

As amended by: Fines (Alteration) Order 2003 (SR&O 7/03)

ELIZABETH II



Colony of the Falkland Islands

WILLIAM HUGH FULLERTON C.M.G.,
Governor.

Marine Mammals Ordinance 1992

(No: 8 of 1992)

(assented to: 23rd June 1992)
(commencement: on publication)
(published: 10th July 1992)

An Ordinance

to prohibit the killing or taking of marine mammals on land or in the internal waters, territorial sea or fishery waters of the Falkland Islands.

ENACTED by the Legislature of the Falkland Islands as follows —

Short title

1. This Ordinance may be cited as the Marine Mammals Ordinance 1992.

Interpretation

2. In this Ordinance, and unless the context otherwise requires —

“cetacean” means any creature such as a whale, dolphin or porpoise and which is an aquatic placental mammal is adapted for aquatic life and has a blowhole for breathing;

“court” means the Summary Court or the Magistrate’s Court;

“Falkland Islands waters” means the internal waters, territorial sea and fishery waters of the Falkland Islands;

“marine mammal” means any cetacean, otter or pinniped;

“otter” means any mammal of the subfamily *Lutrinae*;

“pinniped” means any animal such as a seal, fur seal or sealion which is an aquatic placental mammal which has a streamlined body and limbs specialised as flippers.

Prohibition of taking killing etc of marine mammals

3.—(1) Except as provided by subsection (2) it shall be unlawful for any person —

(a) with intent to do so, to take, wound or kill any marine mammal on land within the Falkland Islands or within Falkland Islands waters;

(b) on land in the Falkland Islands or within Falkland Islands waters to administer any noxious substance to any marine mammal;

(c) to use on land within the Falkland Islands or within Falkland Islands waters any explosive in such manner as, in all the circumstances of the case, is likely to cause harm to any marine mammal; or

(d) to use within Falkland Islands waters, any net, trawl line or hook of a type or length prescribed for the purposes of this paragraph by regulations made under section 4, in any manner prohibited by such regulations.

(2) Nothing in subsection (1) prohibits —

(a) any person doing anything reasonably done with the intent of relieving or preventing suffering by the marine mammal to which that thing is done;

(b) any person doing anything reasonably done with the intent of preserving the life of or preventing injury to the person doing that thing or any other person,

but, in a prosecution for an offence under subsection (3), it is for the person doing that thing to prove on the balance of probabilities that it was done with one or other of the intents mentioned in (a) and (b) and that it was reasonably done with the intent in question.

(3) A person who contravenes subsection (1) is liable if he be not a body corporate to a fine of an amount not exceeding Level 7 or to imprisonment for a period not exceeding twelve months, but if a body corporate to a fine of an amount not exceeding Level 12.

(4) Where an offence under subsection (3) has been committed by a person with the consent or connivance of or is proved to be attributable to the neglect of a body corporate or of a director manager, secretary or similar officer of the body corporate or any person who was purporting to act in that capacity, the body corporate in question and that director, manager, secretary or similar officer or person so purporting to act shall each be taken to have committed that offence and may be proceeded against accordingly in addition to or instead of the first-

named person.

In this subsection “director” in relation to a body corporate which —

- (a) is established under any law of an overseas country or territory; and
- (b) is a body whose affairs are managed by its members,

means a member of that body corporate.

(5) Where an offence under subsection (3) has been committed by a person who, at the time in question, was aboard any vessel, the master of the vessel and the master's employer shall be taken also to have committed that offence and may each be proceeded against accordingly in addition to or instead of the first-named person.

For the purposes of this subsection the registered owner of the vessel shall be deemed to be the employer of the master of the vessel unless the contrary is proved.

(6) A police officer or a fishery protection officer may arrest without warrant any person whom he reasonably suspects to have committed an offence under subsection (3) and a fishery protection officer may detain any vessel aboard which he reasonably suspects such an offence has been committed.

(7) A fishery protection officer may for the purposes of better detention of a vessel require that ship to proceed to any port in the Falkland Islands and there remain for so long as it is detained under this section.

(8) A vessel shall not be detained under this section after the latest to expire of such of the following periods as may in the circumstances be applicable —

- (a) a period of seventy-two hours after it was first detained unless some person aboard that vessel is within that period charged with an offence under this section;
- (b) where a person aboard that vessel is charged with an offence under subsection (3), after the determination of proceedings in relation to the prosecution of that offence or the earlier release of the vessel by order of a court; or
- (c) where a court has convicted the registered owner of the vessel of an offence under subsection (3), after any fine imposed by the court on the registered vessel owner of the vessel following such conviction has been paid.

(9) Where a police officer or fishery protection officer has under subsection (6) the power to arrest any person, he or any other police officer or fishery protection officer also has power without warrant to search any premises or vessel in or upon which he reasonably believes the person he has arrested or may arrest to be or to have been at the time of the offence, but a search under this paragraph shall be limited to a search for anything which may have been used in or in

connection with the commission of the offence.

(10) A police officer or a fishery protection officer may seize and detain for the purpose of it being used as evidence in a prosecution for an offence under subsection (3) anything which he reasonably suspects has been used in or in connection with the commission of such an offence.

(11) A court may make such order as it thinks fit as to the disposal of anything seized or detained under subsection (1), but if no person prosecuted for an offence under subsection (3) is convicted of an offence in or in connection with which that thing was seized and detained, the court in which proceedings for prosecution of that offence were commenced shall order that that thing be returned to the person who appears to the court to be the person who would have been entitled to possession of that thing if it had not been seized.

Importation or exportation of marine mammals

4.—(1) Except as provided by subsection (2) it is unlawful for any person to import into or export from the Falkland Islands any marine mammal or any part of a marine mammal living or dead.

(2) Subsection (1) does not apply in respect of the importation or exportation of any marine mammal or part of a marine mammal under the authority and in accordance with any conditions imposed under a licence granted by the Governor on the advice of the Executive Council.

(3) On the grant of a licence under subsection (2) such conditions may be imposed as the Governor on the advice of the Executive Council thinks fit.

(4) Section 2(3) and (4) apply in respect of a contravention of subsection (1) of this section as they do in respect of a contravention of section (1) of that section.

(5) A police officer or a customs officer may arrest without a warrant any person whom he reasonably suspects to be in the course of committing or attempting to commit an offence under this section and may seize without a warrant any marine mammal or part of a marine mammal which he reasonably believes to be the subject of such an offence.

Regulations

5. The Governor may make any regulations which appear to him to be necessary or convenient for the achievement of the purposes of this Ordinance and, without prejudice to the generality of the foregoing may make regulations —

(a) prohibiting the use within Falkland Islands waters of any nets trawl line or hook of a type or length prescribed in those regulations (and being such as, in the opinion of the Governor, are likely to take, kill, wound or harm any marine mammal and whether or not the purpose of the net appears to the Governor to take kill or wound any marine mammal);

(b) restricting the use of any net trawl line or hook within Falkland Islands waters to circumstances in which it appears to the Governor its use is less likely to take, kill or wound a marine mammal.

Jurisdiction of Courts

6. The Summary Court and the Magistrate's Court shall each have power to try and determine any proceedings for an offence under this Ordinance and to impose any sentence provided for by this Ordinance.

Repeals

7. The Ordinances specified in the Schedule are repealed.

SCHEDULE (section 7)

Cap. 62	Seal Fishery Ordinance
Cap. 76	Whale Fishery Ordinance

Passed by the Legislature of the Falkland Islands this 5th day of June 1992.

A. Livermore,
Clerk of Councils.

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Council, and is found by me to be a true and correctly printed copy of the said Bill.

A. Livermore,
Clerk of Councils.