



Water voles – the law in practice

Guidance for planners and
developers

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The water vole was once a familiar sight on waterways and ponds throughout England. Sadly, it has suffered one of the most catastrophic declines of any British mammal this century and its widespread survival is now seriously threatened. This decline has been most rapid in the last 30 years, and a recent survey showed that the species has been lost from almost 90% of the sites where it occurred earlier this century. Many remaining populations are now severely fragmented and their survival must be in doubt.

The reasons for this decline are complex but certainly involve a combination of loss and fragmentation of bankside vegetation, altered riparian management and, perhaps critically, the introduction and spread of the mink, an effective predator of water voles.



Legal protection

The water vole received limited legal protection in April 1998 through its inclusion in Schedule 5 of the Wildlife & Countryside Act 1981 (as amended) for some offences. This protection has recently been extended (6th April 2008), so the water vole is now fully protected under Section 9.

Legal protection makes it an offence to:

- intentionally kill, injure or take (capture) a water vole;
- possess or control a live or dead water vole, or any part of a water vole;
- intentionally or recklessly damage, destroy or obstruct access to any structure or place which water voles use for shelter or protection or disturb water voles while they are using such a place;
- sell, offer for sale or advertise for live or dead water voles.

Offences under Section 9 carry a maximum penalty of a fine not exceeding Level 5 on the standard scale (currently £5,000), imprisonment for up to six months, or both. In addition, the courts may order the forfeiture of any vehicle or other thing that was used to commit the offence.

Licences are available from Natural England to allow activities that would otherwise be offences for:

- scientific or educational purposes;
- the purpose of ringing or marking;
- conserving wild animals or introducing them to particular areas;
- preserving public health or public safety;
- preventing the spread of disease;
- preventing serious damage to any form of property or to fisheries.



Water vole and run. © Photo P Morris

There is no provision under the Wildlife & Countryside Act 1981 for licensing what would otherwise be offences for the purpose of development, maintenance or land management. Such activities must be covered by the defence in the Act that permits otherwise illegal actions if they are the incidental result of a lawful operation and could not reasonably be avoided.

A defence is also available to permit the possession of water voles that were not taken illegally (e.g. specimens found dead). In addition, the law only applies to wild animals, so the possession of captive-bred voles is not an offence. In both cases, the onus is on the possessor to show that one of these defence applies.

The law in practice

It is clearly not the intention of the law to prevent all development, management or maintenance works in areas used by water voles. However, legal protection does require that due attention is paid to the presence of water voles and appropriate actions are taken to avoid committing offences.

If it can be demonstrated that any action that would otherwise have been an offence was the 'incidental result of a lawful operation and could not reasonably have been avoided', this constitutes a defence against prosecution under the Act. This defence thus provides for the carrying out of works that intentionally but incidentally commit offences, such as damaging water vole burrows, but requires that reasonable steps are taken to avoid any unnecessary damage. Only a court can decide what is 'reasonable' in any set of circumstances, but, clearly, agreement between the appropriate conservation agencies (Natural England and the Environment Agency), planners and developers would be important. There is, therefore, an obligation on those who maintain waterways to ensure that appropriate systems are in place to minimise damage and that all reasonable ways of avoiding that damage are used.

Developers, or other riparian owners, who wish to maintain, build on or alter areas used by water voles must also ensure that unnecessary damage is avoided and all reasonable steps are taken to minimise impacts on water voles or their burrows. This can best be achieved by undertaking a water vole survey at an appropriate time prior to planning any work and ensuring that appropriate avoidance or mitigation measures are included in the proposals.

This is only a general guide to the main provisions of the law, not a definitive interpretation. The Wildlife & Countryside Act 1981 and the Countryside and Rights of Way Act 2000 should be consulted for further details.



Water voles and planning

Through Planning Policy Statement 9 on Biodiversity and Geological Conservation the Government expects the planning system to help meet its objectives to conserve, enhance and restore the diversity of England's wildlife and the populations of its natural occurring species. As a protected species, the presence of water vole is a material planning consideration when a planning authority is considering a development proposal that, if carried out, would be likely to result in harm to either it or its habitat.

Local planning authorities can help conserve water voles by basing their development plan policies and planning decisions on up-to-date information on the presence of water vole populations. These policies and decisions should aim to maintain, enhance and restore populations of water vole. Development decisions should first seek to prevent harm to water voles by avoiding the development sites where they are present or, failing that, putting in place mitigation measures which avoid harm to the population. Where harm to water voles from a development cannot be avoided or mitigated, then as a last resort, appropriate compensation measures must be agreed and put in place.

Local Planning Authorities, in common with all public authorities, also have a duty to conserve biodiversity (Natural Environment and Rural Communities Act 2006, Section 40). The water vole is included in the Government's list of species of principal importance for the conservation of biodiversity in England and thus requires special attention.

An ecological appraisal, which in some cases may be required as part of a statutory Environmental Impact

Assessment, is recommended for all cases where protected species may be affected. This provides a suitable mechanism for the gathering of data about the presence of water voles and the development of appropriate mitigation. In general, such an appraisal would need to include:

- a description of the development;
- an ecological survey, particularly of protected species;
- an assessment of the likely significant effects of the development on fauna and flora;
- a proposal to avoid, reduce or remedy the impacts of adverse effects.

In the case of developments involving riparian or other waterside habitats, planning authorities should require applicants to check for the presence of water voles by a combination of field survey and consultation with local records centres or other holders of environmental data, and ensure that appropriate mitigation is included in the ecological assessment. Field survey methods and suggestions for mitigation methods are described in the *Water vole conservation handbook* (see Further reading).

Site survey – a brief guide

As water voles are rarely seen, surveys should be based on the presence of characteristic signs. Site-specific searches, by an appropriately experienced surveyor, should involve a close examination of all waterway and pond banks up to two metres from the water's edge. The presence of signs should be recorded on a detailed map. Although they do not hibernate, water voles are not very active above ground during the winter, so surveys are best carried out between April and October.



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additional important function of linking together water vole populations and are recognised as a useful contribution to nature conservation.

Exclusion from development areas

Some recent experimental work suggests that the careful removal of surface vegetation from small areas to be developed (e.g. road or pipeline crossings) can cause water voles to move to nearby alternative areas, provided these are suitable and not already occupied by voles. During the growing season, green shoots should be removed at frequent intervals to discourage the voles from returning. This method is most likely to be successful early in the year and over short lengths of bank.

Trapping and translocation

The capture of water voles for translocation from a site is unlikely to be considered the incidental result of other activities and so is not covered by the defence in the legislation. If, despite all reasonable efforts, properly authorised development will adversely impact on water voles and there are no alternative habitats nearby, Natural England may be able to issue a licence to trap and translocate the water voles for the purpose of conservation. In order to issue such a licence, Natural England would need to be assured that there is no reasonable alternative to the development or maintenance work and that there are no other practical solutions which would allow water voles to be retained at the same location. We also need to be assured that the actions would make a positive contribution to water vole conservation.

Habitat enhancement

Development can sometimes provide opportunities for habitat enhancement by restoring degraded habitats and encouraging the return of a greater range of wildlife. For water voles, the restoration of vegetated bankside corridors to link fragmented populations could help to reverse local population declines or improve the viability of small populations. An ecological appraisal should identify such opportunities for positive works. Wherever possible, favourable management for water vole should be promoted through the adoption of a habitat management plan.

The following signs should be sought:

Faeces – these are 8 – 12mm long and 4 – 5 mm wide, cylindrical with blunt ends. The colour is variable, though often green, and they are generally odourless or have a faint musky smell.

Latrines – the majority of droppings are deposited at latrine sites, used to mark range boundaries or favoured spots close to burrows. Latrines are typically maintained between February and November and often consist of a flattened mass of old droppings topped with fresh ones.

Feeding stations – water voles often bring pieces of cut vegetation to favoured feeding stations close to the water's edge and leave remains in neat piles.

Burrows – many burrows can be found in river banks, but those constructed by water voles are typically wider than they are high, with a diameter of 4 – 8cm. Around these holes, well-grazed 'lawns' can often be found, where the water voles have chewed the vegetation short.

Footprints – these are easily confused with rat footprints; consult a good field guide for illustrations.

Many of these signs may be obliterated by heavy rain or high water levels, so negative surveys carried out in these circumstances should be treated with caution.

Water voles and development

Conservation advice from Environment Agency staff should be sought before any riverbank or channel management work is carried out.

Where development may affect water voles or their habitats, consideration should be given to the following courses of action:

Planning the development to avoid water vole habitats

This is the preferred course of action. As water voles confine the great majority of their activities to within a few metres of water it may be possible to leave undeveloped areas around ponds or wildlife corridors along ditches or streams. These corridors have an



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Further reading

Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their impact within the Planning System. ODPM Circular 0/2005, Defra Circular 01/2005 downloadable at <http://www.communities.gov.uk/publications/planningandbuilding/circularbiodiversity>

Planning Policy Statement 9: Biodiversity and Geological Conservation (Office of the Deputy Prime Minister August 2005) downloadable at <http://www.communities.gov.uk/publications/planningandbuilding/planningpolicystatement12>

Strachan, R. & Moorhouse, T.(2006) Water vole conservation handbook (2nd ed.). Wildlife Conservation Research Unit, Oxford, 132pp. ISBN 0 9546376 4 X. Note that this handbook pre-dates the increased legal protection for water voles.

Natural England Technical information Note – TIN 042 Water voles and development: Licensing Policy (2008). Downloadable from <http://www.naturalengland.org.uk/conservation/wildlife-management-licensing/leaflets.htm>

Further advice

Work or proposals affecting riverbanks:
The Environment Agency
Regional Office (see phone directory)

Works or proposals affecting canal banks:
British Waterways
Environmental and Scientific Services,
Llanthony Warehouse, Gloucester Dock, Gloucester, GL1 2BJ

Contact **Natural England** for:
conservation advice: Local Offices (see phone directory or our website)
and
licensing advice and applications: Wildlife Management and Licensing Service
0845 6014523
wildlife@naturalengland.org.uk

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