

Wildlife (Jersey) Law 2021

Ecological and practical interpretation of legal definitions: disturbance, breeding sites and resting places of protected marine species

Introduction

Jersey supports a rich diversity of plants, animals and birds, due in large measure to our variety of landscapes and habitats, whether terrestrial or marine. Many of these species are rare or under threat locally or internationally and are in need of protection from activities that can damage their conservation status or lead to their mistreatment.

The Wildlife (Jersey) Law 2021 is the main legislation that provides for the protection and conservation of wild animals, wild birds and wild plants in Jersey including its territorial waters. The Law makes it an offence to carry out deliberate or reckless acts affecting protected species, including the killing, capture of species and the disturbance or damage of nests, dens and breeding sites. Protected species include wild birds, mammals, reptiles, amphibians, invertebrates, plants, fungi, marine mammals and fish, and different levels of protection apply according to the conservation of the species in question. In addition, defences and exceptions exist for some activities.

This guidance is one of a series of guidance documents that seeks to provide information on the protection afforded to wild animals, wild birds and wild plants under the Wildlife (Jersey) Law 2021. This guidance note has been developed to provide information to practitioners on what some of the provisions of the law mean in relation to protected marine species, and particularly in relation to what is considered to constitute their breeding sites and resting sites and offences in terms of disturbance of such sites.

Please note that this is guidance only and that ultimately it is the role of the courts to interpret and apply the law. If in doubt you may wish to seek your own legal advice.

Legal Protection of Marine Species

Wildlife (Jersey) Law 2021

Ecological and practical interpretation of legal definitions – Marine species

October 2022

The Wildlife (Jersey) Law 2021 gives specific protection to the breeding sites and resting sites of certain protected marine species (Schedule 4), when the site is in use. Some species are additionally protected from disturbance (Schedule 6).

Table 1 lists the schedules and articles that are relevant to each protected marine species individually. The full text of the Wildlife Law can be downloaded at:

<https://www.jerseylaw.je/laws/unofficialconsolidated/Pages/02.950.aspx>

	Schedule 1 (Article 5) Protected wild animals	Schedule 4 (Article 5, 11) Wild animals whose breeding & resting sites are protected	Schedule 6 Part 2 (Articles 5, 13) Species protected from disturbance
Dolphins (all species) <i>Delphinus</i>	YES	N/A	YES
Fan Mussel <i>Pinna nobilis</i>	YES	N/A	N/A
Pink Sea Fan <i>Eunicella verrucosa</i>	YES	N/A	N/A
Porpoises (all species) <i>Phocoenidae</i>	YES	N/A	YES
Long-snouted Seahorse <i>Hippocampus guttulatus</i>	YES	N/A	YES
Short-snouted Seahorse <i>Hippocampus hippocampus</i>	YES	N/A	YES
Seals (all species) <i>Phocidae</i>	YES	YES whilst in use	YES

Marine turtles* (all species)	YES	YES Whilst in use	YES
Pelagic Sharks (all species except houndsharks & catsharks) Lamnidae	YES	N/A	YES
Sturgeon Acipenseridae	YES	N/A	N/A
Atlantic Bluefin Tuna Thunnus thynnus	YES	N/A	YES
Whales (all species) Cetaceans	YES	N/A	YES
Five-shilling shell <i>Mactra glauca</i>	Protection from sale and possession	N/A	N/A
Sunfish	Protection from capture, sale, possession and export	N/A	YES
Sunset Cup-coral	YES	N/A	N/A

Breeding Sites and Resting Sites

The Wildlife (Jersey) Law 2021 gives specific protection to the breeding sites and resting sites of certain protected marine species (Schedule 5) when the site is in use.

(may need to provide further explanation of the offences relating to breeding and resting sites)

Which structures are breeding sites or resting sites?

Seals (all species)

In Jersey the majority of breeding sites chosen by the mother will be in the upper intertidal zone or just beyond the high-water mark, both around the island and on the offshore reefs. Jersey's coastline is easily accessible and therefore undisturbed sites are rare. Sightings of juveniles here tend to be those which have been separated from the female and often result in rescue. The only undisturbed coastal areas are along the South East coast where various rock heads remain isolated at most states of tide.

The offshore reefs (comprising Les Écréhous, Les Minquiers, Les Paternosters and Les Dirouilles) offer the best habitat for breeding seals and most sightings of pregnant females or females with juveniles occur here. Les Paternosters and Les Dirouilles reefs are small and exposed areas and do not offer much in terms of breeding sites, however Les Écréhous and Les Minquiers are larger and offer more shelter to breeding females.

Regardless of the location chosen by the female, the location chosen for pupping will be above the high tide mark to allow the pup an opportunity to wean and grow. Around the coast of Jersey, most sightings of juveniles tend to be those which have been separated from the female and often result in rescue. That most sightings of pregnant females or females with juveniles occur at the offshore reefs demonstrates a preferred choice of breeding location.

Resting sites for seals, can include beaches, exposed rocks, sheltered stretches of water and sand and shingle banks.

Marine Turtles (all species)

For Turtles, in order to breed the female must come ashore to make the nest and lay the eggs. However, there are no accounts of turtles laying eggs within Jersey waters due to lack of suitable nesting locations. This could potentially change with climate change impacting animal behaviour and warming environments.

Whilst currently turtle sightings in Jersey waters are rare any resting sites are likely to include easily accessible smooth sites such as sand banks, beaches, shingle banks and shallow lagoons.

Offences in relation to the Breeding Sites and Resting Sites of Seals (all species) and Marine turtles (all species) under Article 11 of the Law

A precautionary approach must be taken when considering how activities could result in the disturbance of a breeding site or a resting site and could constitute an offence if carried out as a deliberate or reckless act or without a licence to do so. For clarity, an offence is unlikely to be committed where ‘accidental’ harm is caused, despite having recognised and taken into account the risks through taking reasonable precautions to avoid harm. A ‘deliberate’ action, in which someone has weighed the risks, has concluded that there is a ‘serious risk’ of harm prohibited by the Law occurring, and then, despite their awareness of that serious risk, has proceeded to act in a way which actually causes harm, is likely to commit an offence. Expert ecological advice should be sought for advice on the likely impacts, on the recommended precautionary measures to avoid such impacts including any licences needed under the Law.

The table below provides an overview of the activities that are likely to cause an offence under Article 11 of the law relating to the breeding sites and resting sites of the protected marine species listed in Schedule 4 (Part 2) to the Law, where carried out deliberately or recklessly or without a licence to do so. This is an overview only and is indicative of the types of activities that could cause an offence but by no means exhaustive.

Structure	Legal definition	Examples of activity that can constitute an offence under Article 11

<p>In water</p>	<p>Breeding or resting site</p>	<ul style="list-style-type: none"> • Physical contact with seals or turtles at any stage of life. • Feeding animals at nesting or resting sites. • Approaching seals on rock in or out of watercraft. • Not maintaining an adequate distance from seals or turtles. • Traveling through water at speeds likely to disturb a nesting site i.e. at a speed that would cause a wake. • Travelling closer to juveniles or a site than is required. • Chasing seals while in water if they retreat from resting causing increased levels of stress. • Create loud noises such as shouting, sirens, banging, fireworks etc. • Use of aerial apparatus.
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<p>Hauled out on land</p>	<p>Breeding or resting site</p>	<ul style="list-style-type: none"> • To remove or disturb sand, rock, seaweed or any other material in or close to nesting or resting sites • To allow pets such as dogs to approach nesting or resting sites. • Obstructing pathway between mother and juvenile and/or site by any means e.g. vessels, moorings, people, building sites, pets. • To land or beach boats in the vicinity of resting seals or turtles. • Unloading people, goods, pets or any other item into the vicinity of breeding or resting seals. • Approaching seals on rock in or out of watercraft. • Physical contact with seals or turtles at any stage of life. • Not maintaining an adequate distance from seals or turtles. • Traveling through water at speeds likely to disturb a nesting site i.e. at a speed that would cause a wake. • Travelling closer to juveniles or a site than is required. • Chasing seals while in water if they retreat from resting causing increased levels of stress. • Create loud noises such as shouting, sirens, banging, fireworks etc. • Use of aerial apparatus around breeding or resting sites. • Engage in sport or physical activity in the vicinity of resting or nesting sites. • Engage in any form of construction
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Disturbance (Article 13)

In Jersey, nearly 110,000 people share an island of 118.2km² with a variety of species. This figure however is dwarfed by the 2,455km² of territorial sea. Those marine species that are resident (e.g., Bottlenose dolphins) all year round, seasonal or migratory (e.g., Atlantic blue fin tuna) for a significant part of the year or nomadic on occasion encounter many anthropogenic disturbances. These are activities which can cause disturbance to their daily routines and longer-term behaviours.

What is disturbance?

In the Wildlife Law “disturb” is described as doing any act, or carry out any activity, which in fact does, or might reasonably be foreseen to:

- (a) impair the ability of the wild animal in question –
 - (i) to survive, to breed or reproduce, to rear or nurture offspring, or
 - (ii) in the case of a hibernating or migratory species, to hibernate or migrate; or
- (b) affect significantly the local distribution or abundance of a species.

Any human activity which influences the behaviour of a marine species causing a change to their present activity can be defined as disturbance. This can include altered feeding behaviour, increased vigilance or displays of aggression and departure from an area.

Disturbances which are localised or temporary in nature are unlikely to have any lasting effects as many marine species are highly mobile and able to remove themselves from a disturbance with relative ease, for example a sailing vessel passing a pod of dolphins on a fixed track at a slow speed. However, a more serious disturbance impacting a large area or an individual for a prolonged period of time may have a more lasting impact. For instance, a sports fishing vessels which targets Atlantic bluefin tuna on lighter tackle for the fight.

Sources of disturbance for marine life

Whilst any human activity has the potential to disturb marine life at some point in their life and day to day activities, the following table contains more direct sources whose impact is likely to be greater than generic interactions (e.g. actively targeting via angling vs sailing on a fixed track nearby).

The precautionary provisions recited above in relation to activities affecting protected breeding sites or resting sites apply equally in relation to the disturbance of protected marine species, particularly those listed in Schedule 6 of the Law. An offence is unlikely to be committed where ‘accidental’ harm is caused, despite having recognised and taken into account the risks through taking reasonable precautions to avoid harm. A ‘deliberate’ action, in which someone has weighed the risks, has concluded that there is a ‘serious risk’ of harm prohibited by the Law occurring, and then, despite their awareness of that serious risk, has proceeded to act in a way which actually causes harm, is likely to commit an offence. Expert ecological advice should be sought for advice on the likely

impacts, on the recommended precautionary measures to avoid such impacts including any licences needed under the Law.

The table below provides an overview of the activities that are likely to cause an offence under Articles 11 and 13 of the Wildlife Law relating to the deliberate or reckless disturbance of protected marine species, including their dependent offspring. This is an overview only and is indicative of the types of activities that could cause an offence but by no means exhaustive.

Applies to dolphins (all species), porpoises (all species), pelagic sharks (all species except hound sharks and catsharks), short snouted seahorse, long snouted seahorse, seals (all species), sunfish, Atlantic bluefin tuna, marine turtles (all species) and whales (all species).

Structure	Legal definition	Examples of activities that could constitute to an offence
<p>In water</p> <p>Only section relevant to dolphins, porpoises, pelagic sharks, seahorses, sunfish, Atlantic bluefin tuna and whales</p>	<p>Disturbance</p>	<ul style="list-style-type: none"> • Traveling at fast speeds through waters with pelagic sharks, sunfish, Bluefin Tuna and Whales resting, feeding or travelling on surface waters. • Chasing shoals of Atlantic bluefin tuna. • Casting, trolling or setting fishing gear around or through shoals of Atlantic Bluefin Tuna. • Proceeding at such a speed that boat wake could disturb resting species at the surface. • Erratic changes in direction around species at the surface. • The use of sudden loud noise.
<p>Hauled out on land</p>	<p>Disturbance</p>	<ul style="list-style-type: none"> • To land or beach boats in the vicinity of one of the species listed. • Unloading people, goods, pets or any other item in the vicinity of one of the animals listed. • Deliberate physical contact with any of the animals listed e.g. for trophies, photography etc.

		<ul style="list-style-type: none"> • Approaching seals on a rock in or out of watercraft. • Not maintaining an adequate distance from any of the animals listed. • Traveling through water at speeds likely to disturb one of the animals listed i.e. at a speed that would cause a wake. • Travelling closer to juveniles or a site than is required. • Chasing seals while in water if they retreat from resting causing increased levels of stress. • Create loud noises such as shouting, sirens, banging, fireworks etc. • Use of aerial apparatus around breeding or resting sites. • To remove or disturb sand, rock, seaweed or any other material in or close to nesting or resting sites. • To allow pets such as dogs to approach nesting or resting sites • Obstructing pathway between mother and juvenile and/or site by any means e.g. vehicles, moorings, people, building sites, pets etc • Engage in sport or physical activity in the vicinity of resting or nesting sites • Engage in any form of construction
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Annex 1 – Ecology

Dolphins (all species)

Highly mobile marine mammals, bottlenose dolphins (*Tursiops truncatus*) account for the majority of encounters (circa 95%) the population around Jersey is one of the largest in north west Europe and residential in nature. Other species include common dolphins (*Delphinus delphis*).

Porpoises (all species)

Highly mobile marine mammals, found throughout Jersey waters in various locations dependant on the state of tide, season and location. The most common species is the Harbour Porpoise (*Phocoena phocoena*).

Pelagic sharks (all species except hound sharks and catsharks)

There are approximately 13 recorded species of shark around the island, including basking sharks (*Cetorhinus maximus*), blue sharks (*Prionace glauca*), porbeagle sharks (*Lamna nasus*) and shortfin mako (*Isurus oxyrinchus*). These range in size from a metre up to approximately 8m (basking shark).

Short snouted seahorse *Hippocampus hippocampus*

The short snouted seahorse can be found in the North-eastern Atlantic from the north western Scotland and the Netherlands south to Senegal and into the Mediterranean Sea and are most often found in shallow waters, estuaries or seagrass meadows where they use their prehensile tail as an anchor to cling onto the seagrass and other substrate. They are distributed along the south coast of England with populations in both the Channel Islands and Ireland. The short snouted seahorse is currently listed on the IUCN Red list as 'Data deficient' due to insufficient data but is currently considered to be vulnerable across most parts of its range. It has been difficult to assess the status of the short-snouted seahorse in the Channel Islands, but recent sightings suggest the short snouted seahorse is not as rare as once thought where they have been brought up by commercial fishers clinging to lobster pots, in scientific trawl surveys and a small population was found under the pontoons within the main marina.

Long snouted seahorse *Hippocampus guttulatus*

The Long-snouted Seahorse is one of Britain's rarest fish species and the Channel Islands (especially Jersey) have been cited as being a particularly good place to view them. The fish may be a relatively recent newcomer to the islands as the oldest local record is from 1957. Subsequent reports are sporadic, but this species is observed by divers and fishers from

time to time plus four specimens were taken from scientific trawls between 2006 and 2011. As with the Short-snouted Seahorse, the trawled specimens were from deeper water, suggesting that there may be offshore populations that are only irregularly encountered

Seals (all species)

2 main species can be found locally in abundance, the Grey seal (*Halichoerus grypus*) and the common/harbour seal (*Phoca vitulina*). Similar in size reaching up to 2m in length and exploit the offshore reef locations around Jersey.

Ocean Sunfish *Mola mola*

The bizarrely shaped Ocean Sunfish is the largest, most fecund bony fish in the ocean. They live in tropical and temperate waters, and can be found in the Atlantic, Pacific, and Indian Ocean as well as inlets such as the Mediterranean and North seas. They are generalist predators and consume small fishes, fish larvae, squid and crustaceans.

Local reports of Sunfish go back to the 1840's and there is some evidence to suggest that sightings of sunfish around the waters of the Channel Islands have been more frequent than in previous years. It is thought that they visit during the summer to feed on swarms of Barrel Jellyfish (*Rhizostoma pulmo*) that drift into local waters from the Atlantic Ocean during summer months. The species was listed as Vulnerable to extinction globally by the IUCN since 2011.

Atlantic bluefin tuna – these fish are a top pelagic predator and vulnerable to overfishing. Their range encompasses a large area across the Atlantic Ocean comprised of smaller sub populations.

Marine turtles (all species)

Large marine reptiles which are migratory in nature, sightings in Jersey waters are limited to several a year and confined to the warmer summer months when the water is sufficiently warm. The most common turtle species seen is the Leatherback turtle (*Dermochelys coriacea*), this is rarely seen and is the largest species globally and feeds predominantly on jellyfish.

Whales (all species)

No resident whales are found in Jersey waters, species which can be found in season and on occasion include humpback whale (*Megaptera novaeangliae*) and pilot whale. Most encounters are with animals transiting through the area.

WiSe TRAINING: (wildlife Safe) WiSe is UK's National scheme for minimising disturbance to marine life, the nationally recognised training promotes sustainable ecotourism. Their aim is 'To promote responsible wildlife watching, through training, accreditation and raising awareness'. This is accomplished by enhancing peoples' understanding on how to avoid disturbance. It is recommended to go with an accredited tour group or company to ensure that the best practices are used to help maintain a healthy natural environment while being able to appreciate the wildlife.



For further information please refer to:

Jersey Wildlife Law 2021: [Wildlife \(Jersey\) Law 2021 \(jerseylaw.je\)](http://jerseylaw.je)

Level 2 Marine Guidance Note: [Link](#)

Ramsar Codes of Conduct: [Code of Conduct – Channel Islands Ramsar Sites \(ci-ramsar.com\)](http://ci-ramsar.com)

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