



MacArthur
Green

Vale of Leven Wind Farm Draft Species Protection Plan

Technical Appendix 6.5

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1 INTRODUCTION

MacArthur Green has prepared this draft Species Protection Plan (SPP) on behalf of Vale of Leven Wind Farm Limited (the applicant) to ensure all reasonable protection measures are undertaken with regard to protected species present, or potentially present, at the proposed Vale of Leven Wind Farm (the Proposed Development).

The SPP is to be implemented within the Site and Site Access (i.e., the land that falls within the Application Boundary) during the construction and decommissioning phases of the Proposed Development, although it can also be used for guidance should the need arise for maintenance during the operational period.

The SPP has been produced to ensure the adequate preservation of protected species interests into all construction and decommissioning activities within the Application Boundary by safeguarding the resident populations and ensuring compliance with the relevant nature conservation legislation (see **Annex A**).

The SPP will be a live document subject to review and updating and will assist staff in the protection of species during construction and decommissioning, under the guidance of the Ecological Clerks of Works (ECoW).

2 BACKGROUND INFORMATION

Baseline habitats and protected species surveys, including associated desk studies, have been undertaken to inform the Environmental Impact Assessment Report (EIAR) for the Proposed Development. Full details and results are reported within **Technical Appendix 6.1: National Vegetation Classification & Habitats Survey Report, Technical Appendix 6.2: Protected Species Survey Report, Technical Appendix 6.3: Bat Survey Report** and **Technical Appendix 6.4 Fish Survey Report**.

The SPP is designed to reflect the results of the surveys and the distinct ecology and distributions of protected species within and around the Application Boundary.

These baseline surveys have recorded the presence of the following protected or notable species within, or in close proximity to, the Application Boundary:

- otter (*Lutra lutra*), seven potential holts (none within the Application Boundary), no other field signs;
- badger (*Meles meles*), including four setts (none of which are within the Application Boundary);
- common lizard (*Zootoca vivipara*);
- common pipistrelle (*Pipistrellus pipistrellus*);
- soprano pipistrelle (*Pipistrellus pygmaeus*);
- brown long-eared bat (*Plecotus auritus*);
- Daubenton's bat (*Myotis daubentonii*);

- *Nyctalus* spp.;
- *Myotis* spp.;
- Atlantic salmon (*Salmo salar*) and
- sea/brown trout (*Salmo trutta*).

With respect to bats, several trees with suitability for roosting bats were recorded during surveys; see **Technical Appendix 6.3** for full details.

No other protected species, or protected plant species, were recorded within or around the Application Boundary during baseline surveys, with the Site and Site Access also largely considered of limited suitability for water vole (*Arvicola amphibius*), red squirrel (*Sciurus vulgaris*), pine marten (*Martes martes*), great crested newt (*Triturus cristatus*) and beaver (*Castor fiber*); see **Technical Appendix 6.2** report for further details.

3 AIMS & OBJECTIVES OF THE SPECIES PROTECTION PLAN

The Aim of the SPP is to ensure all reasonable precautions are taken by the applicant and their contractors to safeguard protected species from disturbance, injury and death and to protect any structure or place, which any such protected species uses for growth, breeding, resting, shelter or protection during the construction and decommissioning of the Proposed Development. The SPP will also contribute to meeting legal obligations should protected species licences be required.

The Aim of the SPP will be fulfilled by the applicant adopting the following objectives throughout the construction and decommissioning of the Proposed Development:

- Objective A - Implement a monitoring and protection plan for protected species;
- Objective B – Follow an approved procedure if an active feature is found; and
- Objective C – Ensure adequate education and awareness of Site personnel.

Objective A addresses the monitoring procedure to be followed to ensure that the Aim of this SPP is achieved. Objective B covers the detailed procedure in the event of a protected species feature being discovered. Objective C addresses the educational needs of appropriate personnel on the Site to further reduce the risk of an offence being committed. The procedures to be adopted that will fulfil these objectives are detailed in **Section 6** below.

4 RESPONSIBILITIES

The overall responsibility for ensuring that the planning conditions and the conditions of any licence granted are adhered to, in particular those conditions relating to protected species, will lie with the applicant. The personnel responsible for the day-to-day implementation of the SPP are detailed in **Table 4-1** below.

4.1 Role of the Ecological Clerks of Works

The ECoW will have the specific remit of monitoring compliance with the SPP during the construction and decommissioning phases and reporting any breaches to the applicant's Construction Project Management Team. The ECoW's role shall involve direct monitoring of all

activities on the Site to the extent the ECoW considers this to be required, and/or training of nominated personnel to carry these out in a manner likely to minimise the potential for impact on the protected species. The ECoW will also agree changes to construction operations to prevent breaches of the SPP.

Table 4-1: SPP Responsibilities

Task	Responsibility
Implementation of the SPP	The applicant's Construction Project Management Team
Monitoring and review of the SPP	ECoW
Regular site monitoring for protected species and associated protected features, including otter, bats, pine marten, reptiles, badger, red squirrel, water vole and Annex II plants	ECoW or a suitably qualified ecological surveyor
On-going watching brief for the above	All site personnel

5 THE POTENTIAL IMPACTS OF DEVELOPMENT

Impacts on protected species can result from the physical effects of construction such as soil stripping, road laying, turbine foundation construction and noise disturbance. These operations can negatively affect protected species in a number of ways including:

- i. Abandonment of a holt/burrow/roost/den/sett/pond etc. due to disturbance;
- ii. Abandonment of dependant young due to disturbance;
- iii. Damage to or destruction of a protected feature or species;
- iv. Damage to navigation/commuting routes (i.e., ditches, burns, fence lines etc.);
- v. Fragmentation of territories;
- vi. Damage to foraging areas (e.g., areas containing amphibians or fish in the case of otter);
- vii. Contamination of water;
- viii. Disturbance to a protected species that results in behaviour that negatively impacts their life stage; and
- ix. Accidental injury or death to species by machinery, tools or vehicles.

6 PROCEDURES FOR PROTECTING PROTECTED SPECIES

This Section details the procedures to be followed to ensure all reasonable precautions have been adopted to protect species from disturbance, injury and death and to protect any structure or place that any such species uses for growth, breeding, resting, shelter or protection.

The extent of disturbance free zones for each species is shown in **Table 6-1** below. If other protected species are identified during pre-construction surveys or during construction suitable buffer zones will be advised by the ECoW and agreed in consultation with NatureScot.

Table 6-1: Level of Protection and Recommended Disturbance Free Zones

Species Feature	Level of Protection	Disturbance Free Zone
Otter (holts, etc.)	European	30/200 metres ¹
Bat (roost)	European	30/200+ metres ²
Badger (sett)	National	30/100 metres ³
Water vole (burrow)	National	5-10 metres ⁴
Red squirrel (drey)	National	5/50 metres ⁵
Pine marten (den)	National	30/100 metres ⁶
Reptiles (hibernacula)	National	n/a ⁷

6.1 Objective A – Monitoring and Protection Plan

6.1.1 Monitoring Plan

It will be the duty of the ECoW to check the status of protected species and any associated protected features immediately prior to construction activity progressing for the Proposed Development, and to continue regular spot checks during construction for any new protected species features in the vicinity of the construction works. Where construction work is staggered across the Site and Site Access, any watercourses within the vicinity of the works due to be carried out should be monitored and checked immediately prior to the commencement of works. This should occur during each phase of construction.

If it is not possible to determine the status of features during ECoW checks, further monitoring by use of camera traps may be required.

The results from the ecological baseline surveys highlighted potential otter holts and badger setts locally, but none were recorded within the Application Boundary. No other active protected species' features were recorded within the Application Boundary or respective survey areas; however, there is the potential for other protected species to move into the area. Guidelines detailing the monitoring of protected species and associated protected features by the ECoW or suitably qualified ecological surveyor are described below.

¹ The disturbance zone will be 30 m unless a breeding/natal holt is identified, in such an instance the disturbance zone will be increased to 200 m.

² The disturbance zone will be 30 m; however, turbines must be positioned 200 m plus turbine rotor radius from maternity roosts and significant hibernation and/or swarming sites (NatureScot *et al.*, 2021).

³ Disturbance is defined by NatureScot as any new procedure that approaches within a minimum of 30 m of a sett margin. For piling or blasting activities, this buffer zone is extended to 100 m.

⁴ Dependant on burrow location and bank profile.

⁵ The disturbance zone will be 5 m or one tree's distance (whichever is less) unless a breeding drey is identified, in such instances the disturbance zone will be increased to 50 m during the red squirrel breeding season (February to September inclusive) (SNH, 2020).

⁶ 100m applied if breeding.

⁷ Due to the more limited nature of their protection and their ability to avoid machinery etc. during their active phase, no specified disturbance zone for reptiles is given; however, if a hibernacula is discovered, an appropriate disturbance exclusion zone will be demarcated.

Potential Features

- European Protected Species (EPS) – fauna (otters and bats) & Nationally Protected Species (badger, water vole, red squirrel, pine marten, and reptiles):

Further checks or appropriate monitoring of the potential features will be completed during construction and all potential protection features will be clearly demarcated.

- If the status of the potential protection feature remains unoccupied, construction may occur in the area, but not damaging the potential feature under close supervision by the ECoW⁸; or
- If the status of the feature changes to occupied, then the under-noted procedure for occupied sites will be followed. The ECoW will be responsible for this survey work as required.

Occupied Features

- European Protected Species - fauna (otters and bats)

Where an occupied feature exists within the Application Boundary or disturbance zone, and the infrastructure cannot be microsited away:

- A licence to disturb will be applied for to NatureScot; or
 - A licence to damage or destroy will be applied for to NatureScot if there are no reasonable alternatives.
- National Protected Species (badger, water vole, red squirrel, pine marten, and reptiles)
 - Where an active badger sett exists within the Application Boundary or disturbance zone, and the infrastructure cannot be microsited away, it may be necessary to undertake an exclusion or relocation exercise. This is a licensed activity which will require prior authorisation from NatureScot. Guidance for this process has been produced by NatureScot, who should be consulted throughout.
 - Where a water vole burrow, red squirrel drey or pine marten den exists within the Application Boundary or disturbance zone, and the infrastructure cannot be microsited away, the Applicant will discuss any licensing requirements and appropriate mitigation with NatureScot.
 - Where reptiles are found to be occupying any proposed infrastructure locations during their hibernacula period and the infrastructure cannot be microsited away, the applicant will discuss appropriate mitigation with NatureScot. Reptiles are capable of actively avoiding disturbances during their active phase.

⁸ If the infrastructure cannot be microsited away from the potential feature, the monitoring and checks by the ECoW will be used to assess the likelihood of current use, with appropriate species-specific monitoring undertaken as required. For badger, if it is proven the potential feature is not in use, or has not been in recent use, then it would not be considered a protected feature, and could be sensitively destroyed under supervision of the ECoW.

6.1.2 Protection Plan – General

In addition to the mitigation measures detailed above, further general Site and Site Access wide steps should be implemented to increase the protection levels on protected species and reduce general disturbance from the Proposed Development:

- i. Covering/securing all excavations and piping. If this is not possible then a means of escape must be provided for any animal that could fall in e.g. a ramp with a gradient of 45° or shallower;
- ii. Any temporarily exposed open pipe system should be capped in such a way as to prevent mammals gaining access, as may happen when contractors are offsite. If such pipes are left for an extended time, periodic checks will be carried out to ensure that the pipe is inaccessible to animals;
- iii. All excavations will be checked at the start of works and prior to the commencement of any works activities to ensure protected species are not present or have become trapped overnight. A responsible individual will be tasked with carrying out these checks;
- iv. Night-time working will be minimised to reduce disturbance to nocturnal and crepuscular fauna. Where this is not possible, security lighting used at the Site compound and those areas where lighting is absolutely necessary to ensure safe working conditions will be angled downwards to reduce light spillage into adjacent areas. Lighting outwith the Site compound will be switched off when no works are being undertaken. Other required lighting will be directed to where it is needed and away from features (including setts, treelines, watercourses/riparian habitats, mammal paths, etc.) to minimise light disturbance;
- v. All works undertaken in proximity to watercourses will be undertaken in line with pollution prevention measures outlined in a detailed Construction Environment Management Plan (CEMP);
- vi. An appropriate speed limit (of around 15 to 20 mph) for all vehicles on the Site and Site Access, and vehicle movements will be kept to pre-determined routes wherever possible;
- vii. Watercourse crossings will be designed to allow the passage of small mammals on the Site and Site Access, where appropriate;
- viii. Vegetation within 50 m of all watercourses should be left undisturbed except in areas of construction of watercourse crossings and access tracks leading to crossings as well as construction associated activities (such as drainage and mitigation);
- ix. Chemicals should not be stored within 100 m of a sett, holt or couch, or within 10 m of hibernacula, or other protected feature, or along mammal paths. All paints, chemicals and sealants used during the construction process will be removed from the working area at the end of each working day. Open tins or other containers will not be left at the works areas but will be stored in a suitable container at the Site compound; and
- x. Any areas for location of wind turbines and infrastructure will be subject to inspection by an experienced ECoW immediately prior to any works. The ECoW will monitor the Site and Site Access so that in-situ materials associated with works will not incidentally create reptile refuges, e.g. piles of cut vegetation. Materials will be removed from Site or Site Access if advised by the ECoW.

6.2 Objective B – Procedure if Active Feature is Found

6.2.1 Procedure if previously unrecorded active feature or protected species found in advance of construction or decommissioning activity

If an active feature or protected species is found by the ECoW's monitoring in advance of construction activity progressing across the Site or Site Access, the following text outlines the procedure to be followed.

If Obstruction, Damage or Destruction (ODD) to a protected species is likely, a location specific ODD risk assessment will be completed. This will consider all potential mitigation measures to avoid ODD. This may include micrositing of infrastructure away from the location, where topography allows, and outwith the disturbance zone and the demarcation of the protected site.

If Disturbance is likely, a location specific Disturbance Risk Assessment (DRA) will be completed. This should firstly consider revision to the disturbance zone as a result of the Site-specific topography and habitat quality (e.g., if a ridge lies between activity and a holt then the disturbance zone may be reduced). Also, other measures which could reduce disturbance to an acceptable level should be considered (including micrositing and the demarcation of the protected site).

The DRA or ODD risk assessments will be submitted to NatureScot for consideration.

If it is not possible to microsite and, in consideration of the risk assessment, NatureScot determines that ODD and/or significant levels of Disturbance is likely to occur, the procedures described in Objective A will be adopted for unoccupied and occupied features. If there is uncertainty over whether the feature is occupied a precautionary approach will be adopted and occupancy will be assumed.

6.2.2 Procedure if previously unrecorded protected feature or species found during construction or decommissioning

In the event of any Site personnel discovering an unrecorded protected feature or protected species, the following procedure must be followed:

- i. Work should stop immediately within the specified disturbance zone;
- ii. The ECoW should be contacted immediately;
- iii. The location should be checked by the ECoW to determine the nature of the new find; and
- iv. If the protected species or feature is confirmed then the procedure detailed in Objective A above should be followed.

6.3 Objective C – Education and Awareness

The applicant will provide the necessary education and awareness as part of a Site induction to all Site personnel with regard to the protection of protected species that are or could be present on the Site, in particular the actions that should be taken if protected species are seen on the Site or Site Access. All Site personnel (including contractors and sub-contractors) will be informed of the objectives of the SPP to ensure they are aware of any species present at the Site.

This information will include as a minimum:

- i. The requirements and use of the SPP;

- ii. Identification of protected species and features;
- iii. Key risk activities and sensitive areas; and
- iv. Site personnel responsible for dealing with protected species.

The applicant will undertake that any person found on the Site or Site Access by them to be inadequately trained, or to be disregarding the terms of the SPP is immediately expelled from the Site or Site Access until such time that it is appropriate for them to be allowed to return. In general, such persons will need to undertake retraining in the use and application of the SPP to ensure the impact on protected species is minimised. Species specific Toolbox Talk handouts will be provided by the ECoW as required.

7 REFERENCES AND RELEVANT LEGISLATION AND GUIDANCE

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ANNEX A. LEGAL PROTECTION

Bats and **Otters** receive protection under the Conservation Regulations (1994) (as amended) only⁹.

Conservation (Natural Habitats, &c.) Regulations 1994 (as amended)

Under Regulation 39 (1) it is an offence to:

- a) deliberately or recklessly to capture, injure or kill a wild animal of a European protected species;
- b) deliberately or recklessly:
 - i. to harass a wild animal or group of wild animals of a European protected species;
 - ii. to disturb such an animal while it is occupying a structure or place which it uses for shelter or protection;
 - iii. to disturb such an animal while it is rearing or otherwise caring for its young;
 - iv. to obstruct access to a breeding site or resting place of such an animal, or otherwise to deny the animal use of the breeding site or resting place including bat roost sites;
 - v. to disturb such an animal in a manner that is, or in circumstances which are, likely to significantly affect the local distribution or abundance of the species to which it belongs;
or
 - vi. to disturb such an animal in a manner that is, or in circumstances which are, likely to impair its ability to survive, breed or reproduce, or rear or otherwise care for its young;
- c) deliberately or recklessly to take or destroy the eggs of such an animal; or
- d) to damage or destroy a breeding site or resting place of such an animal.

Regulation 44 (2e) allows a licence to be granted for the activities noted in Regulation 39 such that:

Preserving 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.

⁹ The Conservation Amendment (Scotland) Regulations (2007) removed EPS from Schedule 5 and 8 of the Wildlife and Countryside Act 1981.

Water Vole is protected by Section 9, subsection 4 and Section 10 of the Wildlife and Countryside Act¹⁰.

Wildlife and Countryside Act (1981)

Nature Conservation (Scotland) Act 2004

Under Section 9 Subsection 1¹¹ it is an offence to:

- Intentionally or recklessly kill, injure or take any wild animal included in Schedule 5.

Under Section 9, Subsection 4, Paragraphs (a) and (b)⁴, it is an offence to:

- Intentionally or recklessly damage or destroy, or obstruct access to, any structure or place which any wild animal included in Schedule 5 uses for shelter or protection.
- Intentionally or recklessly disturb any such animal while it is occupying a structure or place which it uses for that purpose.

Under Section 10, Subsection 3, Paragraph (c)⁴, any person shall not be guilty of an offence by reason of:

- Any act made unlawful by that section if he shows:
 - a) That each of the conditions specified in subsection (3A) was satisfied in relation to the carrying out of the unlawful act; or
 - b) That the unlawful act was carried out in relation to an animal bred and, at the time the act was carried out, lawfully held in captivity.
- Section 3A states those conditions referred to in Subsection 3c are:
 - a) That the unlawful act was the incidental result of a lawful operation or other activity;
 - b) That the person who carried out the lawful operation or other activity:
 - i. took reasonable precautions for the purpose of avoiding carrying out the unlawful act; or
 - ii. did not foresee, and could not reasonably have foreseen, that the unlawful act would be an incidental result of the carrying out of the lawful operation or other activity; and

That the person who carried out the unlawful act took, immediately upon the consequence of that act becoming apparent to the person, such steps as were reasonably practicable in the circumstances to minimise the damage or disturbance to the wild animal, or the damage or obstruction to the structure or place, in relation to which the unlawful act was carried out.

¹⁰ as amended by the Nature Conservation (Scotland) Act 2004.

Red Squirrels and Pine Martens are protected by the following legislation:

Wildlife and Countryside Act (1981)

Nature Conservation (Scotland) Act 2004

Under Section 9, Subsection 1, it is an offence to:

Intentionally or recklessly:

- Kill, injure or take any wild animal listed on Schedule 5;
- Damages or destroys or obstructs access to, any structure or place that any animal listed on Schedule 5 uses for shelter or protection;
- Disturbs any such animal while it is occupying a structure or place which is uses for that purpose
- Sell, offer or expose for sale, or possess or transport for the purpose of sale, any live or dead wild animal included in Schedule 5, or any part of, or anything derived from, such an animal.
- Publish or cause to be published any advertisement likely to be understood as conveying that he buys or sells, or intends to buy or sell, any of those things.

Badgers are protected under the **Protection of Badgers Act 1992** (as amended by the **Nature Conservation (Scotland) Act 2004 (as amended)**).

The following applies under this legislation:

Part 1.–

- (1) A person is guilty of an offence if, except as permitted by or under this Act, he wilfully kills, injures or takes, or attempts to kill, injure or take, a badger.
- (2) If, in any proceedings for an offence under subsection (1) above consisting of attempting to kill, injure or take a badger, there is evidence from which it could reasonably be concluded that at the material time the accused was attempting to kill, injure or take a badger, he shall be presumed to have been attempting to kill, injure or take a badger unless the contrary is shown.
- (3) A person is guilty of an offence if, except as permitted by or under this Act, he has in his possession or under his control any dead badger or any part of, or anything derived from, a dead badger.

Part 3. –

- (1) A person is guilty of an offence if, except as permitted by or under this Act, he interferes with a badger sett by doing any of the following things–
 - a) damaging a badger sett or any part of it;
 - b) destroying a badger sett;
 - c) obstructing access to, or any entrance of, a badger sett;
 - d) causing a dog to enter a badger sett; or
 - e) disturbing a badger when it is occupying a badger sett,intending to do any of those things or being reckless as to whether his actions would have any of those consequences.
- (2) A person is guilty of an offence if, except as permitted by or under this Act, he knowingly causes or permits to be done an act which is made unlawful by subsection (1) above.

Reptiles

The three native species of **reptile** to Scotland, **adder**, **slow worm** and **viviparous lizard**, are protected by the following legislation:

Wildlife and Countryside Act (1981)

Nature Conservation (Scotland) Act 2004

Under Section 9 Subsection 1¹² it is an offence to:

- Intentionally or recklessly kill, injure or take any wild animal included in Schedule 5.

Under Section 9, Subsection 5, Paragraphs (a) and (b)¹⁰, it is an offence to:

- Sell, offer or expose for sale, or possess or transport for the purpose of sale, any live or dead wild animal included in Schedule 5, or any part of, or anything derived from, such an animal.
- Publish or cause to be published any advertisement likely to be understood as conveying that he buys or sells, or intends to buy or sell, any of those things.

Under Section 10, Subsection 3, Paragraph (c)¹⁰, any person shall not be guilty of an offence by reason of:

- Any act made unlawful by that section if he shows:
 - a) That each of the conditions specified in subsection (3A) was satisfied in relation to the carrying out of the unlawful act; or
 - b) That the unlawful act was carried out in relation to an animal bred and, at the time the act was carried out, lawfully held in captivity.
- Section 3A states those conditions referred to in Subsection 3c are:
 - a) That the unlawful act was the incidental result of a lawful operation or other activity;
 - b) That the person who carried out the lawful operation or other activity:
 - i. took reasonable precautions for the purpose of avoiding carrying out the unlawful act; or;
 - ii. did not foresee, and could not reasonably have foreseen, that the unlawful act would be an incidental result of the carrying out of the lawful operation or other activity; and

That the person who carried out the unlawful act took, immediately upon the consequence of that act becoming apparent to the person, such steps as were reasonably practicable in the circumstances to minimise the damage or disturbance to the wild animal, or the damage or obstruction to the structure or place, in relation to which the unlawful act was carried out.