



Protecting Marine Mammals in the UK: Amendments to the Legislative Framework

This briefing has been prepared for the new Defra team by the Wildlife and Countryside Link Marine Mammals Expert Group, England's largest coalition of groups working to protect marine mammals. We would be delighted to meet with the Minister to discuss further and answer any questions that arise.

This briefing note sets out the immediate amendments required to the existing legislative framework for marine mammals in the UK in order to deliver enhanced protection to all cetacean (whale, dolphin and porpoise) species and all pinniped (seal and walrus) species in UK waters.

In setting out the rationale for these amendments, this note summarises the current legislative framework, identifies the gaps in this, and provides an explanation as to the urgent need for such amendments to be made for both cetaceans and pinnipeds. A detailed summary of the legislative framework is provided in Appendices 3 to 7 of this note.

SUMMARY:

Required Amendments

1. All pinniped species to be included in Schedule 5 of the Wildlife and Countryside Act 1981 (WCA 1981), and all offences under section 9 WCA 1981 to be applicable to all pinniped species; and
2. All section 9 WCA 1981 offences to apply to all cetacean species.

Current Gaps in legislation

1. Not all pinniped species are protected under the WCA 1981. Accordingly, it is not currently an offence to intentionally or recklessly disturb a pinniped species (with the exception of the walrus, *Odobenus rosmarus*, which is listed in Schedule 5 WCA 1981) in the UK;
2. Whilst all cetacean species are listed in Schedule 5 WCA 1981, it is not an offence to intentionally or recklessly disturb harbour porpoise, *Phocoena phocoena*, in England and Wales. In Scotland, it is only an offence to intentionally or recklessly disturb or harass bottlenose dolphin, *Tursiops truncatus*, and common dolphin, *Delphinus delphis*; and
3. It is not an offence to intentionally (or recklessly in Scotland) kill, injure or take a cetacean species under the WCA 1981.



Reasons for changes to legislation to protect pinnipeds in the UK

There are two resident species of pinniped in the UK – the grey seal, *Halichoerus grypus*, and the common (or harbour) seal, *Phoca vitulina*. In addition, there are increasing numbers of ‘vagrant’ species frequenting the UK.¹

- Pinniped species around the UK use both the water and the land. Pinnipeds ‘haul out’ on the land at many sites around the UK coast to rest and to reproduce – both activities are critical to the lifecycle of such species. These haul-out sites are varied around the coast. In some instances, they can be on open beaches which are easily accessible by humans from both the land and sea, and in some instances, they can be more difficult to reach locations such as coves, remote islands or rocky shores. Haul-out sites for pinnipeds can vary throughout the year and can be used by only one animal, or by hundreds of animals.
- With increasing coastal activity around the UK, including recreational activities, pinnipeds are suffering increased anthropogenic disturbance. Incidents of disturbance of seals both at haul-out sites and in the water are being increasingly reported. In addition to increasing anthropogenic disturbance, additional disturbance as a result of climate change, including accelerating coastal erosion and extreme weather events such as more frequent and more extreme storms, are impacting pinnipeds.²

Reasons for changes to legislation to protect cetaceans in the UK

The UK has more than twenty known species of cetacean in its waters. Some of the most commonly occurring cetacean species include the harbour porpoise, common bottlenose dolphin, common dolphin, white-beaked dolphin, *Lagenorhynchus albirostris*, Risso’s dolphin, *Grampus griseus*, orca, *Orcinus orca*, and common minke whale, *Balaenoptera acutorostrata*. Other notable cetaceans which are increasingly seen in UK waters include humpback whales, *Megaptera novaeangliae*, fin whales, *Balaenoptera physalus*, sperm whales, *Physeter macrocephalus* and pilot whales, *Globicephala spp.* These species range in size, behaviour and susceptibility to the numerous threats that they face. Such threats include bycatch and entanglement, disturbance from underwater noise, vessel strikes, pollution, loss of prey, loss of habitat and the impacts of climate change, such as changes in the distribution of prey.

¹ [Five vagrant pinniped species have been found in United Kingdom waters, including:](#) Bearded seal (*Erignathus barbatus*), Harp seal (*Pagophilus groenlandicus*), Hooded seal (*Cystophora cristatus*), Ringed seal (*Pusa hispida*), and Walrus (*Odobenus rosmarus*). See Mammal Society, Full Species List, available at <https://www.mammal.org.uk/species-hub/uk-mammal-list/>

² [SRT ‘People Protecting Precious Places’ report](#) and Seal Alliance ‘[Do not disturb](#)’ Report. (Links embedded). This is the easiest issue pinnipeds face to mitigate quickly and effectively supporting public awareness raising work



REQUIRED AMENDMENTS

1. All pinniped species to be included in Schedule 5 of the WCA 1981 and all offences under Section 9 WCA 1981 to be applicable to all pinniped species

Background:

- Currently, the only pinniped species listed in Schedule 5 WCA 1981 is the walrus, a vagrant species which, although occasionally seen in the UK, is not a resident species. As a result, resident pinniped species (the grey seal and the common/harbour seal), together with other vagrant species which occur in the UK, do not receive legal protection under section 9 WCA 1981.
- Under section 9 WCA 1981, it is currently not an offence to intentionally or recklessly 'disturb' a pinniped (other than the walrus) in England, Wales and Scotland.
- Pinnipeds get limited protection from disturbance under two legal frameworks;
 - firstly, where they are a monitored feature of a Site of Special Scientific Interest; and
 - secondly, in Scotland, under the Marine (Scotland) Act 2010 where they are present at a haul-out site which is identified in The Protection of Seals (Designation of Haul-Out Sites) (Scotland) Order 2014 (as amended).
- The Environment, Food and Rural Affairs Committee report on 'Protecting Marine Mammals in the UK and Abroad' published on 28 June 2023 (the EFRA Report) found that the legal framework to protect marine mammals is *'incoherent and not sufficient to effectively preserve these precious species.'* This incoherence is evidenced by the dispersed legislation which offers limited and varying levels of protection to pinnipeds. This current framework which is based on the identification of specific sites, is not effective for a highly mobile group of species such as pinnipeds.
- A summary of the legal regime for pinnipeds in the UK is set out in Appendices 3 and 7 of this note.

Benefit of change implementation for pinnipeds:

- Disturbance of pinnipeds, particularly when they are hauled out, as well as in coastal waters, is already substantial (Reference SRT PPPP Report) and increasing (SRT long term data).
- Climate change may increase the number of instances of vagrant pinniped species in UK waters and is adding to already high levels of anthropogenic disturbance (e.g. rockfalls, hammering rain and hail storms).



- The EFRA Report recognised this and made the recommendation that seals should be added to the list of species in Schedule 5 WCA 1981 as soon as possible.
- In its response published on 31 October 2023, the Government stated that it is still considering JNCC's extensive submission on the 7th Quinquennial Review (QQR7) of Schedule 5 WCA 1981, but that in the meantime, Defra has been working to raise awareness of the impact that disturbance can have on marine wildlife, including seals through their 'Marine and Coastal Wildlife Code'.
- Accordingly, it is widely agreed by the public, NGOs and by the Government, that disturbance of seals is an issue that must be addressed.
- The most effective way of addressing this issue is through the inclusion of all pinniped species in Schedule 5 WCA 1981 and ensuring that all of the offences are applicable to all pinnipeds. This is the simplest of all the multiple impacts on seals to address with legislation that will be very popular with the public and a quick demonstration of the government's willingness to support nature (our native and vagrant marine mammals).

2. All section 9 WCA 1981 offences to apply to all cetacean species

Background:

England and Wales

- All cetaceans are listed in Schedule 5 WCA 1981 in England and Wales, however, all the section 9 WCA 1981 offences do not apply to them. The WCA 1981 previously included full protection for cetaceans in section 9. This was changed in 2007 when the WCA 1981 was amended so that the offences under section 9(1) and (2) were no longer applicable to European Protected Species (including all cetacean species).³
- Currently, under the WCA 1981 in England and Wales, only sections 9(4A) and (5) apply to cetaceans, with section 9(4A) – the offence of intentionally or recklessly disturbing, only applying to whale and dolphin species (notably this does not apply to the harbour porpoise).
- As a result of this amendment, section 9(1) WCA 1981 does not apply to cetaceans and therefore it is not an offence to intentionally kill, injure or take a cetacean under the WCA 1981. This is not consistent with the Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017, which implement the Habitats Directive in the UK. Under these respective habitats regulations, it is an offence to deliberately capture, injure or kill any cetacean.

³ The Conservation (Natural Habitats, &c.) (Amendment) Regulations 2007 (SI 2007/1843).



Scotland

- In Scotland, all cetaceans were removed from Schedule 5 WCA 1981 by the Conservation (Natural Habitats, &c.) Amendment (Scotland) Regulations (SSI 2007/80). However, two cetacean species remain listed in Schedule 5 – the common bottlenose dolphin and the common dolphin.
- Section 9(4A) of the WCA 1981 in Scotland includes the offence ‘... *any person who, intentionally or recklessly, disturbs or harasses any wild animal included in Schedule 5 as a (a) dolphin, whale or porpoise (cetacea)... shall be guilty of an offence.*’ Accordingly, this offence contains two elements which must be met – firstly, the wild animal must be included in Schedule 5, and secondly, it must be a cetacean. As a result of this wording, this offence only applies to the common bottlenose dolphin and common dolphin in Scotland.
- Unlike in England, the wording in Schedule 5 for common bottlenose dolphins and common dolphins does not limit them to the offences under sections 9(4A) and (5) only, and so in Scotland, these two species get the benefit of all of the offences in section 9 WCA 1981. For the remainder of the cetacean species, it is not an offence under section 9(1) to intentionally or recklessly kill, injure or take a cetacean under the WCA 1981. This is not consistent with the Conservation (Natural Habitats, &c.) Regulations 1994 and the Conservation of Offshore Marine Habitats and Species Regulations 2017 which implement the Habitats Directive in Scotland. Under these regulations, it is an offence to deliberately (or recklessly up to 12nm) capture, injure or kill any cetacean.

The EFRA Report found that the legal framework to protect marine mammals is ‘*incoherent and not sufficient to effectively preserve these precious species.*’ This incoherence is evidenced by the dispersed legislation and the incomprehensible wording of the WCA 1981 in England, Wales and Scotland. The lack of protection, especially against intentional or reckless disturbance for the harbour porpoise is also evidence of insufficient protection.

Benefit of Change Implementation for Cetaceans:

- This amendment will restore the WCA 1981 to its original intent prior to the amendments made in 2007 as a result of the EU Habitats Directive. This would re-enshrine cetacean protections into primary UK legislation as they were originally written and intended.
- Cetaceans would be fully protected by UK law rather than by assimilated European Union law, which could be eroded or repealed, for example, as a result of the powers set out in the Retained EU Law (Revocation and Reform) Act 2023. Should amendments to the offences in the respective habitats regulations occur, without the concurrent offences enshrined in primary legislation, this would result in a regression of UK environmental laws.



- Without the overlay of the respective habitats regulations, the UK would be in violation of the United States Marine Mammal Protection Act import provisions that require nations importing fish into the United States to have, among other things, prohibitions on the “*intentional mortality or serious injury of marine mammals in the course of fishing operations.*” This could put fisheries that export to the United States at risk. Amending the WCA 1981 assures compliance with this aspect of the import provisions.
- The current legal framework for cetaceans is identified in the EFRA Report as incoherent and not sufficient for effective preservation. An example of such incoherence is the split of offences applicable to cetaceans across both primary legislation (the WCA 1981) and secondary legislation (the respective habitats regulations). Added to this complexity is that the respective habitats regulations are now assimilated EU law. This is confusing to understand, including by those seeking to enforce the legislation. This amendment would consolidate and simplify the legal framework for cetaceans in the UK.
- In addition, there are complexities around the varying interpretations of the protections in place for harbour porpoise. Making it an offence to intentionally or recklessly disturb harbour porpoise would increase protection for this highly mobile species across the whole UK, and simplify the legal framework for the UK’s most common cetacean species.
- Highly mobile vulnerable marine mammals need protection that follows them throughout their range as they are forced to shift their distribution in response to [climate change](#).

Benefits of the Changes for UK Native and Vagrant Marine Mammals:

- More effective marine mammal conservation at a time when they face multiple, increasing and cumulative threats to their existence (please refer to Appendix 1 for a high level overview of threats to marine mammals). These highly mobile marine mammals will need to shift in response to climate change, so site-based protection is no longer enough. Legislation needs to protect all marine mammals wherever they are found⁴.
- Coherence and consistency of the legal framework for marine mammals in the UK, making implementation and enforcement more effective.
- Protected, thriving, diversified (tourism/ecotourism) and resilient coastal economies, ecosystems and species.
- Biodiversity benefits from marine mammal ecosystem services including enhancing blue carbon habitats.

⁴ Link to JNCC Report [https://jncc.gov.uk/news/new-research-on-climate-change-impacts-on-marine-species/#:~:text=The%20study%20forms%20part%20of,Atlantic%20Environment%20\(NEAE\)%20Strategy](https://jncc.gov.uk/news/new-research-on-climate-change-impacts-on-marine-species/#:~:text=The%20study%20forms%20part%20of,Atlantic%20Environment%20(NEAE)%20Strategy)



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- Contributions to blue health and wellbeing for everyone visiting coastal regions.
- Simpler and more effective, fit for purpose legislative framework for enforcement agencies, statutory authorities, developers, businesses, NGOs and the public.
- Efficiency and clarity from consolidation into primary legislation and consistency through this primary legislation with international obligations.
- Quick, popular public win for the new UK Government.

Appendices

These have been included to illustrate the inadequacies, complexities and inconsistencies of existing marine mammal legislation in the UK

APPENDIX 1: Existing Threats to Marine Mammals

APPENDIX 2: Existing Legislation

APPENDIX 3: Summary of Section 9 of the Wildlife and Countryside Act 1981 for marine mammals

APPENDIX 4: Regulation 43 of the Conservation of Habitats and Species Regulations 2017 (as amended)



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APPENDIX 5: Regulation 39 of the Conservation (Natural Habitats, &c.) Regulations 1994

APPENDIX 6: Regulation 45 of the Conservation of Offshore Marine Habitats and Species Regulations 2017

APPENDIX 7: Summary of legal frameworks setting out offences for pinnipeds in the UK



APPENDIX 1

Existing threats to Marine Mammals from anthropogenic sources

- Climate change impacts: Warming seas affecting prey distribution; Extreme weather events in; Groundswells increasing lost gear increasing entanglement rates; Groundswells disturbing pollutants and contaminants locked in the seabed (including PCBs); Ocean acidification; Toxic algal blooms; Changing habitat availability;
- Disturbance from increasing coastal human activity from land, sea and air;
- Fish stocks being depleted, changing and shifting;
- Bycatch and entanglement in operational and lost fishing gear;
- Persecution using a variety of fatal and debilitating actions;
- Habitat loss through coastal squeeze and increasing marine activity and developments;
- Emergence of new pathogens (including avian flu);
- Pollution in the form of physical (macro and micro) and chemical outflows ranging from industrial, agricultural, transportation and household activities including emerging issues such as pharmaceutical runoff (e.g. painkillers and hormones);
- Hunting by neighbouring countries - i.e. minke whales in Norway, fin whales in Iceland, pilot whales and several other dolphin species in the Faroe Islands.



APPENDIX 2

Existing Legislation

In the UK the following pieces of legislation set out specific offences for marine mammal species (cetaceans and pinnipeds):

- The Conservation of Habitats and Species Regulations 2017, which transpose the Habitats Directive up to 12nm offshore in England and Wales;
- The Conservation of Offshore Marine Habitats and Species Regulations 2017, which transpose the Habitats Directive beyond 12nm and within the whole of the UK offshore marine area. These regulations apply in Scottish waters more than 12nm from land;
- The Conservation (Natural Habitats, &c.) Regulations 1994, which transpose the Habitats Directive up to 12nm offshore in Scotland;
- The Wildlife and Countryside Act 1981;
- The Conservation of Seals Act 1970;
- The Marine (Scotland) Act 2010.



APPENDIX 3

Summary of section 9 of the Wildlife and Countryside Act 1981 for marine mammals

The following offences, set out in section 9 of the Wildlife and Countryside Act 1981 in England, Wales and Scotland, apply to Schedule 5 species. However, not all the section 9 offences apply to European protected species (which includes all cetaceans) which are included in Schedule 5.

The below table sets out which section 9 offences apply to marine mammals.

In Scotland, all cetaceans were removed from Schedule 5 WCA 1981 by the [Conservation \(Natural Habitats, &c.\) Amendment \(Scotland\) Regulations 2007/80](#) (regulation 28). However, the WCA 1981 still includes the offence in section 9(4A) which reads that ‘...any person who, intentionally or recklessly, disturbs or harasses any wild animal included in Schedule 5 as a (a) dolphin, whale or porpoise (cetacea).... shall be guilty of an offence.’ Accordingly, this offence contains two elements which must be met – firstly, the wild animal must be included in Schedule 5, and secondly, it must be a cetacean. Within Schedule 5, there are only two cetacean species – the common bottlenose dolphin, *Tursiops truncatus* and the common dolphin *Delphinus delphis*. Therefore, the disturb or harass offence only applies to these two species in Scotland. Further, Schedule 5 in Scotland does not limit the common bottlenose dolphin and common dolphin to only the section 9(4A) offence, and, unlike in England, all of the offences in section 9 WCA 1981 apply to these two species.

Section		Jurisdiction	Whale	Dolphin	Porpoise	Walrus
1	Intentionally kill, injure or take	England and Wales	No	No	No	Yes
1	Intentionally or recklessly kill, injure or take	Scotland	No	Common dolphin and	No	Yes



Section		Jurisdiction	Whale	Dolphin	Porpoise	Walrus
				common bottlenose dolphin only		
2	Has in his possession or control any live or dead wild animal or any part of, or anything derived from, such an animal	England and Wales; Scotland	No	No	No	Yes
4	Intentionally or recklessly -	England and Wales				
	a damages or destroys any structure or place which any wild animal uses for shelter or protection;	England and Wales	No	No	No	Yes
	b disturbs any such animal while it is occupying a structure or place which it uses for shelter or protection; or	England and Wales	No	No	No	Yes
	c obstructs access to any structure or place which any such animal uses for shelter or protection	England and Wales	No	No	No	Yes
4	Intentionally or recklessly -	Scotland				
	a damages or destroys, or obstructs access to, any structure or place which any wild animal uses for shelter or protection; or	Scotland	No	Common dolphin and common bottlenose	No	Yes



Section		Jurisdiction	Whale	Dolphin	Porpoise	Walrus
				dolphin only		
	b disturbs any such animal while it is occupying a structure or place which it uses for that purpose	Scotland	No	Common dolphin and common bottlenose dolphin only	No	Yes
4A	Intentionally or recklessly disturbs -	England and Wales				
	a a dolphin or whale (cetacea)	England and Wales	Yes	Yes	No	N/A
4A	Intentionally or recklessly disturbs or harasses -	Scotland				
	a a dolphin, whale or porpoise (cetacea), or	Scotland	No	Common dolphin and common bottlenose	No	N/A



Section			Jurisdiction	Whale	Dolphin	Porpoise	Walrus
					dolphin only		
5							
	a	sells, offers or exposes for sale, or has in his possession or transports for the purpose of sale, any live or dead wild animal, or any part of, or anything derived from, such an animal; or	England and Wales	Yes	Yes	Yes	Yes
	b	publishes or causes to be published any advertisement likely to be understood as conveying that he buys or sells, or intends to buy or sell, any of those things	England and Wales	Yes	Yes	Yes	Yes
5							
	a	sells, offers or exposes for sale, or has in his possession or transports for the purpose of sale, any live or dead wild animal, or any part of, or anything derived from, such an animal; or	Scotland	No	Common dolphin and common bottlenose dolphin only	No	Yes



Section		Jurisdiction	Whale	Dolphin	Porpoise	Walrus
	b publishes or causes to be published any advertisement likely to be understood as conveying that he buys or sells, or intends to buy or sell, any of those things	Scotland	No	Common dolphin and common bottlenose dolphin only	No	Yes
5A	Knowingly causes or permits to be done an act which is made unlawful by any of the foregoing provisions of this section (other than subsection (5)(b))	Scotland	No	Common dolphin and common bottlenose dolphin only	No	Yes



APPENDIX 4

Regulation 43 Conservation of Habitats and Species Regulations 2017 (as amended)

The following offences, set out in Regulation 43 of the Conservation of Habitats and Species Regulations 2017 (as amended), apply to all European Protected Species. In the UK, this includes all cetaceans, but no pinniped species.

Section		Offence	Jurisdiction	Whale	Dolphin	Porpoise	Pinniped
43(1)	(a)	Deliberately capture, injure or kill any wild animal of a European Protected Species	England and Wales (up to 12nm)	Yes	Yes	Yes	No
43(1)	(b)	Deliberately disturb wild animals of the species. Disturbance of animals include in particular any disturbance which is likely – (a) To impair their ability – (i) To survive, to breed or to reproduce, or to rear or nurture their young; or (ii) In the case of animals of a hibernating or migratory species, to hibernate or migrate; or (b) To affect significantly the local distribution or abundance of the species to which they belong		Yes	Yes	Yes	No



43(1)	(d)	Damage or destroy a breeding site or resting place of such an animal	England and Wales (up to 12nm)	Yes	Yes	Yes	No
43(3)	(a)	To be in possession of, or to control	England and Wales (up to 12nm)	Yes	Yes	Yes	No
43(3)	(b)	To transport	England and Wales (up to 12nm)	Yes	Yes	Yes	No
43(3)	(c)	To sell or exchange	England and Wales (up to 12nm)	Yes	Yes	Yes	No
43(3)	(d)	To offer for sale or exchange	England and Wales (up to 12nm)	Yes	Yes	Yes	No
43(4)		Section 43(3) applies to (a) any live or dead animal or part of an animal – (i) which has been taken from the wild, and (ii) which is of a species or subspecies listed in Annex IV (a) to the Habitats Directive; and (b) anything derived from such an animal or any part of such an animal	England and Wales (up to 12nm)				



APPENDIX 5

The Conservation (Natural Habitats, &c.) Regulations 1994

The following offences, set out in Regulation 39 of The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended), apply to all European Protected Species in Scottish waters up to 12nm. This includes all cetaceans, but no pinniped species.

Section		Offence	Jurisdiction	Whale	Dolphin	Porpoise	Pinniped
39(1)	(a)	Deliberately or recklessly capture, injure or kill a wild animal of a European Protected Species	Scotland, up to 12nm	Yes	Yes	Yes	No
39(1)	(b)	Deliberately or recklessly –					
	(i)	Harass a wild animal or group of wild animals of a European protected species		Yes	Yes	Yes	No
	(ii)	Disturb such an animal while it is occupying a structure or place which it uses for shelter or protection		Yes	Yes	Yes	No
	(iii)	Disturb such an animal while it is rearing or otherwise caring for its young		Yes	Yes	Yes	No
	(iv)	Obstruct access to a breeding site or resting place of such an animal, or otherwise to deny the animal use of the breeding site or resting place		Yes	Yes	Yes	No



	(v)	Disturb such an animal in a manner that is, or in circumstances which are, likely to significantly affect the local distribution or abundance of the species to which it belongs		Yes	Yes	Yes	No
	(vi)	Disturb such an animal in a manner that is, or in circumstances which are, likely to impair its ability to survive, breed or reproduce, or rear or otherwise care for its young		Yes	Yes	Yes	No
	(vii)	Disturb such an animal while it is migrating or hibernating.		Yes	Yes	Yes	No
39(1)	(d)	To damage or destroy a breeding site or resting place of such an animal.		Yes	Yes	Yes	No
39(2)		Deliberately or recklessly disturb any dolphin, porpoise or whale (cetacean)		Yes	Yes	Yes	No
39(3)	(a)	On or after 1 May 2007 to possess or control		Yes	Yes	Yes	No
39(3)	(b)	On or after 1 May 2007 to transport		Yes	Yes	Yes	No
39(3)	(c)	To sell or exchange		Yes	Yes	Yes	No
39(3)	(d)	To offer for sale or exchange		Yes	Yes	Yes	No
		Section 39(3) applies to (a) any live or dead animal or part of an animal – (i) which has been taken from the					



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		wild; and (ii) which is of a species or subspecies listed in Annex IV(a) to the Habitats Directive; and (b) anything derived from, such an animal or part of such an animal					
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APPENDIX 6

Regulation 45 Conservation of Offshore Marine Habitats and Species Regulations 2017

The following offences, set out in Regulation 45 of the Conservation of Offshore Habitats and Species Regulations 2017 (as amended), apply to all European Protected Species. In the UK, this includes all cetaceans, but no pinniped species.

Section		Offence	Jurisdiction	Whale	Dolphin	Porpoise	Pinniped
45(1)	(a)	Deliberately capture, injure or kill any wild animal of a European protected species	England, Wales and Scotland offshore waters up to 200nm	Yes	Yes	Yes	No
45(1)	(b)	Deliberately disturb wild animals of any such species Disturbance of animals include in particular any disturbance which is likely – (c) To impair their ability – (iii) To survive, to breed or to reproduce, or to rear or nurture their young; or (iv) In the case of animals of a hibernating or migratory species, to hibernate or migrate; or	England, Wales and Scotland offshore waters (12 – 200nm)	Yes	Yes	Yes	No



		To affect significantly the local distribution or abundance of the species to which they belong					
45(1)	(d)	Damage or destroy, or do anything to cause the deterioration of, a breeding site or resting place of such an animal	England, Wales and Scotland offshore waters (12 – 200nm)	Yes	Yes	Yes	No
45(3)	(a)	To keep or transport	England, Wales and Scotland offshore waters (12 – 200nm)	Yes	Yes	Yes	No
45(3)	(b)	To sell or exchange	England, Wales and Scotland offshore waters (12 – 200nm)	Yes	Yes	Yes	No
45(3)	(c)	To offer for sale or exchange	England, Wales and Scotland offshore waters (12 – 200nm)	Yes	Yes	Yes	No
45(4)		45(3) applies to (a) any live or dead animal or part of an animal – (i) which has been taken from the wild, and (ii) which is of a species or subspecies listed in Annex IV (a) to the Habitats Directive; and (b) anything derived from such an animal or any part of such an animal	England and Wales (up to 12nm)	Yes	Yes	Yes	No



APPENDIX 7

Summary of legal frameworks setting out offences for pinnipeds in the UK

Legislation	Jurisdiction	Offence	Limitations
Conservation of Seals Act 1970 (as amended)	England and Wales	Intentionally or recklessly kill, injure or take a seal (s1)	<p>'Seal' is not defined in the Conservation of Seals Act 1970 (as amended).</p> <p>Does the Conservation of Seals Act 1970 apply to all pinnipeds, or only to 'seals'? Is this why the walrus has a place in Schedule 5 of the Wildlife and Countryside Act 1981 (as amended)?</p> <p>In England and Wales, there is no offence of disturbance, or harassing a seal, whether in the water or at a haul-out site</p>
		Attempting to commit the offence of intentionally or recklessly killing, injuring or taking a seal (8(1))	
		Having in your possession, for the purpose of committing an offence under s1, any poisonous or explosive substance, any explosive article or any firearm or ammunition (s8(2))	
Marine (Scotland) Act 2010	Scotland	Killing, injuring or taking a live seal (intentionally or recklessly) (s107)	<p>Does the Marine (Scotland) Act 2010 apply to all pinnipeds, or only to 'seals'? Is this why the walrus has a place in Schedule 5 of the Wildlife and Countryside Act 1981 (as amended)?</p> <p>The definition of 'haul-out site' is not flexible enough to allow smaller haul outs to be included, or for the identification of new haul-outs as species move. As a result, the Designation of Haul-Out Sites Order(s) do not include all seal haul-out sites in Scotland</p>
		<p>Harassing a seal (intentionally or recklessly) at a haul-out site (s117).</p> <p>S117 goes on to define "Haul-out site" as meaning any place which the Scottish Ministers, after consulting the Natural Environment Research Council (NERC), by order designate as such for the purposes of this section.</p>	



		<p>The Protection of Seals (Designation of Haul-Out Sites) (Scotland) Order 2014⁵ designates 194 separate places as seal haul-out sites. The Protection of Seals (Designation of Haul-Out Sites) (Scotland) Amendment Order 2017 amends the 2014 Order to designate an additional place as a seal haul-out site</p>	
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In addition, under section 28P of the Wildlife and Countryside Act 1981, where a seal is an interest feature of a Site of Special Scientific Interest (SSSI), it is an offence for a person (other than a s28G authority⁶ acting in the exercise of its functions) who without reasonable excuse:

- **Intentionally or recklessly destroys or damages** any of the flora, **fauna** or geological or physiogeographical features by reason of which land is of special interest, or **intentionally or recklessly disturbs any of those fauna, and**
- **Knew that what he destroyed, damaged or disturbed was within a SSSI.**⁷
- A person (other than a s28G authority acting in the exercise of its functions) who without reasonable excuse –
 - **Intentionally or recklessly destroys or damages** any of the flora, fauna, or geological or physiogeographical features by reason of a SSSI is of special interest, or
 - **Intentionally or recklessly disturbs any of those fauna.**⁸

The Wildlife & Countryside Link Marine Mammals Expert Group has been pleased to work closely with Defra over the years to support marine mammal conservation. We look forward to continuing this work and for any further information please contact Cassie Rist, Senior Policy & Advocacy Advisor, Wildlife and Countryside Link E: cassie@wcl.org.uk

⁵ <https://www.legislation.gov.uk/ssi/2014/185/introduction/made>

⁶ The term “section 28G authority” is broadly defined in the WCA 1981, but specifically it includes local authorities and statutory undertakers.

⁷ S28P(6) WCA 1981

⁸ S28P(6A) WCA 1981