Appendix 7.2 Protected Species Survey

This page is intentionally blank.

Cumberhead West Wind Farm
Protected Species Survey

Technical Appendix 7.2

Date: 8 October 2020

Tel: [redacted]

Web: www.macarthurgreen.com

Address: 93 South Woodside Road |Glasgow | G20 6NT

Document Quality Record

Version	Status	Person Responsible	Date
0.1	Draft	Joanne Martindale	04/08/2020
0.2	Updated	Leanne Cooke	23/09/2020
0.3	Reviewed	Joanne Martindale	24/09/2020
1	Internal Approval	David H. MacArthur	10/10/2020

CONTENTS

1 INTRODUCTION 1
2 THE SITE & STUDY AREA 1
3 LEGAL PROTECTION 1
4 METHODS 2
4.1 Desk Study 2
4.2 Field Surveys 2
4.3 Limitations 5
5 RESULTS & DISCUSSION 5
5.1 Desk Study 5
5.2 Field Surveys 6
6 CONCLUSIONS 8
7 REFERENCES 9
ANNEX A. LEGAL PROTECTION 10
ANNEX B. SURVEY RESULTS 14

LIST OF TABLES

Table 5-1: Designated sites with habitat/botanical qualifying interests within 5 km of the site 5

FIGURES

Figure 7.5A Protected Species Survey Results

Figure 7.5B Confidential Protected Species Survey Results (Confidential Annex C)

1 INTRODUCTION

MacArthur Green was commissioned by the Applicant to carry out protected species surveys at the Cumberhead West Wind Farm approximately 3 km to the west of Coalburn, South Lanarkshire (hereafter referred to as the 'Proposed Development').

The desk study and surveys focussed on otter (*Lutra lutra*), water vole (*Arvicola amphibious*), badger (*Meles meles*), red squirrel (*Sciurus vulgaris*), pine marten (*Martes martes*) and great crested newts (*Triturus cristatus*). A watching brief was also kept and signs recorded for other protected species potentially inhabiting the site, i.e. brown hare (*Lepus europaeus*), mountain hare (*Lepus timidus*) native reptiles the adder (*Vipera berus*), common or viviparous lizard (*Zootoca vivipara*), and slow worm (*Anguis fragilis*).

Surveys for bats and fish were carried out and are reported separately (Technical Appendices 7.3 and 7.4).

These protected species surveys were undertaken to aid and inform the ecological assessment for the Cumberhead West Wind Farm Environmental Impact Assessment (EIA) Report, and this report details the findings of the surveys.

2 THE SITE

The Proposed Development site ('the site') is located mainly within an area of active commercial forestry within the larger Cumberhead Forest complex, west of Douglas, South Lanarkshire. The site adjoins the existing cluster of operational and consented wind farms around Hagshaw Hill, known as the 'Hagshaw Cluster'.

The site extends over the existing Cumberhead Forest, consisting of commercial coniferous plantation and existing forestry tracks. There is also a small area of enclosed fields around Black Hill within the southeast of the site. The site boundary also includes the site access track which runs from junction 11 of the M74 motorway through Cumberhead Forest to the southern corner of the site. This part of the site was not surveyed as the access would make use of existing tracks. The exception to this is a short stretch of track which would be created for the Proposed Development if the proposed Douglas West Extension Wind Farm is not built in advance. This 1.38 km section of new track has been assessed separately in Appendix 3.3 of this EIA Report.

The site gradually rises from 320 m Above Ordnance Datum (AOD) in the north to 522 m AOD at the summit of Nutberry Hill in the south of the site. A number of watercourses run through the site, mainly Birkenhead Burn, Eaglin Burn, Long Burn, Logan Water and the River Nethan.

The surrounding land comprises open moorland to the west and south-west, farmland with some scattered individual properties to the north and north-east, with further coniferous plantation to the south and south-east.

3 LEGAL PROTECTION

The details of the legal protection of the protected species surveyed for are given in Annex A.

4 METHODS

4.1 Desk Study

A desk-based study was undertaken in order to inform the field surveys and assessment with regards the presence of designated sites and species of interest within the site and its environs. This study consisted of the consultation of various online resources as detailed below:

- Scottish Natural Heritage (SNH) Sitelink[1] for designated site information within 5 km of the site;
- Consultation with SNH via the 'Cumberhead West Wind Farm Ecology Scoping Report (10th October 2019).
- South West Scotland Environmental Information Centre (SWSEIC) records within 5 from the site;
- National Biodiversity Network (NBN) Atlas[2] records up to 5 km from the site (records from the last ten years);
- Glasgow Museums Biological Record Centre (GMBRC) records within 5 km from the site;
- Scottish Badgers; and
- Saving Scotland's Red Squirrels[3] for red squirrel sightings up to 5 km from the site (records from the last ten years).

4.2 Field Surveys

Surveys to record the presence or likely absence, and suitable habitat for otter, water vole, badger, red squirrel and pine marten were carried out at the site during September 2019, 1 March 2020 and August 2020 , during which all habitats suitable for these species were surveyed within the appropriate study areas (Figures 7.5A and B).

A watching brief for any protected species signs was undertaken during other survey visits (e.g. ornithology/vegetation surveys) to site throughout the year.

The signs found indicate the type and intensity of activity and consequently help in the assessment of the importance of a particular area for the protected species. The survey methods used are described below.

4.2.1 Otter

All accessible watercourses within the site boundary were surveyed for otter field signs. Otter field signs and survey methods are described in Bang & Dahlstrøm (2001), Sargent & Morris (2003) and Chanin (2003), and include:

Holts: Underground features where otters live. They can be tunnels within bank sides, underneath root-plates or boulder piles, and even man-made structures such as disused drains. Holts are used

[1] https://sitelink.nature.scot/home
[2] https://nbnatlas.org/
[3] https://scottishsquirrels.org.uk/squirrel-sightings/

by otters to rest up during the day and are the usual location of natal or breeding sites. Otters may use holts permanently or temporarily;

Couches: These are above ground resting-up sites. They may be partially sheltered, or fully exposed. Couches may be regularly used, especially in reed beds and on in-stream islands. They have been known to be used as natal and breeding sites. Couches can be very difficult to identify and may consist of an area of flattened grass or earth. Where rocks or rock armour are used as couches, these can be almost impossible to identify without observing the otter in-situ;

Prints: Otters have characteristic footprints that can be found in soft ground and muddy areas;

Spraints: Otter faeces may be used to mark territories, often on in-stream boulders. They can be present within or outside the entrances of holts and couches. Spraints have a characteristic smell and often contain fish remains;

Feeding signs: The remains of prey items may be found at preferred feeding stations. Remains of fish, crabs or skinned amphibians can indicate the presence of otter;

Paths: These are terrestrial routes that otters take when moving between resting-up sites and watercourses, or at high flow conditions when they will travel along bank sides in preference to swimming; and

Slides and play areas: Slides are typically worn areas on steep slopes where otters slide on their bellies, often found between holts or couches and watercourses. Play areas are used by juvenile otters in play and are often evident by trampled vegetation and the presence of slides. These are often positioned in sheltered areas adjacent to the natal holt.

Any of the above signs (apart from paths) are diagnostic of the presence of otter. However, it is often not possible to identify couches with confidence unless other field signs are also present. Spraints are the most reliably identifiable evidence of the presence of this species.

4.2.2 Water Vole

All watercourses within the site, were surveyed for water vole field signs following the methodology prescribed in Dean *et al*. (2016). This involved searching for the following field signs. This involved searching for the following field signs:

Faeces: Recognisable by their size, shape, and content. If not too dried-out these are also distinguishable from rat droppings by their smell;

Latrines: Faeces, often deposited at discrete locations;

Feeding stations: Food items are often brought to feeding stations along pathways and hauled onto platforms. Recognisable as neat piles of chewed vegetation up to 10 cm long;

Burrows: Appear as a series of holes along the water's edge distinguishable from rat burrows by size and position;

Lawns: May appear as grazed areas around land holes;

Nests: Where the water table is high above ground woven nests may be found;

Footprints: Tracks may occur at the water's edge and lead into bank side vegetation. May be distinguishable from rat footprints by size; and

Runways in vegetation: Low tunnels pushed through vegetation near the water's edge; these are less obvious than rat runs.

In line with current guidance (Dean *et al*. 2016), the first visit should be undertaken during the first half of the water vole breeding season (mid-May to the end of June) and the second between July and mid-September. A second visit may not be required if suitable habitat is not identified during the first survey visit or if a precautionary approach is taken to their assessment and/or protection.

4.2.3 Badger

Land with the potential to support badger within the site, was searched for field signs with particular attention given to areas around woodland and areas underlain by mineral soils as opposed to peat, following the methodology described in Scottish Badgers (2018). Field signs of badger are described in Neal and Cheeseman (1996), Bang and Dahlstrøm (2001), and SNH (2001). Field evidence searched for included:

Setts: Single and/or groups of holes and underground tunnels used by badgers;

Prints: Badgers have characteristic footprints that can be found in soft ground and muddy areas;

Latrines and dung pits: These are small excavated pits in which droppings are deposited. Latrines can be used as territorial markers;

Hairs: Tufts of hair can often be found on fences, or in the entrances to setts;

Feeding signs: Small scrapes where badgers have searched for insects and plant tubers, known as snuffle holes. Feeding signs can also include torn out wasp and bee nests and ripped up dung of other species, including cattle;

Scratching posts: Marks on trees (including fallen trees) where badgers have scratched leaving claw marks or ripped at areas of rotten bark to search for food; and

Paths: These are routes that badgers take when moving between setts and foraging areas.

4.2.4 Pine Marten

Signs of pine marten were searched for within the site following guidance from O'Mahony *et al.* (2006). Survey methods included:

Scats: Searches for pine marten scats were made along linear features such as fence lines or stone walls. Also searches for scats on prominent features such as tree stumps, dead logs or stones, and around rock piles and dense scrub where the species could establish a den; and

Dens: Identification of features which could be used as a den. Dens can include the utilisation of upturned trees, tree cavities, rocks or manmade structures such as log piles or large bird boxes.

4.2.5 Red squirrel

Areas of woodland that have the potential to support red squirrel were surveyed for squirrels, following guidance from Gurnell *et al.* (2009). Survey methods included:

Sightings: Visual sightings of red squirrels;

Dreys: Dreys are usually built close to the main stem of a tree, over 3m from ground level and over 50x30cm in size (Gurnell *et al.* 2009); and

Feeding signs: Predated cone core searches in areas of woodland.

4.2.6 Other Protected/Notable Species

It was not considered necessary to undertake targeted reptile surveys; however, incidental records of reptile sightings, or signs such as shed skins, and features of particular importance (i.e. potential hibernacula) were recorded.

Records were also made of any sightings or evidence of other mammal species including brown hare (*Lepus europaeus*), mountain hare (*Lepus timidus*) and deer species.

4.3 Limitations

During protected species survey in September 2019 the presence of bracken (*Pteridium* aquilinum) along some of the deep riparian gullies presented a constraint to badger surveys and may have resulted in the under recording of badger signs and setts. As a result of the survey constraint, areas of dense bracken cover which were identified as high suitability areas for sett creation (i.e. on sloping ground with mineral soil) were re-surveyed over two days in March 2020 when bracken cover was no longer a survey constraint. It is possible that other areas within the site which were not assessed as high suitability areas for sett creation with bracken cover a constraint could be supporting a badger sett or have signs of a badger presence such as path, feeding signs, dung pits and latrines.

On two occasions a surveyor could not survey a gully safely due to steep banks at NS 75971 34929 and NS 76004 34154, with no access across to the other bankside.

5 RESULTS & DISCUSSION

5.1 Desk Study

There are no designated sites within the site boundary. Table 5.1 below details the results of the designated sites search within 5 km of the site.

Table 5-1: Designated sites with habitat/botanical qualifying interests within 5 km of the site

Designated Site	Distance from site (km)	Qualifying Interests	Last Assessed Condition & Date
Muirkirk Uplands SSSI[4]	Adjacent to site	▪ Blanket bog ▪ Upland habitat assemblage	Unfavourable No Change 20/10/2005 Favourable Maintained 21/10/2005
Coalburn Moss SAC[5]	3.8 km	▪ Active raised bog	Favourable Maintained 12/08/2012 Unfavourable Recovering 12/08/2012

[4] Site of Special Scientific Interest (SSSI)
[5] Special Area of Conservation (SAC)

Designated Site	Distance from site (km)	Qualifying Interests	Last Assessed Condition & Date
		▪ Degraded raised bog	
Coalburn Moss SSSI	3.8 km	▪ Raised bog	Unfavourable Recovering 13/10/2009
Blood Moss and Slot Burn SSSI	4.8 km	▪ Blanket bog	Unfavourable No Change 26/08/2014

No response was returned from GMBRC.

SWSEIC returned records of the following species[6]:

- otter; and
- mountain hare.

A search on NBN Atlas contained records for the following protected or notable species within 5 km of the site:

- otter;
- brown hare;
- mountain hare;
- common lizard; and
- common frog (*Rana temporaria*).

Scottish Badgers returned records of a badger road casualty, a live sighting, a main sett and unclassified sett which are provided in Confidential Annex C.

The Saving Scotland's Red Squirrels sightings map returned no records of red squirrel within 5 km of the site.
In response to the Ecology Scoping Report (MacArthur Green, October 2019) SNH confirmed that surveys for Great Crested Newt were not required at the site. The scoping report explained that, 'based on the absence of great crested newts at other project sites, it is considered very unlikely that the species is present on site. It was agreed with SNH during consultation for the recent Hagshaw Hill Repowering Wind Farm and Douglas West Extension Wind Farm application processes that the species is likely to be absent from the local area. No specific surveys are therefore planned'.

5.2 Field Surveys

5.2.1 Otter

Records of otter within 5 km of the site were returned by the desk study (section 5.1). No holts were recorded during the field surveys. A potential resting up area under the root of fallen tree

was recorded along the River Nethan south east of Nutberry Hill. The cavity was sheltered and extended for approximately 1.6 m and was approximately 1 m in width. No sign of otter was recorded around the feature. An otter spraint containing bones was recorded upstream of this feature and was located on bankside vegetation (Annex B).

The watercourses within the site are variable in their size and characteristics. Many of these watercourses, particularly the Birkenhead Burn, provide suitable commuting habitat for otter within their wider territory range, and may support otter for foraging, commuting and sheltering purposes. The banks are fringed by dense bankside vegetation including bracken, with overhanging banks and other cavities, creating opportunities for otter to utilise the habitats within the site for resting up and permanent shelter.

Suitable habitat for fish was noted in the River Nethan mainstem, Logan Water and the Birkenhead Burn (Technical Appendix 7.4) which offer suitable prey for otter, with most other watercourses providing minimal fish habitat. It is known that no migratory fish can access the site, therefore the main fisheries presence is the local, resident brown trout (*Salmo trutta*) population.

5.2.2 Water Vole

No records of water vole were returned by the desk study (section 5.1). No burrows or other evidence of water vole were recorded during the field surveys.

The site offers some suitable habitat for water voles with many tributaries within the site having a low flow offering suitability for water vole commuting. The areas of exposed soft peaty banks offer burrowing habitat for water vole, and rush and grassland habitats along banksides offer suitable foraging habitat. Although no evidence of water vole was identified during the surveys, it is possible that the species could colonise the site.

5.2.3 Badger

Records of badger were returned by the desk study. Details are provided within the separate Confidential Annex C to this Technical Appendix.

Evidence of badger was also recorded during the surveys. One main badger sett was recorded as well as paths, latrines, dung pits and feeding signs. Details are provided within Confidential Annex C and Confidential Figure 7.5B.

The majority of the site is considered suitable for badger species due to the presence of sloped ground with mineral soils in some sections of the site.

5.2.4 Pine Marten

No records of pine marten were returned by the desk study. No dens of pine marten were recorded during the surveys. A possible sighting of a pine marten was recorded near Birkenhead with a small dark mustelid seen through plantation running along the ground. A definitive identification could not be made due to the brief sighting. Wind thrown trees were present in this area which can offer suitable shelter/den habitat for pine marten. A potential pine marten scat was located in this area.

5.2.5 Red Squirrel

No records of red squirrel were returned by the desk study. No dreys or other evidence of red squirrel were recorded during field surveys.

5.2.6 Reptiles

Records of common lizard were returned by the desk study. No reptiles or signs of reptiles were recorded during the field surveys.

The site offers some small aeras of open grassland and peatland habitat suitable for common lizard, slow worm and adder, on undulating ground, often with frequent bracken cover. These species can utilise habitats such as these for basking, sheltering and foraging, as reptiles benefit from a diversity of microhabitats created by a variety of vegetation types (Edgar *et al.*, 2010). Peatland habitats can support small mammals, ground-nesting birds and invertebrates, all of which offer prey to reptiles (Catherine, 2018).

5.2.7 Other Observations

Records of brown hare, mountain hare and common frog were retuned by the desk study.

One common frog (*Rana temporaria*) was noted within the site and field evidence of fox (*Vulpes vulpes*) was recorded.

Several mammal holes and mammal paths were noted within the site however lack of field signs prevented confirmation of species usage.

Fox (*Vulpes vulpes*) prints and scat were recorded across the site.

6 CONCLUSIONS

No confirmed protected features for otter, water vole, pine marten or red squirrel were recorded within the site with only limited suitable habitat for water vole. Suitable habitat exists for pine marten with possible pine marten signs recorded during surveys. A badger sett was the only confirmed protected features recorded within the site.

The protected species field evidence recorded include otter spraint, badger feedings signs, badger paths and prints.

7 REFERENCES

Bang, P., and Dahlstrøm, P. (2001). *Animal Tracks and Signs*. Oxford University Press, Oxford.

Catherine, C. (2018). ARG UK Advice Note 10: Reptile Survey and Mitigation Guidance for Peatland Habitats. Amphibian and Reptile Groups of the United Kingdom.

Chanin, P. (2003). *Monitoring the Otter* (*Lutra lutra*). Conserving Natura 2000 Rivers Monitoring Series No.10 English Nature, Peterborough.

Dean, M., Strachan, R., Gow, D. and Andrews, R. (2016). *The Water Vole Mitigation Handbook* (The Mammal Society Mitigation Guidance Series). Eds Fiona Mathews and Paul Chanin. The Mammal Society, London.

Edgar, P., Foster, J. and Baker, J. (2010). Reptile Habitat Management Handbook. Amphibian and Reptile Conservation, Bournemouth.

Gurnell, J., Lurz, P. McDonald, R. & Pepper, H. (2009). *Practical Techniques for Surveying and Monitoring Squirrels.* Forestry Commission Practice Note, October 2009.

MacArthur Green (October 2019) Cumberhead West Wind Farm, Ecology Scoping Report.

Neal, E., and Cheeseman, C.L. (1996). *Badgers*. Poyser Natural History, London.

O'Mahony D., O'Reilly, C. & Turner, P. (2006). *National Pine Marten Survey of Ireland 2005*.

Sargent, G., and Morris, P. (2003). *How to Find and Identify Mammals*. The Mammal Society, London.

Scottish Badgers (2018). *Surveying for Badgers: Good Practice Guidelines.* Version 1.

Scottish Natural Heritage (2001). Scotland's Wildlife: Badgers and Development. SNH, Battleby, Perthshire.

ANNEX A. LEGAL PROTECTION

Otters and great crested newts receive protection under the Conservation Regulations (1994) (as amended) only[7].

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;
  (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.

Otter is also listed on Appendix I of CITES, Appendix II of the Bern Convention and Annexes II and IV of the Habitats Directive (1994). It is also listed as globally threatened on the IUCN/WCMC Red Data List.

Wildcat is listed on Annexes II and V of the Habitats Directive (1994).

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

Water vole is not protected by Section 9, subsection 1 of the Wildlife and Countryside Act but is covered by Section 9, subsection 4 and Section 10[8].

Wildlife and Countryside Act (1981)

Nature Conservation (Scotland) Act 2004

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

  (c) 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.

[8] as amended by the Nature Conservation (Scotland) Act 2004

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.–

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.

(1) 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.
(2) 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,
  (f) 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.

Note: A badger sett is defined in law as any structure or place which displays signs of current use by a badger.

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.

Adder, slow worm and **viviparous lizard** are protected by the following legislation:

These three species of reptile are noted within Schedule 5 of the Wildlife and Countryside Act (1981). However, Schedule 5 of the 1981 act notes that these species are protected 'in respect of section 9(5) only'.

Section 9(5) states:

(5) Subject to the provisions of this part, if any person-

(a) Sells, offers or exposes for sale, or has in his possession or transports 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; or

(b) Publishes or causes 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.

he shall be guilty of an offence

An amendment was made to Schedule 5 on 18 March 1988 relating to slow worm and viviparous lizard to give them protection under Section 9(1). A further amendment was made to Schedule 5 on 27 March 1991 relating to adders which afford them protection under Section 9(1).

Section 9(1) (as amended by the Nature Conservation (Scotland) Act 2004) states:

'Subject to the provisions of this Part, if any person intentionally or recklessly kills, injures or takes any wild animal included in schedule 5, he shall be guilty of an offence.'

ANNEX B. SURVEY RESULTS

Species	Sign	Grid reference
Amphibians	Common frog seen beside watercourse.	NS 76125 34243
Otter	Otter spraint near watercourse on grass. Fish bones present.	NS 74673 32865
Otter	Potential otter resting up area under the root of fallen tree. Cavity sheltered and can see the back of cavity. Cavity 1.6 m deep and 1m wide. No signs of otter.	NS 75374 33256
General	Mammal track from immature plantation to fence.	NS 77622 35912
General	Potential mammal shelter under the root of a mature beech tree. No signs. Cavity extends for 1 m.	NS 77253 36273
General	Mammal track along watercourse.	NS 77183 36172
General	Open moorland which is a suitable habitat for common lizard and adder.	NS 75997 36274
General	Fox print.	NS 76838 34928
General	Path under fence line. Fox scat nearby.	NS 75716 34995
General	Mammal path under fence line.	NS 75993 34539
General	Mammal path under fence line.	NS 76125 34414
General	Slope and substrate highly suitable for badger sett creation and foraging. Opposite burn and out with survey area also suitable slope for badger setts.	NS 76692 33721
General	Mammal path under fence line.	NS 76144 34358
General	Several mammal paths.	NS 76056 34451
General	Numerous fox scats in this area.	NS 76488 35971
General	Mammal paths leading into the plantation.	NS 76465 35961
Pine Marten	Potential sighting of mustelid. Mustelid seen through plantation running along the ground. Dark colour. No markings seen. Wind blow in the area which can be suitably shelter/den habitat for pine marten.	NS 77591 37334