

Legislation and Notable Species Statuses

The following summary of national legislation, international agreements and conservation statuses is designed purely as a basic guide to the statuses displayed within HBIC's protected and notable species lists to aid developers, consultants and members of the public to make informed decisions. It is imperative that full details of all relevant legislation and definitions be consulted for all species when reviewing the list and before any action is taken.

Wild Birds Directive 1979 (ECC Directive on the conservation of wild birds)

The 'Wild Birds Directive' was adopted in response to the 1979 Bern Convention on the conservation of European habitats and species. The Directive provides a framework for the conservation and management of, and human interactions with, wild birds in Europe. In England the provisions of the Birds Directive are implemented through the Wildlife & Countryside Act 1981 (as amended) and The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended), and are supported by a wide range of other statutory and non-statutory activities including the UK Biodiversity Action Plan which involves action for a number of bird species and the habitats which support them.

[See <http://www.jncc.gov.uk/page-1373> for more information]

Annex I - Birds which are the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution. Species include those in danger of extinction; species vulnerable to specific changes in their habitat; species considered rare because of small populations or restricted local distribution; other species requiring particular attention for reasons of the specific nature of their habitat.

Examples: Kingfisher, Dartford Warbler, Woodlark, Stone-Curlew, Bittern

Annex II/1 – Birds which, owing to their population level, geographical distribution and reproductive rate throughout the Community, may be potentially hunted under national legislation. Certain non-selective methods of hunting are banned and limits are define within which hunting seasons can be set. Member states must ensure that the hunting of these species does not jeopardize conservation efforts in their distribution area.

Examples: Mallard, Woodcock, Snipe, Teal, Wigeon

Annex II/2 - Species which may potentially be hunted (as per Annex II/1) under national legislation but only within certain specified Member States.

Examples: Song Thrush, Moorhen, Starling, Lapwing, Oystercatcher

Habitats Directive 1992 (EEC Directive on the Conservation of natural habitats and of wild fauna and flora)

The 'Habitats Directive' aims to protect the wild plants, animals and habitats that make up the diverse natural environment of the European Community. It requires Member States to introduce a range of measures for the protection of habitats and species listed in its Annexes. In England the Habitats Directive has been transposed into national law by means of the Conservation (Natural Habitats, & c.) Regulations 1994 (as amended), known as 'the Habitats Regulations'. It provides for the protection of 'European protected species' by making it an offence to deliberately kill, capture, or disturb them, or to damage or destroy their breeding sites or resting places.

[See <http://www.jncc.gov.uk/page-1374> for more information]

Annex II - Non-priority - Endangered animal and plant species that are of Community interest (i.e. endangered, vulnerable, rare or endemic in the European Community) requiring the designation of special areas of conservation.

Examples: Southern Damselfly, Lady's-slipper, Otter, Large Copper, River Lamprey

Annex II - Priority – Endangered animal and plant species requiring the designation of special areas of conservation (SAC) for which the European Community has a particular responsibility for conservation in view of the proportion of their natural range which falls within the territory of the Community.

Examples: Sturgeon, Houting, Loggerhead Turtle

Annex IV - Animal and plant species of Community interest (i.e. endangered, vulnerable, rare or endemic in the European Community) in need of strict protection. They are protected from killing, disturbance or the destruction of them or their habitat.

Examples: Dormouse, Large Blue, Pipistrelle bat, Sand Lizard, Early Gentian

Annex V - Animal and plant species of community interest whose taking in the wild and exploitation may be subject to management measures.

Examples: White-clawed Crayfish, Atlantic Salmon, Common Frog, Freshwater Pearl Mussel

IUCN Red List

The World Conservation Union (IUCN) has been assessing the conservation status of species, subspecies, varieties and even selected subpopulations on a global scale in order to highlight taxa threatened with extinction, and therefore promote their conservation. The IUCN Red List, previously known as the Red Data Book (RDB), uses a set of criteria relevant to all species and all regions of the world to evaluate the extinction risk of thousands of species and subspecies. The IUCN Red List is recognized as the most authoritative guide to the status of biological diversity.

[See <http://www.iucnredlist.org/> for more information]

IUCN 2001

The IUCN Red List categories and criteria have undergone an extensive review in recent years. The revised categories and criteria (version 3.1) were adopted in 2000 and all new assessments and reassessments of taxa follow this revised system. Taxa using this classification currently consist only of subsets of higher and lower plants.

Extinct (EX) - Taxa where there is no reasonable doubt that the last individual has died. A taxon is presumed Extinct when exhaustive surveys (over a time frame appropriate to the taxon's life cycles and life form) in known and/or expected habitat, at appropriate times (diurnal, seasonal, annual), throughout its historic range have failed to record an individual.

Extinct In The Wild (EW) - Taxa known only to survive in cultivation, in captivity or as a naturalised population (or populations) well outside the past range. A taxon is presumed Extinct in the Wild when exhaustive surveys (over a time frame appropriate to its life cycles and life form) in known and/or expected habitat, at appropriate times (diurnal, seasonal, annual), throughout its historic range have failed to record an individual.

Critically Endangered (CR) - Taxa where the best available evidence indicates that it meets any of the IUCN criteria for Critically Endangered, and it is therefore considered to be facing an extremely high risk of extinction in the wild (see http://www.iucnredlist.org/info/categories_criteria2001 for a full explanation).

Endangered (EN) - Taxa where the best available evidence indicates that it meets any of the IUCN criteria for Endangered, and it is therefore considered to be facing a very high risk of extinction in the wild (see http://www.iucnredlist.org/info/categories_criteria2001 for a full explanation).

Vulnerable (VU) - Taxa where the best available evidence indicates that it meets any of the IUCN criteria for Vulnerable, and it is therefore considered to be facing a high risk of extinction in the wild (see http://www.iucnredlist.org/info/categories_criteria2001 for a full explanation).

Taxa categorised as either '**Critically Endangered**', '**Endangered**' or '**Vulnerable**' are described as '**Threatened**'.

Near Threatened (NT) - Taxa where it has been evaluated against the criteria but does not qualify for Critically Endangered, Endangered or Vulnerable now, but is close to qualifying for or is likely to qualify for a threatened category in the near future.

Data Deficient (DD) - Taxa where there is inadequate information to make a direct, or indirect, assessment of its risk of extinction based on its distribution and/or population status. Data Deficient is therefore not a category of threat, but it may be appropriate to give them the same degree of attention as threatened taxa, at least until their status can be assessed.

IUCN 1994

Assessments from 1996-2000 that have not been converted over to the revised system use the 1994 categories and criteria (version 2.3). Taxa using this classification currently only consist of a subset of *Diptera* (True Flies).

See IUCN 2001 for descriptions of the following categories:

- **Extinct (EX)**
- **Extinct In The Wild (EW)**
- **Critically Endangered (CR)**
- **Endangered (EN)**
- **Vulnerable (VU)**
- **Data Deficient (DD)**

Taxa categorised as either '**Critically Endangered**', '**Endangered**' or '**Vulnerable**' are described as '**Threatened**'.

Conservation Dependent (CD) - Taxa which are the focus of a continuing taxon-specific or habitat-specific conservation programme targeted towards the taxon in question, the cessation of which would result in the taxon qualifying for one of the threatened categories above within a period of five years.

Near Threatened (NT) - Taxa which do not qualify for Lower Risk (conservation dependent), but which are close to qualifying for Vulnerable. In Britain, this category includes species which occur in 15 or fewer hectads but do not qualify as Critically Endangered, Endangered or Vulnerable.

Taxa categorised as '**Conservation Dependent**' or '**Near Threatened**', i.e. do not satisfy the criteria for any of the threatened categories, are known as '**Lower Risk**'.

IUCN Pre '94

Superseded by new IUCN categories in 1994, but still applicable to lists that have not been reviewed since 1994. Taxa using this classification currently consist largely of invertebrates including many *Coleoptera* (Beetles), *Trichoptera* (Caddis Flies), *Hymenoptera* (Bees, Ants, Wasps and Sawflies), *Hemiptera* (True Bugs), *Araneae* (Spiders) and *Mollusca* (Molluscs).

Extinct (EX) - Taxa which are no longer known to exist in the wild after repeated searches of their localities and other known likely places.

Endangered (EN) - Taxa in danger of extinction and whose survival is unlikely if the causal factors continue operating.

Vulnerable (VU) - Taxa believed likely to move into the Endangered category in the near future if the causal factors continue operating.

Nationally Rare (NR) - Taxa with small populations that are not at present Endangered or Vulnerable, but are at risk. In Britain this was interpreted as species which exist in fifteen or fewer 10km squares.

Indeterminate (Ind) - Taxa not seen since 1970 but require further survey before they can be declared Extinct, Endangered, Vulnerable or Rare, but where there is not enough information to say which of these categories is appropriate.

Insufficiently known (IK) - Taxa that are suspected but not definitely known to belong to any of the above categories (i.e. Endangered, Vulnerable, Rare), because of the lack of information.

Threatened endemic (TE) - Taxa which are not known to occur naturally outside Britain. Taxa within this category may also be in any of the other RDB categories or not threatened at all.

Birds of Conservation Concern

Every five years the leading governmental and non-governmental conservation organisations in the UK, chaired by the RSPB, review the population status of the birds that are regularly found here to keep track of changes in abundance and range. In 2002 a total of 247 species were assessed, and each was placed onto one of three lists - red, amber or green - based on a set of quantitative criteria.

[See <http://www.bto.org/psob/index.htm> for more information]

Red list – Comprises 40 species that are Globally Threatened according to IUCN criteria; those whose population or range has declined rapidly in recent years; and those that have declined historically and not shown a substantial recent recovery.

Examples: Corncrake, Hen Harrier, Tree Sparrow, Skylark, Nightjar, Marsh Tit

Birds on the Amber or Green lists are not considered notable in Hampshire unless they are protected or notable according to one of the other conservation statuses.

Rare and scarce species (not based on IUCN criteria)

Taxa which do not fall within the IUCN Red List categories but which are still uncommon in Great Britain.

[See <http://www.jncc.gov.uk/page-3425> for more information]

Nationally Rare (NR) - Taxa occurring in 15 or fewer 10km squares in Britain.

Nationally Scarce (NS) - Taxa occurring in 16-100 10km squares in Britain.

Nationally Notable (NN) - Taxa thought to occur within the range of 16 to 100 10km squares or, for less-well recorded groups less than twenty vice-counties. Superseded by Nationally Scarce, but may still be in use for some taxonomic groups.

Biodiversity Action Plans

The UK Biodiversity Action Plan (UK BAP) is the Government's response to the Rio Convention on Biological Diversity signed in 1992. It describes the UK's biological resources and commits a detailed plan for the protection of these resources. Action plans have been developed which set priorities for important wildlife species both nationally and locally within Hampshire. The potential effects of any development on species listed as priorities in the UK BAP and by Local Biodiversity Partnerships (i.e. in the Hampshire BAP) are capable of being a material consideration in the preparation of regional spatial strategies and local development documents and the making of planning decisions.

[See <http://www.ukbap.org.uk/> and <http://www.hampshirebiodiversity.org.uk/> for more information]

UK BAP Species (June 2007) – Lists the priority species that require urgent conservation action under the UK BAP as a result of being either globally threatened or rapidly declining in the UK (by more than 25% in the last 25 years). This list is an important reference source and will be the focus for conservation action across the UK over the next decade.

Hampshire BAP Species (July 2000) – Lists the priority species requiring urgent conservation action at a national level that are found in Hampshire, or species which are considered as particularly important at a local context within Hampshire. This list has yet to be reviewed in the light of the more recent changes to the UK BAP species list and taking into account the latest knowledge on the distribution, rarity and threats to species within Hampshire.

Wildlife and Countryside Act 1981 (as amended)

The Wildlife and Countryside Act (WACA) 1981 (as amended) is the principle mechanism for the legislative protection of wildlife in Britain. It is the means by which the Bern Convention and the Birds Directive and Habitats Directive are implemented in Britain. Protected birds, animals and plants are listed in Schedules 1, 5 and 8 respectively of the Wildlife and Countryside Act.

[See <http://www.jncc.gov.uk/page-3614> for more information]

Schedule 1 Part 1 – Birds which are protected by special penalties at all times from being intentionally killed, injured, or taken and whose eggs, nests or dependent young are also protected from being disturbed.

Examples: Red Kite, Honey Buzzard, Hobby, Barn Owl, Brambling, Fieldfare

Schedule 5 Section 9 Part 1 (killing / injuring) – Animals which are protected from being intentionally killed or injured.

Examples: Adder, Slow-worm, Heath Fritillary, Dormouse, Otter, Bats (all UK species)

Schedule 5 Section 9 Part 1 (taking) – Animals which are protected from being taken.

Examples: White-clawed Crayfish, Natterjack Toad, Large Blue, Bats (all UK species)

Schedule 5 Section 9 Part 4a – Animals which are protected from intentional damage to, destruction of, or obstruction of access to any structure or place used for shelter or protection.

Examples: Water Vole, Great Crested Newt, Smooth Snake, Dormouse, Bats (all UK species)

Schedule 5 Section 9 Part 4b – Animals which are protected from intentional disturbance while occupying a structure or place used for shelter or protection.

sharing information about Hampshire's wildlife

The Hampshire Biodiversity Information Centre Partnership includes local authorities, government agencies, wildlife charities and biological recording groups.

Examples: Water Vole, Great Crested Newt, Smooth Snake, Dormouse, Bats (all UK species)

Schedule 8 – Plants and fungi which, subject to exceptions, are protected from: intentional picking, uprooting or destruction; selling, offering for sale, possessing or transporting for the purpose of sale; advertising for buying or selling.

Examples: Red Helleborine, Lady's Slipper, Slender Cottongrass, Wild Gladiolus

Protection of Badgers Act 1992

Both badgers and their setts are protected, making it illegal to kill, injure or take, possess or cruelly ill-treat badgers or to interfere with a badger sett (including blocking tunnels or damaging the sett in any way).

[See http://www.opsi.gov.uk/ACTS/acts1992/ukpga_19920051_en_1 for more information]

European Protected Species

European Protected Species are defined in English legislation as animals and plants listed in Annex IV of the Habitats Directive whose natural range includes any part of Britain and are protected under the Habitats Regulations 1994. European protected species of animals and their breeding sites or resting places are protected under Regulation 39. It is an offence for anyone to deliberately capture, injure or kill any such animal or to deliberately take or destroy their eggs. It is an offence to damage or destroy a breeding or resting place of such an animal. It is also an offence to have such an animal, live or dead, in one's possession or control. European protected species of plants are protected under Regulation 42. It is an offence to deliberately pick, collect, cut, uproot or destroy any such wild plant. It is also an offence for any purpose to possess, sell or exchange such a plant.

On 21 August 2007 an amendment to the Habitats Regulations 1994 came into force which removed many of the legal defences surrounding these species, including acts which were the incidental result of a lawful operation and could not have been reasonably avoided (commonly known as the 'incidental result defence'). It is no longer a reasonable defence to show that the killing, capture or disturbance of a European Protected Species, or the destruction or damage to their breeding sites or resting places, was the incidental or unavoidable result of an otherwise lawful activity.

Best practice guidance are available from Natural England to minimise the risks of committing an offence under the Regulations. Licences are also available from Natural England to allow persons to carry out activities that would otherwise be prohibited, without committing an offence in circumstances where best practice guidance either cannot be followed or is not applicable.

[See <http://www.naturalengland.org.uk/conservation/wildlife-management-licensing/habsregs.htm> for more information]

The following species are European Protected Species in England:

- Horseshoe bats (all UK species)
- Typical bats (all UK species)
- Marine turtles (all common UK species)
- Dolphins, porpoises and whales (all UK species)
- Large blue butterfly (*Maculinea arion*)
- Wild cat (*Felis silvestris*)
- Dormouse (*Muscardinus avellanarius*)
- Sand lizard (*Lacerta agilis*)
- Great Crested Newt (*Triturus cristatus*)

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- Otter (*Lutra lutra*)
- Smooth snake (*Coronella austriaca*)
- Sturgeon fish (*Acipenser sturio*)
- Natterjack toad (*Bufo calamita*)
- Shore dock (*Rumex rupestris*)
- Killarney fern (*Trichomanes speciosum*)
- Early gentian (*Gentianella angelica*)
- Lady's slipper (*Cypripedium calceolus*)
- Creeping marshwort (*Apium repens*)
- Slender naiad (*Najas flexilis*)
- Fen Orchid (*Liparis loeselii*)
- Floating-leaved water plantain (*Luronium natans*)
- Yellow marsh saxifrage (*Saxifraga hirculus*)

Natural Environment and Rural Communities (NERC) Act 2006

The Natural Environment and Rural Communities (NERC) Act 2006 extends the biodiversity duty conferred by Section 74 of the Countryside and Rights of Way (CROW) Act 2000 'to have regard' to the purpose of conserving biological diversity to include **all** public bodies, including local authorities, local planning authorities and statutory undertakers. Other measures introduced by the Act included the creation of the new integrated agency 'Natural England' to act as a powerful champion for the natural environment, and the formal establishment of a 'Commission for Rural Communities' to act as a strong national rural adviser, advocate and watchdog charged with ensuring that Government policies are making a real difference on the ground. The Act also makes provisions in respect of pesticides harmful to wildlife, the protection of birds, and in respect of invasive non-native species, and also alters enforcement powers in connection with wildlife protection, and extends time limits for prosecuting certain wildlife offences.

[See <http://www.defra.gov.uk/rural/ruraldelivery/bill/> for more information]

Section 41 Species

Section 41 of the Act requires that the Secretary of State publishes a list of species of flora and fauna considered to be of principal importance for the purpose of conserving biodiversity in England. The list is intended to be used to guide decision-makers such as public bodies, including local and regional authorities, in implementing their duty under section 40 of the NERC Act 2006 'to have regard' to the conservation of biodiversity in England, when carrying out their normal functions. The UK BAP list of 1149 species, published in 2007, was used to draw up a list of 938 species, also known as the 'England Biodiversity List', comprising those species found in England which have been identified as requiring action under the UK BAP. In addition, the Hen Harrier has also been included on the list because without continued conservation action it is unlikely that the Hen Harrier population will increase from its current very low levels in England.

National planning policy 'Planning Policy Statement 9: Biodiversity and Geological Conservation' (PPS9) indicates that local authorities should also take steps to further the conservation of species of principal importance through their planning function and identify opportunities to enhance and add to them. PPS9 also requires these species are treated as 'material considerations' and as such are protected from the adverse effects of development, where appropriate, by using planning conditions or obligations. Licences may also be needed where species are affected by development. The list of species of principal importance was first published in 2002 by DEFRA under Section 74 of the

Countryside and Rights of Way (CROW) Act 2000, and was identical to the UK BAP list at that time. The CROW Act Section 74 list has now been replaced by the Section 41 list.

Examples: Skylark, Tower Mustard, Great Crested Newt, Dormouse, Southern Damselfly

Notable

One of the following statuses locally determined by the relevant species groups in Hampshire (contact HBIC for further information):

- **County Rare (CR)**
- **County Scarce (CS)**
- **County of Other Interest (CI)**
- **North Hampshire Rare (nHR)** - (Vice County 12)
- **South Hampshire Rare (sHR)** - (Vice County 11)
- **North Hampshire Scarce (nHS)** - (Vice County 12)
- **South Hampshire Scarce (sHS)** - (Vice County 11)

The 'Rare' and 'Scarce' categories are distribution determined, whereas the 'County of Other Interest' category is an umbrella group to cover those species defined as notable on criteria other than rarity/scarcity, and may include species that are:

- Rapidly declining
- Hampshire responsibility (significant % of UK Resource)
- Long Extinct
- Endemic
- Nationally Protected
- Internationally listed
- HBAP listed
- Alien of interest