Therefore, some woodland management within this corridor, but away from known otter resting places, will most likely create the future understorey and scrub habitats that are favoured by this and many other species.

Good practice for managing woodland used by otters
This good practice guidance for routine woodland operations should maintain or improve the habitat for otters and minimises the risk of harming individuals or damaging their breeding sites or resting places. If you follow this good practice, and carry out the operations as described here, we would not expect you to require a protected species licence.

- **Riparian corridors** – consider the risk of disturbing otters when planning any woodland management activities within 50m of a watercourse (riparian corridor)
- **Holt sites** – within the 50m riparian corridor identify and protect likely holt sites e.g. old trees, patches of scrub, fallen trunks, deadwood.
- **Any mechanised operation** - avoid any such activities within 50m of a known holt or resting site.
- **Felling** – limit the extent of felling within the riparian corridor to ensure the majority of woodland/scrub cover is maintained.
- **Thinning/coppicing** - phase thinning or coppicing of the riparian corridor over several years.
- **Extraction** – where possible extract material away from the riparian corridor. Select routes that avoid disturbing any scrub areas, fallen trees and deadwood.
- **Timber stacking** - stack timber away from the riparian corridor. Where not possible remove promptly (1-2 months), or else leave stacks of timber undisturbed as potential resting sites for otters.
- **Fencing** – when considering fencing out rabbits/ deer/ livestock from an area within the riparian corridor ensure free movement by otters is maintained along the corridor (through fence design or shape of the fenced area). Do not fence in a holt or resting place unless otter access under/through fence is provided. Fencing in sections of the riparian corridor may be beneficial if grazing levels are high.
- **Brash treatment** – needs to be treated soon (1-2 months) after felling if within the riparian corridor, after which should be left as may be used by otters.
- **Sediment run-off** – careful choice of time of year, machine and routes, plus the use of temporary culverts, to avoid sediment entering the watercourse (follow water guidelines).
- **Changes in recreational usage** – locate any new paths or recreational infrastructure at least 100m from potential holt sites.

7. When and how should I seek a licence?

Carrying out any operations that 'exceed' the thresholds or do not comply with the good practice guidance above constitute an offence or carry a significant risk of committing an offence. Some possible examples are:

- Any mechanised operation within 50m of a known holt or resting place (including tree surgery).
- Felling, thinning, or coppicing a high proportion of the woodland habitat within 50m of a river in one year.
- Clearing areas of dense scrub or tall vegetation within 50m of a river.
- Any significant change either to livestock or human disturbance within 100m of a known holt or resting place.

Activities that fall outwith the guidance, but could cause such damage or disturbance, would also necessitate an application for a licence. These might include:

- Removing the riparian woodland to restore open habitats.
- Changes to the management of the watercourse itself (for example bank structure, water levels and flow).

You can apply for a protected species licence to carry out such operations, but your application will have to be able to demonstrate that it meets all of the following three 'tests':

- The work is being done in order to conserve wildlife, ensure public safety or to help deliver the Government's woodland strategy and provide public benefits;
- There is no satisfactory alternative way of achieving the same outcome; and
- The overall package of work will not be detrimental to the population of otters.

An application form can be obtained from your local FC office. This will guide you through the process and the information you need to provide. To meet the third 'test' you may have to carry out additional work to improve the habitat and 'compensate' for any short-term adverse impacts on the otters. The FC will carry out initial checks but NE will make the ultimate decision and grant the licence.

If the package of work you are proposing does not meet these 'tests' then it will not be possible to grant a licence. You are strongly advised not to proceed with operations that involve a high risk of committing an offence without a licence.

8. What else can I do to help conserve otters?

The following operations should improve your woodland for otters and some of these are likely to be essential if you are applying for a licence:

- Landscape measures - planting new woodlands/scrub that link-up woodlands along riparian corridors or expand towards wetland areas.
- Woodland management – vary thinning intensity or group fell to produce sunny glades that provide continuity for areas of scrub cover relatively close to watercourses/bodies, ideally over areas of 25x25m (for daytime resting site) to 50x50m (for breeding area). Remove conifers from alongside watercourses.
- Margins/banks of watercourse - leave uncut margins to watercourses and encourage wet woodland development.
- Leave long lengths of large diameter tree trunks lying on the ground close to water. Consider building logpile otter holts close to water in undisturbed locations.
- Where necessary, seek to reduce grazing pressure by livestock and/or deer to ensure bankside vegetation, scrub and woodland undestorey are able to develop.
- Non-intervention areas or natural reserves – consider allowing parts of the riparian corridor you manage to develop naturally without any further active management.

It is possible that grant aid may be available under the England Woodland Grant Scheme to support such work to further the conservation of otters.

Sources of further information and references

www.english-nature.org.uk/lifeinukrivers/species/otter_breeding.pdf

Anon (2007) *Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC*, European Commission, February 2007, available at: http://forum.europa.eu.int/Public/irc/env/species_protection/library?l=/commission_guidance/final-completepdf/_EN_1.0_&a=d

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Forestry Commission 2003. *Forestry and water guidelines*, Forestry Commission, Edinburgh.

Strachan R., Liles, G. & Fairfield, T. (2004) *Managing woodlands in the presence of otters*. In: Eds. Quine, Trout & Shore. Managing woodlands and their mammals. Joint FC and Mammal Society conference, November 2002. 31-35. Forestry Commission. Edinburgh.

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