

**DRAFT CONSERVATION OF WILDLIFE (JERSEY) LAW 199
(P.223/98): AMENDMENTS**

**Lodged au Greffe on 13th April 1999
by the Deputy of Grouville**



STATES OF JERSEY

STATES GREFFE

Report to Amendment 1

The terms “fauna species” and “flora species” are defining terms used in the Berne Convention on the Conservation of European Wildlife and Natural Habitats, with which the United Kingdom is now harmonizing, and their adoption here should therefore be welcomed.

The stated purpose of the principal law is the Conservation of Wildlife. Implied in that is the conservation of species that are native to Jersey, i.e. the indigenous components of the original naturally established *‘flora and fauna’* of the Island within the context of the Gulf of St. Malo. Jersey and the other Channel Islands are off-shore outliers of continental France and that is the bio-geographical context in which they should be viewed. Bio-geographically, Jersey is not part of the British Isles, and the significance of the presence of species here in Jersey has to be understood in that light. The Island is on the opposite shore of the English Channel from the United Kingdom and species that occur rarely or not at all in the United Kingdom may be quite common in France. At the same time, small breeding populations of otherwise common British species may in Jersey receive special conservation because of their vulnerability to elimination from the local flora or fauna of a small Island.

The species that this Law should be most concerned about are those native to the Island and its surrounding waters, either as residents or as migrants. Introduced species, exotics and feral animals are of separate concern because of the damage to the chances of long-term survival of the native flora and fauna that they can cause if not controlled. It is for this reason that I have brought this amendment insisting on defining the term “wild animal” as native fauna species.

Throughout the draft Law the distinction is made between *‘wild animal’* and *‘wild bird’* and *‘protected wild animal’* and *‘protected wild bird’*. Quite apart from a redundant distinction between birds and animals, the use of these terms is scientifically and practically meaningless, unless they are defined, as I have proposed, in terms of native fauna species. An exotic and unprotected species that escapes or is liberated into the wild in Jersey becomes a wild animal, but that should not necessarily confer on it any protection under this draft Conservation Law. Yet, all

'wild' birds are given protection under the First Schedule Part 2 of this Law, except five species.

Had it been properly thought out, because the purpose of the Law is to protect native *species*, the term '*wild*' would not have been included in the definitions in Article 1 with the meanings given. At the risk of being repetitive, the term '*wild*' only has useful meaning when used to mean a feral animal of a non-native species or an abandoned pet loose in Jersey that may be harmful to flora and fauna species, in which case protection is undesirable.

Article 1(1) of the draft Law defines a 'protected plant' as 'a plant prescribed under Article 3'. It does not define 'wild plant' as was done for animals and birds. The amended Article 1(1) makes a distinction between native animals and ones that have been introduced or are feral or are exotic, and plants need exactly the same treatment. Article 3(3) does this by distinguishing between native and non-native plants. This new paragraph makes it clear that this Law is concerned with the conservation of native flora species, not introduced or exotic species.

If the purpose of the draft Law is as stated: '*to consolidate and amend the Law relating to the conservation of wildlife*' then that Law should stem from the established principles of ecology, wildlife biology and especially Island bio-geography (a sub-discipline in itself) and recognition that species have different histories and behaviour.

In conclusion then, the purpose of this amendment is to place the intention of the Law firmly in an ecological framework of species conservation and wildlife biology and remove the ambiguity that this draft Law may only be an animal protection law without scientific underpinnings or credibility. Properly formatted, this Law will enable wildlife conservation in the Bailiwick to be conducted on sound principles.

I appreciate that it is rare for important amendments to be directed at the interpretation Article (Article 1), but if that interpretation is misguided then the Law will be misguided. To set this Law in stone for many years to come without taking the chance offered by it to greatly improve its fundamental structure would be blameworthy neglect.

Appendix: For the purposes of elucidation and in the expectation that they will be given a very high consideration when decisions are made about what protection fauna and flora species should have, I have appended the most important distinctions that I have made to this report -

resident species: means long established, breeding indigenous species;

Island endemic: means a species or sub-species that evolved in this Bailiwick;

migrant species or visiting species: means a species that does not breed in the Bailiwick at present but occurs seasonally or occasionally with some regularity (and may breed in future);

vagrant species: means a species of which the Bailiwick is not part of the normal range for breeding or seasonal visiting and which appears by natural means only very rarely;

introduced species: means a non-native species that has become established in the Bailiwick or its territorial seas as a consequence of introduction by man in the past;

feral animals and feral plants: means non-native species (including domestic pests and garden plants) that are not part of the native fauna and flora of the Bailiwick but have escaped from captivity or been liberated or abandoned into the wild where they may become established by breeding - often to the detriment of native species;

exotic species or alien species: means a non-native species that occurs elsewhere in the world (usually beyond western Europe or the eastern Atlantic Ocean), is not part of the flora and fauna of the Bailiwick and occurs only because of the agency of man. (There are several examples of this.)

CITES species: means species of plants and animals, trade in which is regulated, because of their rarity, by the Convention on Trade in Endangered Species.

Report to Amendment 2

It is not sufficient to prohibit the export of certain reptiles and amphibians and an opportunity has so far been lost to expand this Article to include other protected plants or animals that could become objects of illicit trade out of the Island. I am aware of various Conventions on the free movement of goods with which the Island must comply but illicit trade in protected species is a different matter and must be clearly outlined within the Conservation of Wildlife Law.

The list of prohibited species in the Fourth Schedule referred to in Article 11 is limited to those carried over from a previous Law with no attempt to identify equally important species from other groups of plants or animals which (or parts of which) could become targets for illicit trade.

The following is not a comprehensive list but is an indication of the flora and fauna species which would need to be considered -

all true Island endemics (plant and animal);

- animals:
- hippocampus: seahorses;
 - eggs of rare birds in addition to the birds themselves;
 - young birds (eyeasses) of species of raptors (birds of prey);

- plants:
- orchidaceae (protected native flora species);
 - bulbs of liliaceae and amaryllidaceae (species specified);
 - ericaceae (all native species).

In summary then, there is no reason to confine Article 11 to reptiles and amphibians. Offences for illegal export are liable to special penalty and so there is a need to widen this Article.

Report to Amendment 3

The Berne Convention (Article 9) clearly states that in addition to allowing for measures for the prevention of damage to crops, livestock forests, fisheries, water, etc. '*other forms of property*' are included.

It is counter-productive to a public acceptance of wildlife conservation if elements of that wildlife cannot be prevented from causing distress and economic cost to people. This has been accepted over a wide range of commercial damage in Article 16(2)(h), and it is appropriate to follow the Berne Convention by extending the provisions of Article 16(2) to cover other forms of serious property damage. This is done by the addition of sub-paragraph (i).

Explanatory Note

The effect of these amendments is to -

- (a) apply the protection of the draft Law to animals that are native to Jersey and its territorial seas rather than simply animals that are wild (which may include introduced, feral and exotic species);
- (b) similarly make it clear that the plants that may be protected under the draft Law are plants that are native to Jersey and its territorial seas;
- (c) make it possible for the prohibition (in Article 11 and the Fourth Schedule as drafted) that applies to the export of certain reptiles and amphibians to be extended to any protected native species; and
- (d) make it possible to grant a licence (allowing things to be done that would otherwise be an offence against the draft Law) for the protection of property in a broader sense than the Law as drafted contemplates.

The amendment referred to in paragraph (d) above brings the draft Law more into line with the Convention on the Conservation of European Wildlife and Natural Habitats (the “Berne Convention”) which the Law is intended to implement within Jersey and its territorial seas.

AMENDMENTS OF DRAFT CONSERVATION OF WILDLIFE
(JERSEY) LAW 199 (P.223 of 1998)

PAGE 14, ARTICLE 1 -

In paragraph (1) -

(a) *for the definition of "wild animal" substitute the following definition -*

“ ‘wild animal’ means any animal (other than a bird) which is of a native fauna species, that is, a fauna species which has been recorded as having occurred naturally in the area comprising the Island and the territorial sea adjacent to the Island -

(a) as a breeding or reproductive resident;

(b) as a seasonal immigrant;

(c) as a migrant which passes through that area regularly; or

(d) as an occasional, but regular, visitor to that area,

but not a fauna species which has been introduced into, or is feral or exotic in, that area;”;

(b) *for the definition of "wild bird" substitute the following definition -*

“ ‘wild bird’ means any bird (other than poultry) which is of a native fauna species, that is, a fauna species which has been recorded as having occurred naturally in the area comprising the Island and the territorial sea adjacent to the Island -

(a) as a breeding or reproductive resident;

- (b) as a seasonal immigrant;
 - (c) as a migrant which passes through that area regularly; or
 - (d) as an occasional, but regular, visitor to that area,
- but not a fauna species which has been introduced into, or is feral or exotic in, that area.”.

PAGE 16, ARTICLE 3 -

At the end of the Article insert the following paragraph -

“(3) A plant may be prescribed under this Article only if it is of a native flora species (that is, a flora species which has been recorded as having occurred naturally in the area comprising the Island and the territorial sea adjacent to the Island as a reproductive resident, but not a flora species which has been introduced into, or is exotic in, that area).”.

PAGE 26, ARTICLE 11 -

- (a) *for the heading to the Article substitute the following heading -*

“ARTICLE 11

Prohibition of export of certain protected species”;

- (b) *for the words “reptile or amphibian” in paragraph (1) there shall be substituted the words “protected plant, protected wild animal, or protected wild bird.”.*

PAGE 28, ARTICLE 15 -

For paragraph (1) there shall be substituted the following paragraph -

“(1) Subject to paragraph (4), it shall be an offence for any person to release or allow to escape into the wild any animal which is not a wild animal or any bird which is not a wild bird.”.

PAGE 30, ARTICLE 16 -

For sub-paragraphs (g) and (h) of paragraph (2) there shall be substituted the following sub-paragraphs -

- “(g) for the purpose of protecting any zoological or botanical collection;
- (h) for the purpose of preventing serious damage to livestock, foodstuffs for livestock, crops, vegetables, fruit, growing timber or fisheries; or
- (i) for the purpose of preventing serious damage to, or serious deterioration of, real property, or movable property, in general.”.

PAGE 41, FOURTH SCHEDULE -

For the heading to the Schedule substitute the following heading -

“FOURTH SCHEDULE

(Article 11(1))

Prohibition of export of certain protected species”.

DEPUTY OF GROUVILLE