

Executive Summary

**Review of Schedules and protected species under the
Conservation of Wildlife (Jersey) Law 2000**



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Introduction

This document summarises the recommendations from the review of Schedules and protected species under the Conservation of Wildlife (Jersey) Law 2000 (CWL).

There are 18 recommendations set out within this executive summary. Each recommendation has come from the research and consultation undertaken in both reports; Part I and Part II of the CWL Schedules and protected species review.

Background

The CWL was implemented in 2000, since which time, environmental legislation has been further developed in several countries. In order to meet current environmental best practice, and to ensure that we meet our European and international obligations under Multilateral Environmental Agreements ('MEAs'), a review of the CWL is needed so that Jersey can amend wildlife legislation in order to strengthen the mechanism and powers to protect, maintain and enhance biodiversity in Jersey.

As a member of the EU, the UK is required to provide specific protection for certain species that are listed on a European scale (e.g. Habitats Directive, Birds Directive, etc.). Although Jersey is not legally required to follow suit, it is nevertheless appropriate to consider the approach taken regarding European Protected Species and to follow best practice where appropriate, as we are ecologically, if not politically, linked to the European ecosystems, and we could be embarrassed internationally, if our protection of migratory species was lower than that of adjacent countries.

The UK is a signatory to Multilateral Environmental Agreements, several of which have been extended to Jersey, including the Bern and Bonn Conventions. Some of these international commitments require the provision of adequate protection to specific species, for example EUROBATs protects all European species of bat. Jersey is committed to ensuring long term, sustainable protection of its natural environment and biodiversity, therefore a periodic review is needed to ensure that the Island is meeting these international commitments.

The CWL delivers protection from harm to certain animals, birds and plants which are listed in the Schedules of the Law. The principle legislation is fixed and can only be amended by reference to the UK and sanctioned by the Queen in council. The Schedules to the CWL serve to list the wild animals, birds and plants that qualify for protection under Parts 2 and 3 of the Law. The Schedules may be amended or varied by Order made by the Minister under Article 23 of the Law.

The current Schedules are as follows:

- **Schedule 1** lists protected wild animals and protected wild birds
- **Schedule 2** lists specially protected wild birds
- **Schedule 3** lists animals which may not be killed or taken by certain methods
- **Schedule 4** lists reptiles and amphibians which may not be exported
- **Schedule of protected wild plants** established by Order in 2009

In 2000, species protected in the current schedules to the CWL were chosen for their general rarity and significance in the local context, broadly based on a set of criteria used for selecting species onto the Schedules of the UK's Wildlife and Countryside Act 1981 (WACA). Whilst the Schedules of the CWL have been amended slightly over the past 14 years, there has never been a set of modern, robust criteria to justify the inclusion of species on each of these Schedules. Therefore this review deals with the Schedules to the Law only, enabling us to make any changes which are recommended, in order to remain up to date and compliant with environmental best practice.

The following 18 recommendations are the outcome of the review and through consultation with experts. Each recommendation needs to be implemented to ensure that the Schedules remain consistent with best practice and that the listed species protected under them are up to date based on local, national and international status.

List of Recommendations

1) Schedules for protected species

1.2) Birds which re-use their nest

Presently Jersey's legislation only protects nests whilst they are in use or being built, with the result that the nests of birds or nest sites that are reused year after year are not protected during their absence.

Recommendation 1

To provide year round protection of the nests or nest sites of certain bird species under Jersey's CWL. This would require a new Schedule and an amendment to the principal legislation. This would relate to:

'Article 6 Prohibition relating to dens and nests etc. of protected wild animals and protected wild birds'.

1.3) Birds which may be killed or taken

All wild birds in Jersey, apart from carrion crow *Corvus corone*, magpie *Pica pica*, wood pigeon *Columba palumbus* and the feral pigeon *Columba livia*, are protected by the Conservation of Wildlife (Jersey) Law 2000. These four birds are hunted for food (wood pigeon) or are taken or killed regularly for public health, agriculture, forestry, fisheries or nature conservation purposes and are regarded locally as pest species (carrion crow, magpie and feral pigeon). It is legal under the CWL to shoot or take these species; however, in order to comply with our International Conventions, the CWL does protect these species from the use of certain inhumane methods of taking or capture e.g. self-locking snares and crossbows. A licence would be required to use such methods and a justification that the taking is required to meet specific purposes defined in Article 16 of the CWL. It is not known what numbers of these birds are killed each year, but it is estimated that several hundreds are killed by trapping or shooting.

Recommendation 2

Undertake research on carrion crows, magpies, wood pigeons and the feral pigeons in Jersey to determine whether their conservation status is a concern and whether they should be considered for protection based on the criteria for listing species.

If there is no conservation concern and they remain unprotected Jersey could introduce a general licence to allow unprotected birds to be killed or taken using prohibited methods without having to apply for a licence or report on the number of birds taken.

When the Animals (Trapping) (Jersey) Law 1961 is repealed, it is proposed to include some of its protections in the CWL. For example, the use of cage traps for non-protected birds will be regulated under a general licence issued under the CWL.

1.3.3) Pheasants

At present over 150 licences are issued annually by the Department of the Environment for the control of common pheasant *Phasianus colchicus*, a bird species which is considered to be a pest by many landowners and occupiers.

Recommendation 3

Undertake research into the current conservation status of pheasants in Jersey to determine whether they should be considered for delisting on the CWL.

The options include:

1. Remain the same;
2. To consider after further research to remove it from the protected list; or
3. To introduce a similar concept to game legislation;
4. To include a new schedule to our law (under article 23) to allow birds which may be killed or taken either outside a closed season or by an authorised person at all times.

1.4) Introduction of new species and non-native invasive species

Invasive non-native species (INNS) are not regulated fully in Jersey and there is an opportunity to better use the CWL for this regulation.

Recommendation 4

It is recommended that further consultation with the Law Officers' Department is made on the following:

- Can article 15 1(a) control the release or escape into the wild of any animal or bird which are native or former native species? (The aim would be to stop species that are resident being introduced from an unknown provenance, but any proposal could be licensed if re-introductions were required.)
- Can article 15 1(b) be changed to refer to a schedule which could then include more species that are currently resident in Jersey but that are non-native animals and birds and should not be released and native animals and birds which we would not wish to be released.
- The Diseases of Animals (Importation of Miscellaneous Goods and Animals) (Jersey) Order 2012 could also be considered to address this issue at the point of entry into the island.
- There is provision to provide a Schedule by Order for the purposes of article 15 2 creating a list of prescribed plants that may not be planted or otherwise caused to grow in the wild in Jersey. However, this could also be achieved through an amendment of the Weeds (Jersey) Law 1961 instead: [6](http://www.jerseylaw.je/law/display.aspx?url=lawsinforce/consolidated/01/01.900>WeedsLaw1961 RevisedEdition 1January2006.html. Further discussion with the Environmental Protection Inspectorate Team is required.
- A new schedule which could be amended by order should be provided in the CWL to enable animal and plant species to be listed, to prevent introduction to the wild.

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1.4.1) 14ZA - Sale etc. of invasive non-native species;

1.4.2) 14ZB - Codes of practice in connection with invasive non-native species.

The CWL does not provide any provision for selling non-native invasive species and guidance around invasive non-native animal and plant species in Jersey. The UK controls the sale of invasive non-native species and provides codes of practice in connection with invasive non-native species under the "Miscellaneous" Section 14ZA and 14ZB of the WACA

Recommendation 5

It is recommended that Jersey should follow the UK provision when amending the CWL in regards to the sale of, and the codes of practice in connection with, invasive non-native species. Further consultation with the Law Officers' Department is required.

It is considered best to create an additional Schedule similar to the WACA Schedule 9, to control the sale and release of undesirable animals and plants.

1.5) Animals which may not be taken or killed in certain ways

Certain methods of killing or taking wild animals are prohibited in Jersey and the UK including; self-locking snares, bows, crossbows, explosives or decoys for the purpose of causing bodily harm, killing or taking any wild animal. A person who sets a snare of a type which is otherwise legal, should be required to ensure that the snare is inspected at least once a day. In Scotland, it is also an offence to sell a self-locking snare, or to possess one without reasonable excuse.

Recommendation 6

It is recommended that further research should be carried out to determine the relevance and requirement of species listed on Schedule 3.

1.6) New Schedules

1.6.1) Invertebrate Species (terrestrial)

Currently Jersey has no protected invertebrate species.

Recommendation 7

It is recommended that Jersey should follow the UK's lead and that Jersey should add invertebrates that need protection, based on local and international criteria, to the Schedule 1 Part 1 Protected Animals.

Or, if Jersey legislation does not allow invertebrates to be listed on the existing schedule, that a new schedule of protected invertebrates should be added when the CWL is revised.

1.6.2) Bryophytes, Fungi and Lichens

Currently Jersey has no protected bryophyte, fungi and lichen species

Recommendation 8

It is recommended Jersey should follow the UK's lead and should add bryophytes, fungi and lichens that need protection based on local and international criteria to the Protected Plants (Jersey) Order 2009 or its replacement schedule.

The definition of plants should be defined as including bryophytes, fungi and algae within the primary legislation.

1.6.3) Marine Species

Currently Jersey has only included dolphins (all species), porpoises (all species), seals (all species) and turtles, marine (all species), on Schedule 1 Part 1 and Schedule 3. The UK protects other maritime species under Schedules 5 and 8 of the WACA.

9. Recommendation

It is recommended that Jersey should follow the EU directives and that Jersey should add further maritime species, based on local and international criteria, to include fish, marine invertebrates and maritime plants to the existing Schedule 1 part 1 Protected animals and to the Protected Plants (Jersey) Order 2009, or its replacement schedule.

It is suggested that more collaborative work should be carried out between the States of Jersey Marine Resources and local stakeholders and NGO's interested in protecting the marine environment.

2) Levels of protection

Currently, all wild animals and birds included on Schedule 1 and Schedule 2 (specially protected wild birds) are afforded the same level of protection under the Law when it comes to killing, injuring, taking, selling and protection relation to their dens and nests.

Recommendation 10

It is recommended that Schedules defining different levels of protection for species listed on the CWL should be defined and implemented.

A hierarchical framework for varying the levels of protection afforded to listed species should be incorporated within the Law. This will require:

- a) amendments to the Law and/or Schedules to provide for the variance of levels of protection; and
- b) the definition of listing criteria which would be applied to determine the individual levels of protection afforded to both current and future listed species

Law Officer advice has indicated that this should be achievable by Order made by the Minister (secondary legislation) defining the different levels of protection within the Schedules themselves, without making changes to the principal law. If it is difficult to achieve by Order, and law draftsmen's time is required.

3) Criteria for listing species

Key objectives for this project have been to produce a rationale for listing and selecting species for protection under the Schedules to the CWL.

Recommendation 11

It is recommended that Jersey has a rigorous set of rationale and criteria to list or delist or change levels of protection for species under schedule 1 (part I), Schedule 2 and the protected plants order of the CWL.

This should include a transparent, formal process based on internationally and nationally recognised criteria and established methods, which stakeholders, agencies and individuals can follow.

Recommendation 12

Based on the research carried out and the consultation, the rationale and criteria for listing species on schedule 1 (part I) Schedule 2 and the protected plants order of the CWL, as reported in section 3.3 of PART II - Results and recommendations from the review of Schedules and protected species of the Conservation of Wildlife (Jersey) Law 2000 report is recommended

3.4 Red listing

To suggest species for protection onto the law, most taxon specialist groups have some form of assessment that is carried out on the status of their species which is used to create the level of conservation listing for individual species. The outcome usually produces Red Data Books or Species of Concern reports.

Recommendation 13

It is recommended that Jersey creates Red Lists for each taxon group. This will require all stakeholders, agencies and individuals working together with the Department of the Environment and the JNCC.

This should include a defined process and guidelines to assist stakeholders, agencies and individuals in creating species status assessments for local species.

4) Reporting, monitoring and review

4.1) Reporting

The most important reason for periodic reporting is to assess how the implementation of the MEAs, Directives, Strategies and policies affects species and habitats. The results of Reporting assist policy makers and site managers to evaluate whether current action and regulatory processes need to be changed or not.

Recommendation 14

Adapt the reporting methodology from EU policies in relation to wildlife and nature conservation to ensure that Jersey can report comprehensively on its international commitments in relation to the Bern Convention and the two key Directives which have been issued by the European Union, namely:

- Directive 2009/147/EC on the Conservation of Wild Birds (Birds Directive)
- Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (Habitats Directive).

This should include a process and guidelines to assist stakeholders, agencies and individuals in creating species status assessments for local species.

4.2) Monitoring

One of the aims of this review was to establish a regime for the long term monitoring of species listed under the Schedules in the CWL. The monitoring schemes will be integrated into Jersey's Biodiversity Monitoring Framework.

Recommendation 15

Engage with local NGOs and volunteers, many of whom act as data gatherers to carry out monitoring on all taxon groups and in particular groups which are data deficient to allow for some form of conservation listing or red listing for individual species (see recommendation 13).

4.3) Review

One of the aims of this review was to establish a regime for **periodic review** of Schedules of protected species under the CWL and for it to be into the legislation.

Recommendation 16

It is recommended that Department of the Environment provide a Jersey information pack based on the JNCC's Quinquennial Review (QQR) information pack and proforma (http://jncc.defra.gov.uk/pdf/QQR6_informationpack_2012.pdf).

This should include a description of the process and guidelines to assist stakeholders, agencies and individuals in suggesting specific species for listing and delisting or changes to their levels of protection.

Recommendation 17

It is recommended that Department of the Environment include a review period for the schedules of protected wild animals, birds and plants and amend the CWL to represent this. For example, make it part of the CWL as seen with Section 24 (<http://www.legislation.gov.uk/ukpga/1981/69/section/24>) of the WACA that requires Great Britain's statutory nature conservation agencies to review Schedules 5 and 8 every five years to recommend any changes to the Schedules.

It is recommended reviewing CWL Schedules every 5 years (e.g. associated to the monitoring period) as The State of Jersey Report is based on 5 year cycle. It would be sensible to allow for the opportunity to review species on the CWL to coincide with the reporting requirements for this report which is made on the sixth year. This does not replace any urgent need for listing or delisting species at any time depending on the need or the availability of data.

Recommendation 18

Once recommendations 12 and 16 have been completed contact each taxon specialist group and/or individuals to carry out a completed assessment for the existing species and those proposed for listing under Schedule 1 (part I) Schedule 2 and the protected plants order of the CWL.

Next Steps

Revisions to principal Legislation

Recommendations above referring to revisions to the principal legislation of the CWL, are dependent on the allocation of law drafting time. Once this time is made available, any amendments to the principal legislation need the following;

1. A written report outlining the proposed legal amendments and seeking approval for submission of law drafting instructions requires approval by the Minister and the resulting Ministerial Decision is published.
2. The relevant law drafting instructions are submitted to the Law Draftsman's Office.
3. On completion of steps 1 and 2, the draft new legislation must be 'lodged' with the States Greffe for 6 weeks prior to being debated at a States sitting. NB. It may be necessary to consult more widely e.g. with Scrutiny due to the level of review.
4. Once approved by the States the new legislation must then be submitted for approval by the Privy Council.
5. Once sanctioned by the Privy Council the new law is registered in the Royal Court and comes into force on the date provided therein.

Revisions to Schedules

The recommendations associated with the Schedules for adding or delisting species on the CWL can be put forward as and when required. Revisions are carried out under Article 23 *Power to amend Schedules*. They can be amended by Order by the Minister and is much simpler and quicker than amending principal legislation. Therefore any species proposed for inclusion on (or removal from) from the Schedules resulting from the consultation process between October and December 2013 can be carried out without having to wait for law drafting advice and are required to follow the next steps;

1. A written report outlining the proposed legal amendments and seeking approval for submission of law drafting instructions is approved by the Minister and the resulting Ministerial Decision is published.
2. The relevant law drafting instructions are submitted to the Law Draftsman's Office.
3. Once a draft has been produced and approved, the Order is issued and signed by the Minister.
4. The new provisions/amendments come into the force on the date referred to in the Order, and as required by law, a notice to this effect is placed in the Jersey Evening Post and on the government website. .

Law drafting instructions

Currently the recommendations have been integrated into detailed law drafting instructions. These instructions are currently being finalised with the assistance of the Law Officers' department prior to submission to the Law Draftsman's office.

Rationale & Criteria

It is recommended that Department of the Environment provide a Jersey information pack based on the JNCC's Quinquennial Review (QQR) information pack and proforma.

A guidance note and proforma needs to be designed and created for Jersey to assist the department, stakeholders, agencies and individuals in suggesting specific species for listing and delisting or changes to their levels of protection.

The same principles will need to be developed for other remaining and proposed new schedules.

Based on the research carried out and the consultation, the rationale and criteria for listing or changing species on Schedule 1 (Part I), Schedule 2 and the protected plants order of the CWL, see recommendation 12 in section 3.3 of PART II - Results and recommendations from the review of Schedules and protected species of the Conservation of Wildlife (Jersey) Law 2000 report.

Each species currently listed and proposed to be listed in Appendix 9 of PART II - Results and recommendations from the review of Schedules and protected species of the Conservation of Wildlife (Jersey) Law 2000 report needs to be scored against the new rationale and criteria for listing species using the above proforma.

This will deliver a robust framework for providing justification and evidence for species currently, proposed and delisted species on the CWL Schedules.