



TRISTAN DA CUNHA

REVISED EDITION OF THE LAWS, 2017

ENVIRONMENT AND NATURAL RESOURCES

**CONSERVATION OF NATIVE ORGANISMS AND NATURAL HABITATS
(TRISTAN DA CUNHA) ORDINANCE, 2006¹**

*Ordinance T1 of 2006
In force 3 February 2006*

No amendments to 1 November 2017

No subsidiary legislation to 1 November 2017

**CONSERVATION OF NATIVE ORGANISMS AND NATURAL HABITATS
(TRISTAN DA CUNHA) ORDINANCE, 2006**

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AN ORDINANCE to make provision for the conservation of the native organisms and natural habitats of Tristan da Cunha

¹ Under section 10 of the Revised Edition of the Laws Ordinance, 1999 this text is authoritative and is the sole authentic edition in respect of the law contained in it as at 1 November 2017.

Short title

1. This Ordinance may be cited as the Conservation of Native Organisms and Natural Habitats (Tristan da Cunha) Ordinance 2006.

Interpretation

2. (1) In this Ordinance, unless the context otherwise requires:

“**Administrator in Council**” means the Administrator acting after consultation with the Island Council;

“**animal**” means any kind of animate organism except human beings, microbes and bacteria and includes any spawn, egg, chick or dependent young of an animal including of birds and every stage of development of an animal including birds;

“**fishing licence**” means a licence issued under the Fishery Limits (Licensing of Fishing) (Tristan da Cunha) Order, 1983;

“**native organism**” means any organism as defined in this section that is known to be or thought to be native to Tristan da Cunha, and includes any non-breeding and migratory organism whose presence in Tristan da Cunha has resulted from natural processes of dispersal of the species to which the organism belongs;

“**native animal**” means any animal (as defined in this section) that is known to be or thought to be native to Tristan da Cunha, and includes any non-breeding and migratory animate organism that visits Tristan da Cunha;

“**native plant**” means any plant (as defined in this section) that is known to be or thought to be native to Tristan da Cunha;

“**natural habitat**” means any land or sea area which has not been significantly altered by human activity as a result of residential, agricultural or horticultural practices, construction of buildings, roads, gardens, enclosures or any other structures or amenities for human use;

“**organism**” means any living thing or part thereof, whether animal or plant as defined in this section;

“**permit**” means a permit issued in accordance with section 6(1) of this Ordinance;

“**plant**” means any kind of vegetation or any part thereof, and without limiting that definition, includes algae, fungi, lichens, liverworts; mosses, grasses, forbs, bushes, shrubs and trees and seeds and spores and every other stage in the growth cycle of a plant;

“**Resident of Tristan da Cunha**” means a person born in Tristan da Cunha, a spouse of any such person and any person who has lived on the Main Island of Tristan da Cunha for a period of at least one year immediately preceding the date of the event at issue or, as the case may be, the act or omission of which complaint is made, but not including in that period any period during which residence was authorised by a permit issued under the Entry Control (Tristan da Cunha) Ordinance, 1967;

“**territorial waters**” means a zone having for its inner boundary the low water line on the coast of the land area of Tristan da Cunha or any part thereof or any other baseline from which the territorial waters are measured and for its seaward boundary a line each point on which is 12 nautical miles from the nearest point on the aforesaid inner boundary and includes air space above that zone as well as the seabed and subsoil thereof;

“**Tristan da Cunha**” means the Main Island of Tristan da Cunha, Gough Island, Inaccessible

Island, Nightingale Island, Middle Island, Stoltenhoff Island and the islets belonging to any of these islands.

(2) In this Ordinance any reference to a land area includes the area of the territorial waters surrounding that land area.

Protection of natural habitat

3. (1) A person must not within Tristan da Cunha, except with a permit, wilfully -

- (a) set fire to any native plant growing in natural habitat;
- (b) spread, discharge or dump any noxious material except within a building or in a place approved by the Administrator for the disposal of such material;
- (c) spread by spray or by any other means any insecticide, herbicide or any other type of pesticide except within a building, tent or garden or areas used for agricultural or horticultural purposes and except within the Settlement of Edinburgh in the Main Island for public health purposes;
- (d) engage in any action causing disruption of the soil other than soil in a garden, enclosed area or areas used for residential, agricultural or horticultural purposes;
- (e) import any kind of organism not native to Tristan da Cunha;
- (f) liberate, disseminate or allow to escape into natural habitat or plant any kind of organism not native to Tristan da Cunha except in a garden or enclosed land or in areas used for residential, agricultural or horticultural purposes.

(2) Notwithstanding subsection (1)(e), a Resident of Tristan da Cunha may import without the prior need of obtaining a permit any agricultural and horticultural plants and domestic animals approved for import from time to time by the Administrator.

(3) A person must not export from Tristan da Cunha a native organism, whether living or dead, or any parts or products thereof, except under the authority of a permit or a fishing licence and in accordance with its conditions.

(4) Notwithstanding subsection (3), a Resident of Tristan da Cunha may, without the prior need of obtaining a permit, export handicrafts and curios manufactured from eggs of those species of birds that are listed in the Schedule to this Ordinance and from plants that have been collected in accordance with this Ordinance.

(5) Notwithstanding section 6, the Administrator has no power to issue a permit in terms of this Ordinance for the purpose of subsection (3) unless-

- (a) the Island Council has approved the issue of the permit; and
- (b) the Administrator has been satisfied that the native organism, or any part or product of it, is being exported solely for scientific and/or conservation purposes, or for commercial purposes in terms of a fishing licence.

(6) A person must not within Gough Island, Inaccessible Island or in any area in the Main Island, declared to be a nature reserve under section 5 of this Ordinance, except with a permit and in accordance with its terms, construct any house, hut, shed, jetty, road, landing strip, runway or erect any mast, pole, aerial, beacon or any other construction or installation or undertake any agricultural or horticultural activity.

Protection of native organisms

4. (1) All native organisms within Tristan Da Cunha are hereby declared to be protected species and no person may, except with a permit, or a fishing licence, and in accordance with its terms, willfully kill, capture, molest, disturb, hold in captivity, destroy, cut down, uproot, remove or collect for any purpose any native organism.

(2) Notwithstanding subsection (1), a Resident of Tristan da Cunha may, without the need for the prior issuing of a permit-

- (a) engage in fishing for domestic consumption within Tristan da Cunha;
- (b) kill, destroy, cut down, uproot or remove any native plant found growing in a garden, enclosed land or in residential, agricultural and horticultural areas on the Main Island;
- (c) on Nightingale, Middle and Stoltenhoff Islands and on the Main Island, not within a nature reserve, pick, gather or pluck parts, including fruits and seeds, of native plants for domestic purposes and for the purpose of producing handicrafts and curios, including the cutting of timber from *Phylica arborea* trees, without willfully uprooting, killing or destroying such plants;
- (d) on Nightingale, Middle and Stoltenhoff Islands collect for domestic purposes eggs and chicks of birds and for agricultural and horticultural purposes guano of birds of those species that are listed in the Schedule to this Ordinance;
- (e) on the Main Island kill or otherwise disturb the introduced Gough Moorhen *Gallinula comeri*, and kill or otherwise disturb free-flying Sub Antarctic or Tristan Skuas *Catharacta antarctica hamiltoni* which are known to be, or are reasonably believed to be, killing or attacking domestic animals, including sheep and poultry.

(3) A person must not willfully destroy, damage or interfere with the breeding sites, moulting sites and resting places of any native animal, including their nests and burrows, whether such sites and places are occupied or not by such animals at the time of such destruction, disturbance or interference:

Provided however that breeding and moulting sites of Great Shearwaters *Puffinus gravis* and Northern Rockhopper Penguins *Eudyptes chrysocome moseleyi* may be entered upon on Nightingale, Middle and Stoltenhoff Islands by Residents of Tristan da Cunha for the purposes of collecting eggs and chicks of Great Shearwaters and eggs and guano of Northern Rockhopper Penguins.

(4) A person must not willfully transport any native organism between islands and islets within Tristan da Cunha, except that on Nightingale, Middle and Stoltenhoff Islands those species of birds that are listed in the Schedule to this Ordinance and timber cut from *Phylica arborea* trees for domestic purposes may be transported to the Main Island.

(5) A person must not release on any island or islet live specimens of any native organism that was not originally derived from that island or islet.

Declaration of nature reserves

5. (1) Gough and Inaccessible Islands and their surrounding islets and territorial waters, which together make up the Gough and Inaccessible Islands World Heritage Site, and all breeding colonies of the Northern Rockhopper Penguin on the Main

Island are hereby declared to be Nature Reserves.

(2) No person other than a Resident of Tristan da Cunha may enter a nature reserve without the prior issuing of a permit, unless a vessel not making a lawful right of passage makes a *force majeure* entry to a nature reserve when its crew must report such entry and any effects thereof in terms of this Ordinance as soon as is practicable to the Administrator.

(3) All activities conducted within nature reserves must be carried out following the regulations, restrictions, requirements and guidelines of any management plan or equivalent document adopted by the Administrator in Council and currently in force for any nature reserve.

(4) A Resident of Tristan da Cunha may without the need for the issue of a permit undertake fishing for domestic consumption within a nature reserve, and gather and remove from a nature reserve driftwood and other jetsam found on the shoreline of the nature reserve.

(5) Notwithstanding subsection (2), a person who is not a Resident of Tristan da Cunha, may only enter the territorial waters of a nature reserve for a purpose authorised by a Fishing License.

(6) The Administrator in Council may from time to time declare any area to be a nature reserve in Tristan da Cunha.

(7) Notice of any declaration proposed under subsection (6) must be posted publicly in such place in the Settlement of Edinburgh as the Administrator directs.

(8) Any Resident of Tristan da Cunha who objects to a proposed declaration is entitled, within one calendar month of the posting of a notice under subsection (7), to give notice in writing addressed to the Administrator and delivered to the Administrator's office that he or she objects to the proposed declaration giving reasons for his or her objection.

(9) The Administrator in Council must as soon as is practicable consider any objection under subsection (8) and, taking into account the nature of the objection, must decide whether the proposed declaration should or should not be made. If it is decided that the declaration should be made, it comes into force one calendar month after the date on which the decision was made.

Permits

6. (1) The Administrator in Council may issue a permit in writing to authorise a person named in the permit to do anything forbidden by this Ordinance, but only if there is or appears to be no other satisfactory course of action and only if the issuing of a permit is consistent with the Agreement on the Conservation of Albatrosses and Petrels, including Article III (General Conservation Measures) and any future amendments to that Agreement.

(2) A person authorised by a permit issued under subsection (1) must inform the Administrator in writing from time to time, but not later than one month after the expiry of the permit, of anything that has been done under the permit including the numbers of each

species of native organisms killed, captured or collected.

Records

7. Written records must be kept by the Administrator or under the direction of the Administrator of the following-

- (a) all permits granted including particulars of the period and conditions of them;
- (b) all activities conducted; and
- (c) the numbers of each species of native organism taken under permits issued under the provisions of Section 6 of this Ordinance,

and such records must be made available for inspection by any member of the Island Council.

Possession of organisms

8. A person who without a permit knowingly-

- (a) has in his or her possession any organism which under section 3 may not be imported, liberated or disseminated; or
- (b) has in his possession any native organism killed, captured or collected in contravention of this Ordinance,

commits an offence and the organism or native organism must be disposed of as the Administrator directs.

Offences and penalties

9. (1) A person who contravenes or attempts to contravene any provision of this Ordinance which does not itself create an offence, or who does not give any information required by this Ordinance to be given, commits an offence.

(2) A person guilty of an offence under this Ordinance for which no other penalty is provided is liable –

- (a) in the case of a first offence, to a fine not exceeding £1000; and
- (b) in the case of a second or subsequent offence, to a fine not exceeding £5000.

Forfeiture of native organisms

10. If a person has been convicted of an offence under this Ordinance –

- (a) any organism or product of it which has been the subject of the conviction is forfeited to the Administrator and the court may, in addition to any penalty that is imposed, order any firearm, machine, instrument, trap, net, apparatus, article, material or thing which has been used in the commission or concealment of the offence to be forfeited also to the Administrator;
- (b) any organism that has been forfeited to the Administrator under this section, if native to Tristan da Cunha and capable of release or replanting, must be released, replaced or replanted on the island or islet of its collection and in its appropriate habitat whenever practicable;
- (c) any organism that has been forfeited to the Administrator under this section -
 - (i) if not native to Tristan da Cunha; or
 - (ii) of a kind the import of which is contrary to section 3(2); or
 - (iii) of which release or replacement would be impracticable; or
 - (iv) if dead,

must be disposed of as directed by the Administrator and, if such organism or thing is sold on removal from Tristan da Cunha, the proceeds must be applied to the benefits of and accrue to the conservation funds of Tristan da Cunha.

Enforcement

11. (1) The provisions of this Ordinance are to be enforced by conservation officers, and for that purpose a conservation officer has the powers set out in section 12.

(2) The following persons are conservation officers, that is to say, every officer appointed in that behalf by the Administrator, and every member of the Tristan da Cunha Police Force.

Powers of Conservation Officers

- 12.** A Conservation Officer has and may exercise the following powers –
- (a) to arrest without warrant or other process any person whom the officer has reasonable grounds to suspect of having committed an offence under this Ordinance;
 - (b) to seize and detain, pending its production in court, any organism or thing in respect of which the officer has reasonable cause to suspect-
 - (i) that an offence under this Ordinance has been committed; or
 - (ii) may be required for evidence in proceedings in respect of an offence; or
 - (iii) may have been used in connection with the commission or concealment of an offence;
 - (c) for the purpose of exercising the powers under this section, to go aboard any vessel within the territorial waters of Tristan da Cunha and make such search thereof and such inquiries of any person therein as he or she considers necessary to ascertain whether any offence under this Ordinance has been committed and to establish any fact relating to the offence;
 - (d) if the officer suspects that there is on a vessel within the territorial waters of Tristan da Cunha any person whom he or she reasonably suspects of having committed an offence under this Ordinance, to board that vessel and bring that person before a competent court and detain the person until the alleged offence has been adjudicated upon;
 - (e) if he or she reasonably suspects that any vessel which is within the territorial waters of Tristan da Cunha has been used in the commission of an offence under this Ordinance, to board the vessel and require the crew to bring the vessel to the nearest or most convenient port; and the Conservation Officer may detain the vessel and crew until such suspected offence has been adjudicated upon by a competent Court.

Protection of Conservation Officer

13. No action lies against a Conservation Officer in respect of any act done or omitted to be done by him or her in the exercise or purported exercise of his or her powers under this Ordinance unless it is proved that the officer acted in bad faith.

Obstruction of Conservation Officer

14. A person who –

- (a) obstructs a Conservation Officer acting in the exercise of his or her powers under this Ordinance; or
- (b) refuses or neglects to comply with any requisition or direction lawfully made or given by a Conservation Officer; or
- (c) refuses or neglects to answer any question lawfully asked by a Conservation Officer under this Ordinance,

commits an offence.

Penalty: A fine of £500 or imprisonment for 3 months, or both.

Venue

15. For all purposes of and incidental to the trial and punishment of any person in respect of an offence under this Ordinance and of proceedings and matters preliminary or incidental to or consequential in the trial or punishment and for all purposes of and incidental to the jurisdiction of any court or of any member of the Police Force of Tristan da Cunha or Conservation Officer with reference to such offence, the offence is deemed to have been committed either in the place in which it was actually committed or in any place in which the offender is for the time being found.

Repeal

16. The Conservation (Tristan da Cunha) Ordinance, 1976 is repealed.

SCHEDULE (Sections 3 and 4)

SPECIES AND PRODUCTS OF SPECIES OF NATIVE BIRDS PERMITTED TO BE
TAKEN BY RESIDENTS OF TRISTAN DA CUNHA ON NIGHTINGALE, MIDDLE
AND STOLTENHOFF ISLANDS WITHOUT A PERMIT

Eggs and chicks of Great Shearwater *Puffinus gravis*

Eggs and guano of Northern Rockhopper Penguin *Eudyptes chrysocome moseleyi*
