

ELIZABETH II



**Territories of South Georgia
and the South Sandwich Islands**

NIGEL ROBERT HAYWOOD C.V.O.,
Commissioner.

WILDLIFE AND PROTECTED AREAS ORDINANCE 2011

(No 1 of 2011)

ARRANGEMENT OF PROVISIONS

**PART I
PRELIMINARY**

Section

1. Title
2. Commencement
3. Application
4. Ordinance to bind the Crown
5. Interpretation and general

**PART II
PROTECTION OF WILDLIFE**

Protection of wild birds and mammals

6. Protection of wild birds and mammals
7. Supplementary to section 6

Protection of other native fauna

8. Protection of native invertebrates

Protection of native plants

9. Protection of native plants
10. Unlawful possession of live or dead wildlife

11. Introduction of non-native species
12. Prohibition of certain methods of killing wild birds or mammals
13. Special protection for species or habitats

Control of imports, exports and movement of wildlife within the Territory

14. Control of imports, exports and movement of wildlife within the Territory

General defences

15. General defences for the purposes of this Part

PART III

SPECIALLY PROTECTED AREAS (SPAs) AND MARINE PROTECTED AREAS (MPAs)

Specially protected areas

16. Specially protected areas (SPAs)
17. Management plans and regulations in relation to SPAs

Marine protected areas

18. Marine protected areas (MPAs)
19. Further provision as to orders designating MPAs
20. Conservation orders for the protection of MPAs

PART IV

PERMITS

21. Permits to do things otherwise prohibited
22. Supplementary to section 21
23. False statement made to obtain a permit
24. Permits: applications, production, revocation and suspension

PART V

**PROVISIONS IN RELATION TO OFFENCES
AND CONCLUDING PROVISIONS**

Provisions in relation to offences

25. Offences by bodies corporate
26. Institution of proceedings
27. Power of arrest etc
28. Trial of offences under this Ordinance
29. Penalty for offences under this Ordinance
30. Defences not applicable in civil proceedings

Concluding provisions

31. Regulations
32. Repeals
33. Exclusion of provisions of English law

ELIZABETH II



**Territories of South Georgia
and the South Sandwich Islands**

NIGEL ROBERT HAYWOOD C.V.O.,
Commissioner.

WILDLIFE AND PROTECTED AREAS ORDINANCE 2011

(No 1 of 2011)

(assented to: 31 May 2011)

(commencement: on publication)

(published: 2011)

AN ORDINANCE

To repeal the Wildlife and Protected Birds Ordinance 1913 and the Falkland Islands Dependencies Conservation Ordinance 1975; to exclude a number of provisions of English law which would otherwise apply in the Territory; to make new provision for the conservation of ecosystems and habitats, to make new provision in relation to the protection of wild birds, mammals, native invertebrates and native plants; to prohibit certain methods of killing wild birds and mammals; to restrict the introduction of non-native species; to make provision for specially protected areas (SPAs) and marine protected areas (MPAs); and for connected purposes.

ENACTED by the Commissioner for South Georgia and the South Sandwich Islands as follows—

**PART I
PRELIMINARY**

1. Title

This is the Wildlife and Protected Areas Ordinance 2011.

2. Commencement

This Ordinance comes into force when it is published in the *Gazette*.

3. Application

This Ordinance applies throughout the Territory (including the internal waters), the territorial sea and the Maritime Zone.

4. Ordinance to bind the Crown

(1) Subject to subsection (2), this Ordinance and regulations made under it bind the Crown.

(2) No contravention by the Crown of any provision of this Ordinance or of any regulations made under it makes the Crown criminally liable; but the Supreme Court may, on the application of any person appearing to the Court to have an interest, declare unlawful an act or omission by the Crown which constitutes such a contravention.

(3) Despite subsection (2), this Ordinance applies to persons in the public service of the Crown as it applies to other persons.

5. Interpretation and general

(1) In this Ordinance, unless the context otherwise requires —

“authorised person” means a person in the public service of the Crown, a commissioned officer in Her Majesty’s armed forces and any other person appointed in writing by or under the authority of the Commissioner to be an authorised person for the purposes of this Ordinance;

“Commissioner”, in relation to the exercise of any power conferred by this Ordinance upon the Commissioner, includes a public officer to whom the Commissioner has under subsection (4) delegated in writing the exercise of that power;

“contravene” includes failure to comply with and “contravention” has a corresponding meaning;

“injury” includes any disability, disease or infestation and “injure” has a corresponding meaning;

“internal waters” means those parts of the sea which lie to the landward side of the baselines of the territorial sea of the Territory established by article 3 of the South Georgia and South Sandwich Islands (Territorial Sea) Order 1989;

“living organism” includes a virus;

“marine mammal” means any mammal of the Orders Cetacea (whales, dolphins and porpoises) or Pinnipedia (seals);

“MPA” means a marine protected area designated by an Order under section 18(1);

“Maritime Zone” means the maritime zone for the Territory established by Proclamation No 1 of 1993 of the Territory, that is to say a zone having as its inner boundaries the outer limits of the territorial sea of the Territory and its seaward boundary a line drawn so that each point on the line is 200 nautical miles from the nearest point on the baselines defined;

“native bird” means any member, or egg, of any species of the Class Aves indigenous to the Territory or occurring there seasonally through natural migrations;

“native invertebrate” means any terrestrial, freshwater or marine invertebrate at any stage of its life cycle, indigenous to the Territory;

“native plant” means any terrestrial, freshwater or marine vegetation, including flowering plants, ferns, clubmosses, bryophytes, lichens, fungi and algae indigenous to the Territory and includes such vegetation at any stage of its life cycle and seeds and other propagules of such vegetation;

“non-native” in relation to micro-organisms, means viruses, bacteria and yeasts which are not indigenous to the Territory;

“non-sterile soil” means soil, sand or aggregate which is not free of every living organism;

“occupied building” means a building that is maintained for use by any person or body of persons, corporate or otherwise;

“offence under this Ordinance” includes any offence under any provision of any Order or regulations made under this Ordinance, incitement to commit an offence under this Ordinance, conspiracy to commit an offence under this Ordinance and any attempt to commit an offence under this Ordinance;

“pick” in relation to a plant means gather or pluck any part of the plant without uprooting the plant;

“protected feature”, in relation to an MPA or SPA, means any flora, fauna, habitat or other feature which is sought to be conserved by the order designating the area;

“recreational vessel” means any vessel designed or used for any recreational or sporting purpose (whether or not as part of a commercial enterprise) and includes a yacht;

“seashore” means —

(a) the foreshore, that is to say, land which is covered and uncovered by the ordinary movement of the tide; and

(b) any land, whether or not covered intermittently by water, which is in apparent continuity (determined by reference to the physical characteristics of that land) with the foreshore, as far landward as any natural or artificial break in that continuity;

“SPA” means an area which is a specially protected area designated by an Order under section 16(1);

“uproot”, in relation to a plant, means dig up or otherwise remove the plant from the place in which it is growing;

“vessel” includes a hovercraft, an aircraft capable of landing on water, and any other craft of any kind whatsoever capable of travelling on, in or under water, whether or not self propelled and whether or not capable of carrying any person;

“wild bird” means a native bird or a vagrant species of Class Aves arriving in the Territory without the assistance of man.

(2) Nothing in this Ordinance, except section 12, applies to rats or mice of any species.

(3) Any power under any provision of this Ordinance to make an Order or Regulations includes power by further Order or Regulations as the case may be under that provision to amend or revoke the Order or Regulations.

(4) The Commissioner may by instrument in writing delegate to any named public officer or public officers, subject to such conditions and limitations, if any, as he or she may specify in that instrument, the exercise of any power he or she has under this Ordinance specified in that delegation except that the Commissioner may not delegate his power under section 31 to make regulations.

PART II PROTECTION OF WILDLIFE

Protection of wild birds and mammals

6. Protection of wild birds and mammals

(1) Subject to this Part, and except as permitted under a permit granted under section 21(1), a person commits an offence who intentionally or recklessly —

- (a) kills, injures, captures, handles or molests a wild bird or mammal;
- (b) administers any noxious substance to a wild bird or mammal;
- (c) damages or destroys the breeding site or the nesting place or nest of a native bird;
- (d) takes, destroys or damages an egg of a native bird; or
- (e) disturbs a breeding or moulting wild bird, the dependent young of any native bird, mammal or a concentration of wild birds or mammals.

(2) Subject to this Part, a person commits an offence who —

- (a) uses a vehicle, vessel or aircraft in a manner that disturbs a concentration of wild birds or mammals, or which disturbs any marine mammal of the Order Cetacea;
- (b) uses firearms or explosives in a manner that disturbs any wild birds or mammals; or

(c) does anything that is likely to cause significant damage to the habitat of any wild bird or mammal.

7. Supplementary to section 6

(1) Where a person is charged with an offence in respect of a contravention of section 6(1)(a) of killing, injuring or molesting a wild bird or mammal), it is a defence for him or her to show that the act in question was done for the relief of the suffering of the wild bird or mammal in question.

(2) It is a defence for a person charged with an offence under section 6(1)(a) of capturing or handling a wild bird or mammal if he or she shows that the wild bird or mammal —

(a) was captured or handled by him or her for the purpose of attending to any injury or disease suffered by it and thereafter returned it to the wild without unreasonable delay; and

(b) if it was injured, the injury was not caused by an unlawful act on his or her part.

(3) It is a defence for a person charged with an offence under section 6(1)(b) of administering a noxious substance to a wild bird or mammal to show that the noxious substance was reasonably used by him or her in providing treatment in relation to any injury or disease suffered by the wild bird or mammal.

Protection of other native fauna

8. Protection of native invertebrates

(1) Subject to this Part, and except as permitted under a permit granted under section 21(1), it is an offence for a person intentionally or recklessly —

(a) to do anything that is likely to cause significant damage to the habitat of any native invertebrate; or

(b) to collect any native invertebrate other than from within an occupied building or its immediate surroundings,

but nothing in paragraphs (a) and (b) applies to any damage arising to the habitat of a native invertebrate from anything done in the course of the lawful operation of a vessel.

(2) In any proceedings for an offence under subsection (1), unless in a building or its immediate surroundings, the invertebrate is to be presumed to be a native invertebrate unless the contrary is shown.

Protection of native plants

9. Protection of native plants

(1) Subject to this Part and except as permitted under a permit granted under section 21(1), a person commits an offence who intentionally or recklessly —

- (a) picks, collects, uproots or applies any noxious substance to any native plant; or
- (b) damages or destroys a concentration of native plants in such a manner or to such an extent that their local distribution or abundance will be significantly affected

but nothing in this subsection applies to anything done in the course of the lawful operation of a vessel.

(2) In any proceedings for an offence under subsection (1), the plant is to be presumed to be a native plant unless the contrary is shown.

Other offences in relation to wildlife

10. Unlawful possession of live or dead wildlife

Subject to this Part and except as permitted under a permit granted under section 21(1), a person commits an offence if he or she knowingly has in his or her possession, transports, sells, exchanges or offers for sale or exchange —

- (a) any live or dead wild bird, mammal, native invertebrate or native plant;
- (b) any egg of a native bird; or
- (c) any part of, or anything derived from, such a wild bird, mammal, native invertebrate, egg of a native bird or native plant.

11. Introduction of non-native species

(1) Subject to the provisions of this Part and except as permitted under a permit granted under section 21(1), a person commits an offence who releases or allows to escape into the wild in the Territory any animal or plant of a non-native species.

(2) Subject to the provisions of this Part and except as permitted under a permit granted under section 21(1), a person commits an offence who —

- (a) keeps on board any vessel in the territorial sea or internal waters or lands or permits to alight on land or escape onto land or into the sea any animal of a non-native species;
- (b) plants or distributes in the wild in the Territory seeds or propagules of a non-native plant;
- (c) cultivates in the Territory any non-native plant; or
- (d) except by reason of unavoidable accident or unavoidable natural process, releases or allows any non-native micro-organism to escape in the Territory.

(3) In any proceedings for an offence under any of the preceding subsections, the organism concerned is to be presumed to be non-native unless the contrary is shown.

(4) Subject to subsection (5), it is a defence to a charge of committing an offence under subsection (1) or (2) for the accused to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(5) Where the defence provided by subsection (4) involves an allegation that the commission of the offence was due to the default of another person, the person charged is not, without leave of the court, entitled to rely on the defence unless, within a period ending seven clear days before the hearing, he or she has served on the prosecutor a notice giving such information identifying or assisting in the identification of the other person as was then in his or her possession.

12. Prohibition of certain methods of capturing or killing wild birds or mammals

(1) A person commits an offence who —

(a) traps, snares, electrocutes, mutilates, kicks, beats, nails or otherwise impales, stabs, burns, stones, crushes, drowns, shoots with any form of projectile, stuns, dazzles, frightens, asphyxiates, poisons, stupefies or attempts to poison or stupefy any wild bird or mammal;

(b) uses a mechanically propelled vehicle or vessel in immediate pursuit of a wild bird or mammal;

(c) uses any live bird or live marine mammal whatsoever, any sound recording or any live bird or live marine mammal as a decoy for the purpose of killing or capturing any wild bird or marine mammal;

(d) knowingly causes or permits to be done an act which is mentioned in the foregoing provisions of this subsection.

(2) Subsection (1) is subject to subsection (3).

(3) A person does not commit an offence under subsection (1) if —

(a) the activity is undertaken under a permit granted by the Commissioner under section 21(1); or

(b) the activity is the use of traps or poison bait to kill mice or rats for preventative biosecurity reasons.

(4) The Commissioner may, by Order, either generally or in relation to any kind of wild bird or mammal, amend subsection (1) by adding any method of killing or capturing or omitting any such method as is mentioned in that subsection.

(5) In any proceedings for an offence under subsection (1)(a) it is a defence for the accused to show that the article was set in position or used for the purpose of killing or taking, in the interests of public health, fisheries or nature conservation any wild bird or mammal which could lawfully be taken or killed by those means and that he or she took all reasonable precautions to prevent injury to any other wild bird or mammal.

13. Special protection for species and habitats

(1) The Commissioner may by Order under this subsection provide that measures of special protection, specified in the Order (“the measures”) are to be established in respect of any species of animal or plant, terrestrial or aquatic, specified in the Order (and, for the purposes of this section, measures for the protection of the habitat of any species are deemed to be measures for the protection of that species).

(2) All persons must comply with the measures unless excused from doing so by any provision of the Order.

(3) An Order under subsection (1) may make such provision as the Commissioner may think fit as to the preparation, contents, publication, approval, implementation and any other matter relating to or connected with an action plan or action plans in respect of any species afforded special protection by that Order.

(4) An Order under subsection (1) may create such offences as the Commissioner considers necessary or expedient to ensure so far as possible compliance with the measures.

Control of imports, exports and movement of wildlife within the Territory

14. Control of imports, exports and movement of wildlife within the Territory

(1) Except as permitted under a permit granted under section 21(1) or, in relation to the import or export of fish, a licence granted under any legislation of the Territory relating to fishing, a person commits an offence who —

(a) imports into the Territory or exports from the Territory, living or dead, any animal, plant, or any part or thing which is a derivative of any such species;

(b) imports non-sterile soil into the Territory;

(c) intentionally or recklessly transports to or releases at a place within the Territory any thing of a kind mentioned in paragraph (a) or (b) which has been acquired at another place within the Territory;

(d) disposes of any poultry in the Territory; or

(e) disposes of any thing of a kind mentioned in paragraph (a) or (b) without due regard to preventing its establishment or spread in the Territory.

(2) In this section, “poultry” means any bird, or derivative of a bird intended for human consumption.

(3) For the purposes of subsection (1) and (2), “derivative” in relation to a species includes any part of the body living or dead (including any bone, skin, feathers, fur or scales), of a member of that species and any egg, spawn, embryo, gamete, zygote, larva, pupa, seed or spore of a member

of that species but does not include anything which has undergone a manufacturing process and is intended for human consumption as food.

(4) Any wild bird or marine mammal or part of a wild bird or marine mammal taken from the sea within the territorial sea or Maritime Zone is to be deemed not to have been imported into the Territory if it is landed directly in the Territory.

General defences

15. General defences for the purposes of this Part

(1) Where a person is charged with an offence under section 6, 8, 9, 11 or 14 or an Order under section 13 it is a defence to prove that the contravention in question occurred in the course of dealing with an emergency relating to —

(a) the safety of human life;

(b) the safety of any vessel or aircraft of significant value or cargo, equipment or facilities of significant value or importance, or

(c) the protection of the environment.

(2) It is a defence for a person charged with an offence under any provision of section 6, 8, 9, 11 or 14 or an Order under section 13 to show that the act rendered unlawful under that provision was the incidental result of an otherwise lawful operation and could not reasonably have been avoided.

PART III

SPECIALLY PROTECTED AREAS (SPAs) AND MARINE PROTECTED AREAS (MPAs)

Specially protected areas

16. Specially protected areas (SPAs)

(1) If the Commissioner believes that any area of land is in need of a high level of protection to preserve its special values he or she may by Order under this subsection designate that area as a specially protected area (“SPA”).

(2) The Commissioner may designate an area as an SPA if he or she believes that any of the following applies in respect of that area —

(a) the flora, fauna, habitats or other features to be found in the area render it of significant conservation or ecological importance;

(b) it is of significant geological, geomorphological or landscape importance; or

(c) it is of high scientific interest.

(3) The reference in subsection (1) to land includes any land lying directly above mean low water mark.

(4) If an area of land to which an Order relates includes land falling within subsection (3) (“area A”), it may also include land lying below mean low water mark (“area B”) if —

(a) area B adjoins area A, and

(b) any of the conditions set out in subsection (5) is satisfied

(5) The conditions are —

(a) that the flora, fauna, habitat, or other features leading to the designation of area A is or are also present in area B;

(b) that the designation of area A is by reason of any flora, fauna or habitat which are dependent (wholly or in part) on anything which takes place in, or is present in, area B;

(c) that, without the addition of area B, the identification of the boundary of the land to which the Order relates (either in the Order or on the ground for the purposes of exercising functions in relation to it) would be impossible or impracticable.

(6) An Order under subsection (1) must specify —

(a) the boundaries of the area designated;

(b) the flora, fauna, habitat, geological, landscape or other features giving rise to the making of the Order (the protected features);

(c) the conservation objectives for the area,

and may prohibit entry into the area without permission and provide that permission to enter it can only be granted in special circumstances.

(7) Nothing in an Order prohibiting entry into an SPA applies to an authorised person acting in the course of his or her duties.

(8) A person commits an offence who, except as provided by subsection (7), contravenes a provision of an Order which prohibits entry into an SPA without being authorised to enter the SPA by a permit granted under section 21(1).

17. Management plans and regulations in relation to SPAs

(1) The protection and management of an SPA will be achieved by the implementation of a management plan devised in relation to that SPA or a number of SPAs including that SPA.

(2) A management plan is a scheme for —

(a) conserving, protecting, or preserving, as the case may be, such of the features mentioned in paragraphs (a) to (c) of section 16(2) as have justified the area being designated as an SPA; or

(b) as the case may be, restoring them; or

(c) both (a) and (b).

(3) The Commissioner must make regulations to provide for the implementation of the management plan.

(4) Regulations made under subsection (3) must contain a synopsis of the management plan and may —

(a) provide for any of the matters mentioned or referred to in subsection (2);

(b) prohibit or restrict (either absolutely or subject to exceptions specified in the regulations) entry into or movement within the SPA of vehicles or craft of any kind;

(c) prohibit or restrict all or specified activities within the SPA;

(d) impose or provide for the imposition of conditions subject to which restricted activities may be undertaken in the SPA;

(e) prohibit within the SPA the depositing of rubbish or other wastes and the discharge of noxious or polluting substances;

(f) prohibit the bringing into the SPA of any weapon or other device or thing designed or adapted for the purpose of killing, or capturing any wild bird or mammal;

(g) prohibit the lighting of any fire, or the smoking of any cigar, cigarette or pipe within the SPA.

(5) A person commits an offence who contravenes any regulations made under subsection (3).

Marine protected areas

18. Marine protected areas (MPAs)

(1) Subject to subsection (2), if the Commissioner believes that any area of sea falling within subsection (6) is in need of protection he or she may by Order under this subsection designate that area as a marine protected area (“MPA”).

(2) The Commissioner may designate an area as an MPA by Order under subsection (1) if he or she believes it is desirable to do so for the purpose of conserving one or more of —

(a) marine flora or fauna;

(b) any species dependent on the marine environment;

(c) marine habitats or types of marine habitat;

(d) features of scientific interest, including those of geological, geomorphological or oceanographic interest.

(3) The reference in subsection (2)(a) to conserving marine flora or fauna and the reference in subsection (2)(b) to conserving any species dependent on the marine environment includes, in particular, references to conserving any species that is rare or threatened because of —

(a) the limited number of individuals of that species;

(b) the limited number of locations within the Territory, regionally or globally, in which that species is present.

(4) The references in subsection (2)(a), (b) and (c) to conserving marine fauna or flora, species dependent on the marine environment or habitats include references to conserving the diversity of such flora, fauna or habitats, whether or not any or all of them are rare or threatened.

(5) Any reference to conserving a species or habitat includes references to —

(a) assisting in its conservation;

(b) enabling or facilitating its recovery or increase.

(6) An area falls within this subsection if —

(a) it falls entirely within one or more of —

(i) internal waters;

(ii) the seaward limits of the territorial sea;

(iii) the Maritime Zone north of latitude 60 degrees south; and

(b) except so far as is permitted by section 19(5) read with section 19(6), it does not include any area lying above mean high water spring tide.

19. Further provisions as to orders designating MPAs

(1) An Order under section 18(1) must —

(a) identify the boundaries of the area designated;

(b) state the protected feature or features;

(c) state the conservation objectives for the MPA.

(2) The boundary of an MPA may be defined by, or by reference to, mean high water spring tide.

(3) An Order under section 18(1) designating an area falling within 18(6)(a)(i), (ii) or (iii) must designate —

(a) an area of land (whether or not covered by water) only; or

(b) an area of land together with all or some of the water covering it.

(4) Section 18(6)(a)(i), (ii) and (iii) include any island, whether or not any part of it lies above mean high water spring tide.

(5) If an MPA includes an area falling within section 18(6)(a)(i) or (ii) (“area A”), it may also include an area of the seashore lying above mean high water spring tide (“area B”) if —

(a) area B adjoins area A, and

(b) any of the conditions in subsection (6) are satisfied.

(6) The conditions are —

(a) that the protected feature or features leading to the designation of area A is or are also present in area B;

(b) that area A is designated for the purpose of protecting marine flora or fauna, habitat, or species dependent on the marine environment, which are dependent (wholly or in part) on anything which takes place in, or is present in, area B;

(c) that, without the inclusion of area B, the identification of the boundary of the MPA (either in the Order designating the area or on the ground for the purpose of exercising functions in relation to it) would be impossible or impracticable.

20. Conservation orders for the protection of MPAs

(1) The Commissioner may make one or more Orders for the purposes of furthering the objectives of an MPA.

(2) In this Part “conservation order” means an Order under subsection (1).

(3) The provision that may be made by a conservation order includes, in particular, provision —

(a) prohibiting or restricting entry into, or any movement or activity within, the MPA by persons;

- (b) prohibiting or restricting entry into, or any movement or other activity within the MPA by vessels, including recreational vessels; or where appropriate, vehicles;
- (c) restricting the speed at which any vessel may move in the MPA or in a specified area outside the MPA where that movement might hinder the conservation objectives of the MPA;
- (d) prohibiting or restricting the anchoring of any vessel within the MPA;
- (e) prohibiting or restricting the doing of anything in the MPA which will interfere with the seabed or damage or disturb any object in the MPA,

provided that no provision in a conservation order has effect so as to prevent a vessel having the right of innocent passage or transit passage through the MPA or from doing anything it is entitled to do in the exercise of that right.

(4) The provision that may be made by a conservation order also includes provision prohibiting or restricting entry into, or any movement or other activity on, any part of the seashore that adjoins the MPA by persons or vehicles.

(5) A conservation order may be made subject to specified exceptions.

(6) A conservation order may make different provision for different cases including (in particular) —

- (a) different parts of the MPA;
- (b) different times of the year;
- (c) different means or methods of carrying out any activity.

(7) In this section “specified” means specified in the Order.

(8) Nothing in a conservation order applies to anything done —

- (a) in the interests of the prevention or detection of crime;
- (b) for securing public health; or
- (c) for the purpose of saving human life, securing the safety of any vessel of significant value or of preventing damage to any vessel or cargo (in either case of significant value) from any danger which could not have been foreseen or avoided.

(9) Subject to subsection (8) and to any permit granted to him or her under section 21(1), a person who contravenes a conservation order made under subsection (1) of this section commits an offence.

PART IV
PERMITS

21. Permits to do things otherwise prohibited

(1) The Commissioner, may, of his or her own motion or on the application of any person —

(a) grant for a purpose specified in subsection (6) a permit authorising any person who is specified or of a description specified in the permit to do anything specified or of a description specified in the permit that would otherwise constitute a contravention of section 6, 8, 9, 10, 11, 12, 14, or 16, regulations under section 17(3) or of any prohibition or restriction contained in an Order made under section 17(1) or section 20(1);

(b) grant a permit of general effect (that is to say a permit the benefit of which enures (subject to such exceptions as may be specified in the permit) to all persons present in the Territory) to do anything specified in the permit which would otherwise be prohibited by section 14.

(2) Unless the Commissioner is satisfied that the permit is granted for a compelling scientific purpose or that the grant of the permit will not jeopardise the survival of the species concerned or the survival of the local population of that species or is necessary in the interests of public health or safety, he or she must not grant a permit under subsection (1) —

(a) to kill, capture or handle a wild bird, marine mammal or native invertebrate;

(b) to take an egg of a native bird; or

(c) to pick, collect or uproot a native plant.

(3) The Commissioner must not grant a permit under subsection (1) to enter an SPA in relation to which the Order designating it indicates that a permit to enter it will only exceptionally be granted unless the Commissioner is satisfied that the applicant has demonstrated that in the exceptional circumstances disclosed in their application the permit ought to be granted.

(4) The Commissioner may grant a permit under subsection (1) subject to such conditions as he or she thinks fit including —

(a) conditions to be complied with by persons doing anything authorised by the permit; and

(b) conditions requiring the person to whom the permit is granted to provide information to the Commissioner.

(5) The Commissioner may, by notice published in the Gazette, require a fee to be paid on the grant of any permit under subsection (1) and may waive payment of a fee in any particular case.

(6) Subject to subsection (7), the purposes for which a permit may be granted under subsection (1) are —

(a) scientific, research and educational purposes;

(b) conserving wild birds, marine mammals, native invertebrates or native plants or for re-introducing them to the Territory or re-establishing them in particular areas within the Territory;

(c) conserving or restoring, habitats;

(d) preserving public health or public safety;

(e) preventing the spread of disease; and

(f) any other purpose for which the Commissioner believes that a permit may properly, in all the circumstances, be granted.

(7) Permits issued for any of the purposes set out in subsection (6) must be limited so as to ensure, as far as possible, that —

(a) the diversity of native species and the balance of the natural ecological systems of the Territory are maintained;

(b) no more wild birds, marine mammals, native invertebrates or native plants are taken than are necessary for the purpose or purposes for which the permit was granted;

(c) no more wild birds or marine mammals are killed or captured from local populations than can reasonably be expected to be replaced in the following breeding season by natural reproduction.

22. Supplementary to section 21

(1) A permit under section 21(1) which authorises any person to kill or capture any wild bird or mammal must specify the area within which and the methods by which such a wild bird or mammal may be killed or captured and may be granted for a period not exceeding one year specified in the permit.

(2) A person commits an offence who —

(a) contravenes any condition of a permit granted under section 21(1); or

(b) fails without reasonable excuse to produce to an authorised person a permit, or a copy of a permit issued under section 21(1).

23. False statement made to obtain a permit

A person commits an offence who for the purpose of obtaining for themselves or another person the grant of a permit under section 21(1) —

(a) makes a statement or representation, or furnishes any document or information, which he or she knows to be false in a material particular; or

(b) recklessly makes a statement or representation, or furnishes a document or information which is false in a material particular.

24. Permits: applications, production, revocation and suspension

Regulations may make provision —

(a) as to the procedure for making applications for permits under section 21(1);

(b) as to the circumstances in which permits may be required to be produced;

(c) as to the circumstances in which permits are liable to be revoked or suspended by the Commissioner;

(d) as to the notice to be given before permits are revoked or suspended, and as to other procedures to be followed in relation to the revocation or suspension of permits; and

(e) for appeals against the revocation or suspension of permits, and as to the procedure to be followed in relation to such appeals (including provision in accordance with which such procedure is to be determined).

PART V PROVISIONS AS TO OFFENCES AND CONCLUDING PROVISIONS

Provisions in relation to offences

25. Offences by bodies corporate

(1) Where an offence under this Part has been committed by a body corporate and the contravention in question is proved to have occurred with the consent or connivance of, or to be attributable to any neglect on the part of —

(a) a director, manager, secretary or other similar officer of the body corporate, or

(b) any person who was purporting to act in any such capacity,

he or she as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly.

(2) In subsection (1) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

26. Institution of proceedings

Proceedings for an offence under this Ordinance may not be instituted except by or with the consent of the Attorney General for the Territory:

Provided that this section does not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, notwithstanding that the necessary consent for institution of proceedings has not been obtained.

27. Power of arrest etc

(1) Regulations may make provision for —

(a) the arrest anywhere in the Territory of any person suspected of committing an offence under this Ordinance;

(b) stopping and searching any person suspected of committing any such offence;

(c) the search without a warrant of any premises, land, vessel, vehicle or aircraft which it is believed may contain any evidence of any such offence;

(d) the authorisation of persons to exercise the powers referred to in this subsection;

(e) the conveyance in custody of any person arrested under regulations made by virtue this subsection to any place, whether in the Territory or elsewhere, where he or she can be tried for the offence in question;

(f) the seizure and detention of any article which may be evidence of an offence under this Ordinance and its conveyance to any place, whether in the Territory or elsewhere, where a person charged with that offence can be tried; and

(g) securing the attendance, before any court, whether in the Territory or elsewhere, before which a person can be tried for an offence under this Ordinance, of any person required to give evidence or produce documents in proceedings relating to that offence.

28. Trial of offences under this Ordinance

All offences under this Ordinance are to be tried summarily by the Magistrate's Court which, on convicting an offender, has the power, notwithstanding any other law of the Territory, to impose any penalty provided for by section 29.

29. Penalty for offences under this Ordinance

(1) A person convicted of an offence under this Ordinance is liable to a fine or to imprisonment for a term not exceeding two years or both a fine and such imprisonment.

(2) In subsection (1) "a fine" means a fine of such amount as the Magistrate's Court sees fit to impose having regard to the gravity and consequences of the offence, and the need to discourage others from committing like offences and the means and circumstances of the offender.

30. Defences not applicable in civil proceedings

(1) Subsection (2) applies if a person establishes a defence to (or an exception from) an offence against (or contravention of) this Ordinance (or regulations made under it).

(2) If this subsection applies, the defence (or exception) does not affect whether or not the person has civil liability in relation to the circumstances in which the defence (or exception) applied.

Concluding provisions

31. Regulations

Regulations under this Ordinance may make —

(a) different provision for different cases or circumstances; and

(b) incidental and supplementary provisions.

32. Repeals

The Wildlife and Protected Birds Ordinance 1913 and the Falkland Islands Dependencies Conservation Ordinance 1975 are hereby repealed.

33. Exclusion of provisions of English law

(1) The following provisions of English law no longer apply as part of the law of the Territory except by virtue of a provision of the law of the Territory applying them by name —

(a) the Wildlife and Countryside Act 1981;

(b) the Wild Mammals (Protection) Act 1996;

(c) the Countryside and Rights of Way Act 2000; and

(d) Parts 2 and 3 of the Natural Environment and Rural Communities Act 2006.

(2) In subsection (1) a reference to an Act includes a reference to any later Act amending or modifying that Act, whether enacted before or after the commencement of this Ordinance.

Made 31st May 2011

N. R. Haywood C.V.O.,
Commissioner.