

**EXPLANATORY MEMORANDUM TO**  
**THE CONSERVATION (NATURAL HABITAT, &C.) (AMENDMENT) (ENGLAND**  
**AND WALES) REGULATIONS 2008**

**2008 No. 2172**

**1.** This explanatory memorandum has been prepared by Defra and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 These Regulations add three new species to Schedule 2 to the Conservation (Natural Habitat,&c.)(England and Wales) Regulations 1994 Habitats Regulations with the result that they are afforded strict protection under regulation 39 of those Regulations, as required by Article 12 of Council Directive on the conservation of natural habitats and of wild fauna and flora Necessary consequential amendments are also made.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

**4. Legislative Background**

4.1 Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive) seeks to promote maintenance of biodiversity by requiring Member States to take measures to maintain or restore natural habitats and wild species at a favourable conservation status. Certain animal species of Community interest have been designated as being in need of strict protection and are listed on Annex IV(a) to the Directive. Member States are required to implement strict measures of protection for these species.

4.2 The Habitats Directive is principally transposed into domestic law by the Conservation (Natural Habitats, &c.) Regulations 1994. Those species listed on Annex IV(a) to the Directive, whose natural range includes Great Britain, are listed on Schedule 2 to the Habitats Regulations and are known as European protected species (EPS). The Habitats Regulations prohibit the deliberate capture, killing, injuring or disturbance of EPS, as well as damage or destruction of breeding sites and resting places. However, the Regulations make provision for derogations to be made from the system of strict protection so that certain specified activities may lawfully take place. For example, if EPS are present on a site where a development is proposed, then a licence may be granted to enable the work to go ahead, so long as specific criteria are met.

4.3 We have been advised by the Joint Nature Conservation Committee (JNCC) that there are three additional species which should be added to Schedule 2 to the Habitats Regulations. Further detail on the species concerned is at paragraph 7. These species are listed on Annex IV(a) to the Habitats Directive but are not currently listed as EPS under the Habitats Regulations, although they are present in England and within their natural range. This is because they have been added to Annex IV(a) to the Habitats Directive as a

result of the accession of new member States to the European Union, because they were previously extinct in England, or because there has been debate over their taxonomy. We now have sufficient evidence to show that they should be added to Schedule 2 and afforded protection under the Habitats Regulations. The species concerned are rare and have a limited distribution.

4.4 The Habitat Regulations (Amendment) 2008 also amend the Wildlife and Countryside Act 1981 (WCA) so that EPS are removed from the scope of certain WCA offences. This ensures that there is no conflict between the two pieces of legislation, preventing a defence which is no longer available under the Habitats Regulations being available under the Wildlife and Countryside Act 1981. This is consistent with amendments made by the Habitats Regulations (Amendment) 2007.

## 5. Territorial Extent and Application

5.1 This instrument applies in relation to England and Wales.

## 6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## 7. Policy background

7.1 Species proposed for listing on Schedule 2 to the Habitats Regulations

<u>Common name</u>	<u>Scientific name</u>
<b>Lesser whirlpool ram's-horn snail</b>	<i>Anisus vorticulus</i>
<b>Pool frog</b>	<i>Rana lessonae</i>
<b>Fisher's estuarine moth</b>	<i>Gortyna borelii lunata</i>

### 7.2 Lesser whirlpool ram's-horn snail

The lesser whirlpool rams-horn snail was listed on Annex IV(a) to the Habitats Directive in 2003 as a result of adaptations to the Annexes made when additional member states acceded to the European Union. As it is extant and in its natural range in England, this species should be designated as a European Protected Species under the Habitats Regulations and be afforded legal protection. The snail has a known distribution limited to approximately 15 sites in East Anglia and the South-East.

### 7.3. Pool frog

The pool frog became extinct in England in the 1990s and hence was not listed on the Schedule 2 when the Habitats Regulations were introduced in 1994. Following the successful re-introduction of the species in 2005 there is now an established population of pool frogs in Norfolk. It is therefore important to add this frog to Schedule 2 now to ensure that this and any further populations are legally protected so that they have the best chance of survival in the future.

### 7.4 Fisher's estuarine moth

Although already afforded protection under the Wildlife and Countryside Act 1981 (WCA), debate over the taxonomy of Fisher's estuarine moth made it difficult to designate the species as an EPS under the Habitats Regulations, despite its inclusion on Annex IV(a) to the Habitats Directive. However, the taxonomy of this moth has now been resolved enabling the species to now be listed on Schedule 2 to the Habitats Regulations thus providing greater legal clarity for stakeholders.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been carried out as the potential impact falls below the threshold required for undertaking this.

## **9. Contact**

Alison Elliott at the Department for Environment, Food and Rural Affairs, Tel: 0117 372 8817 (e-mail: [Alison.Elliott@defra.gsi.gov.uk](mailto:Alison.Elliott@defra.gsi.gov.uk)) can answer any queries regarding the instrument.

# Transposition Note

Relating to Council Directive (92/43/EEC) on the Conservation of Natural Habitats and of Wild Fauna and Flora (“the Habitats Directive”)

The Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora (“the Habitats Directive”) provides a framework for the conservation and management of habitats (listed in Annex I to the Directive) and species of wild fauna and flora (listed in Annex II and Annex IV to the Directive).

In Great Britain, the Habitats Directive is principally transposed by the Conservation (Natural Habitats, &c.) Regulations 2004 (the Habitats Regulations), as amended<sup>1</sup>.

Article 12 of the Habitats Directive requires member States to establish a system of strict protection for the animal species listed in Annex IV(a) to the Directive in their natural range. The Habitats Regulations list in Schedule 2 those animal species listed in Annex IV to the Directive whose natural range includes any area in Great Britain (known as European protected species). These species are then afforded protection under regulation 39 of the Regulations.

Due to either the accession of new member states to the European Union, the successful re-introduction of previously extinct species, or the resolution of taxonomy issues, there are now 3 animal species listed on Annex IV to the Habitats Directive which need to be listed in Schedule 2 to the Habitats Regulations. This will enable them to receive the strict protection afforded under regulation 39, as required by Article 12 of the Habitats Directive.

The Conservation (Natural Habitats, &c.) (England and Wales) (Amendment) Regulations 2008 (the 2008 Regulations), which apply to England and Wales, therefore make changes to Schedule 2 to the Habitats Regulations by adding three new species. These species are *Anisus Vorticulus* (Lesser whirlpool ram’s-horn snail), *Rana lessonae* (Pool Frog) and *Gortyna borelii lunata* (Fisher’s estuarine moth).

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<sup>1</sup> The Regulations were most recently amended by the Conservation (Natural Habitats,&c.) (Amendment) Regulations 2007.

**The Conservation (Natural Habitats, &c.) (Amendment) (England and Wales) Regulations 2008.**

<b>Council Directive (92/43/EEC) on the conservation of natural habitats and of wild fauna and flora</b>			
<b>Articles</b>	<b>Objectives</b>	<b>Implementation</b>	<b>Responsibility</b>
Article 12.1	Member States must establish a system of strict protection for those animal species listed in Annex IV(a) to the Directive in their natural range.	<p>Regulation 39(1) of Conservation (Natural Habitats, &amp;c.) Regulations 2004 (the Habitats Regulations) provides the necessary protection through the creation of a number of criminal offences which relate to Annex IV(a) species whose natural range includes Great Britain. These species are listed in Schedule 2 to the Habitats Regulations and are known as European protected species (EPS).</p> <p>It is an offence to deliberately capture, injure, kill, or disturb (in a way set out in the Regulations) any of these animals, to deliberately take or destroy their eggs, or to damage or destroy a breeding site or resting place of such an animal.</p> <p>Regulation 3 of the 2008 Regulations add three new species to the list in Schedule 2. These species are <i>Anisus vorticulus</i>, <i>Rana lessonae</i> and <i>Gortyna borelii lunata</i> and have been added in order to ensure that we continue to comply with our obligations under the</p>	

	<p>To prevent a defence which is no longer available under the Habitats Regulations[see definition above] being available under the Wildlife and Countryside Act 1981. This is achieved by removing overlapping protection of EPS under the two pieces of legislation.</p>	<p>Habitats Directive.</p> <p>Regulation 4 amends Schedule 5 to the Wildlife and Countryside Act 1981 and removes the protection afforded to the Fisher's estuarine moth under section 9(1), (2) and (4)(a) of that Act. Sections 9(1) and (2) of the Wildlife and Countryside Act 1981 prohibit the killing, injuring, taking, possession and control of those animals listed on Schedule 5. Section 9(4)(a) protects their places of shelter and protection.</p>	
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