

OTTERS



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SUMMARY

- **The European Otter (*Lutra lutra*) is protected under both European and UK Law.**
- **Rivers are the best natural habitats for otters, although they also inhabit small streams, ditches, ponds, lakes, canals and marshes and can be found in coastal areas and estuaries. They also need lots of dense cover as provided by trees, fenland and reeds.**
- **Road mortality and loss and deterioration of habitat are two major factors affecting otters.**
- **Activities potentially harmful to otters include; road schemes, maintenance of water bodies and associated features e.g. bridges, culverts, etc., ditch management, bank side habitat management e.g. removal of dense vegetation, removal of materials (dead wood, rubble etc.), spoil deposition near a holt, coppicing/pollarding/thinning and pollution.**
- **Otters are found on the majority of watercourses in Dorset. If you are doing any work that may harm otters or their breeding site/resting place, it is recommended that you contact the Natural Environment Team, and/or check with DERC¹, before you carry out any work. A survey and a European Protected Species (EPS) licence² may be required.**

BACKGROUND

Legal Protection

The otter (*Lutra lutra*) and its respective habitats are fully protected under Schedule 5 (Section 9) of the Wildlife and Countryside Act 1981³ (as amended) and under Conservation of Habitats & Species Regulations 2010⁴. It is illegal to kill, injure, capture, or disturb them, and the places they use for breeding and resting (e.g. otter holt) are protected from being damaged or destroyed.

In addition the otter is listed as a Priority Species in the UK Biodiversity Action Plan⁵ and a globally threatened species on the IUCN⁶ Red Data List. Special Areas of Conservation (SACs) can be designated on the basis on the presence of otters.

Otter Ecology

Otters use clean rivers or other watercourses e.g. small streams, ditches, ponds, lakes, canals, marshes and estuaries, with an abundant, varied supply of food and plenty of bankside vegetation.

Otters tend to live alone as they are very territorial. They are active at dusk and during the night although may come out occasionally during the day. They usually rest in holts (burrows) in riverbanks, which may be in a tree root system, a hole in a bank or under a pile of rocks, or in a drain or cave. They will also rest above ground in vegetation, creating flattened areas sometimes called couches. Otters mainly eat fish and also crustaceans, frogs, voles and aquatic birds. Otters can travel over large areas, some are known to use 20 km or more of river habitat. To mark their range they deposit spraint (faeces) in prominent places.

Breeding areas are often traditional sites that otters return to year after year. In England, breeding can occur throughout the year and one to three cubs are usually born. Otters only breed once every two years as the cubs remain dependent on their mother for a year.

Timing

Surveys can be carried out at any time of year, although not after periods of heavy rain.

Work

The law recognises that it is sometimes necessary to carry out work that may affect otters or their habitats. It is not the intention of the law to prevent all activity in areas used by otters. However, legal protection does require that due attention is paid to the presence of otters and that appropriate actions are taken to safeguard the places they use for shelter or protection or breeding.

European Protected Species (EPS) licences are usually needed when a project involves disturbing or destroying key habitat features. Some forms of survey also need a licence. Licences cannot be granted retrospectively and are only issued to people considered competent to do the work. Several months may be required for preparing and considering Natural England EPS licence applications.

If otters are found on site once work has commenced, work must stop immediately and Natural England or the Natural Environment Team contacted.

Defences

Wildlife & Countryside Act 1981: Section 10(3)(c) – A person is not guilty of an offence under Section 9, if they can show that the act was the incidental result of a lawful operation and could not have been reasonably avoided. This defence has now been removed from the Habitats Regulations 1994.

This means that those carrying out activities that cause low level disturbance may be able to rely on the defence under the Wildlife & Countryside Act 1981 or may decide to obtain a licence. However, it is expected that enforcement action in respect of more serious disturbance would be brought under the Habitats & Species Regulations 2010, where such a defence is longer available.

For further information and advice please contact the Natural Environment Team.

Fines

The maximum penalty for each offence in the Magistrates' Court is a Level 5 (up to £5000) and/or six months imprisonment. In addition, items used to commit the offence (e.g. vehicles) may be forfeited.

Other considerations

Planning Policy Statement 9 (PPS9): Biodiversity and Geological Conservation (2005) states that *'in taking decisions, local planning authorities should ensure that appropriate weight is attached to protected species.....'* and the accompanying Circular 06/05 states that *'the presence of a protected species is a material consideration when a planning authority is considering a development proposal that, if carried out, would be likely to result in harm to the species or its habitat'*. For European protected species further strict provisions apply, to which planning authorities must have regard.

Definitions

¹ DERC - Dorset Environmental Records Centre – www.derc.org.uk – T: 01305 225081

² Natural England is the appropriate authority for determining licence applications for works associated with development. Three tests must be satisfied before Natural England can issue a licence under Regulation 44(2) (e) to permit otherwise prohibited acts:

- (i) Regulation 44(2)(e) states that licences may be granted by Natural England “to preserve public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment.”
- (ii) Regulation 44(3) (a) states that a licence may not be granted unless Natural England is satisfied “that there is a no satisfactory alternative.”
- (iii) Under Regulation 44(3) (b) a licence cannot be issued unless Natural England is satisfied that the action proposed “will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.”

³ The Wildlife and Countryside Act 1981 (as amended) transposes into UK law the Convention on the Conservation of European Wildlife and Natural Habitats (commonly the ‘Bern Convention’).

⁴ The Conservation of Habitats & Species Regulations 2010 transposes into UK law EC Directive 92/43/EEC.

⁵ Biodiversity: The UK Action Plan (1994). HMSO. CM 2428.

⁶ IUCN – International union for the Conservation of Nature and Natural Resources
<http://www.iucn-uk.org/>



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