

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE
CANBERRA

Measure 16 (2009)

**Amendment of Annex II to the Protocol on Environmental Protection to
the Antarctic Treaty [1998] ATS 6**

Baltimore, 17 April 2009

Not yet in force
[2010] ATNIF 1

Measure 16 (2009)

Amendment of Annex II to the Environment Protocol

The Representatives,

Recalling the Protocol on Environmental Protection to the Antarctic Treaty, including its Annex II on Conservation of Antarctic Fauna and Flora;

Noting that the functions of the Committee for Environmental Protection under Article 12 of the Protocol include providing advice and formulating recommendations in connection with the operation of the Annexes to the Protocol;

Mindful that the Antarctic Treaty Consultative Meeting endorsed the proposal of the Committee for Environmental Protection in 2001 to undertake a review of Annex II to the Protocol;

Recalling also the procedure for amending Annex II as set out in Article 9(3) of the Protocol and Article 9 of Annex II;

Recalling further that the words 'All species of the genus *Arctocephalus*, Fur Seals' were removed from Appendix A to Annex II by Measure 4 (2006), which became effective on 23 June 2007;

Recommend to their Governments that:

1. Annex II to the Protocol on Environmental Protection to the Antarctic Treaty: Conservation of Antarctic Fauna and Flora be replaced by the amended version of Annex II attached to this Measure;

2. the replacement of the current version of Annex II with the amended version becomes effective in accordance with Article 9 of Annex II.

Adopted at Baltimore, United States of America, on 17 April 2009 at the XXXII Antarctic Treaty Consultative Meeting.

**ANNEX II TO THE PROTOCOL ON ENVIRONMENTAL
PROTECTION TO THE ANTARCTIC TREATY
CONSERVATION OF ANTARCTIC FAUNA AND FLORA**

ARTICLE 1

DEFINITIONS

For the purposes of this Annex:

- (a) “native mammal” means any member of any species belonging to the Class Mammalia, indigenous to the Antarctic Treaty area or occurring there naturally through migrations;
- (b) “native bird” means any member, at any stage of its life cycle (including eggs), of any species of the Class Aves indigenous to the Antarctic Treaty area or occurring there naturally through migrations;
- (c) “native plant” means any member of any species of terrestrial or freshwater vegetation, including bryophytes, lichens, fungi and algae, at any stage of its life cycle (including seeds, and other propagules), indigenous to the Antarctic Treaty area;
- (d) “native invertebrate” means any member of any species of terrestrial or freshwater invertebrate, at any stage of its life cycle, indigenous to the Antarctic Treaty area;
- (e) “appropriate authority” means any person or agency authorised by a Party to issue permits under this Annex;
- (f) “permit” means a formal permission in writing issued by an appropriate authority;
- (g) “take” or “taking” means to kill, injure, capture, handle or molest a native mammal or bird, or to remove or damage such quantities of native plants or invertebrates that their local distribution or abundance would be significantly affected;
- (h) “harmful interference” means:
 - (i) flying or landing helicopters or other aircraft in a manner that disturbs concentrations of native birds or seals;
 - (ii) using vehicles or vessels, including hovercraft and small boats, in a manner that disturbs concentrations of native birds or seals;
 - (iii) using explosives or firearms in a manner that disturbs concentrations of native birds or seals;
 - (iv) wilfully disturbing breeding or moulting native birds or concentrations of native birds or seals by persons on foot;
 - (v) significantly damaging concentrations of native terrestrial plants by landing aircraft, driving vehicles, or walking on them, or by other means; and
 - (vi) any activity that results in the significant adverse modification of habitats of any species or population of native mammal, bird, plant or invertebrate.
- (i) “International Convention for the Regulation of Whaling” means the Convention done at Washington on 2 December 1946.
- (j) “Agreement on the Conservation of Albatrosses and Petrels” means the Agreement done at Canberra on 19 June 2001.

ARTICLE 2

CASES OF EMERGENCY

1. This Annex shall not apply in cases of emergency relating to the safety of human life or of ships, aircraft, or equipment and facilities of high value, or the protection of the environment.
2. Notice of activities undertaken in cases of emergency that result in any taking or harmful interference shall be circulated immediately to all Parties and to the Committee.

ARTICLE 3

PROTECTION OF NATIVE FAUNA AND FLORA

1. Taking or harmful interference shall be prohibited, except in accordance with a permit.
2. Such permits shall specify the authorised activity, including when, where and by whom it is to be conducted and shall be issued only in the following circumstances:
 - (a) to provide specimens for scientific study or scientific information;
 - (b) to provide specimens for museums, herbaria and botanical gardens, or other educational institutions or uses;
 - (c) to provide specimens for zoological gardens but, in respect of native mammals or birds, only if such specimens cannot be obtained from existing captive collections elsewhere, or if there is a compelling conservation requirement; and
 - (d) to provide for unavoidable consequences of scientific activities not otherwise authorised under sub-paragraphs (a), (b) or (c) above, or of the construction and operation of scientific support facilities.
3. The issue of such permits shall be limited so as to ensure that:
 - (a) no more native mammals, birds, plants or invertebrates are taken than are strictly necessary to meet the purposes set forth in paragraph 2 above;
 - (b) only small numbers of native mammals or birds are killed, and in no case more are killed from local populations than can, in combination with other permitted takings, normally be replaced by natural reproduction in the following season; and
 - (c) the diversity of species, as well as the habitats essential to their existence, and the balance of the ecological systems existing within the Antarctic Treaty area are maintained.
4. Any species of native mammals, birds, plants and invertebrates listed in Appendix A to this Annex shall be designated "Specially Protected Species", and shall be accorded special protection by the Parties.
5. Designation of a species as a Specially Protected Species shall be undertaken according to agreed procedures and criteria adopted by the ATCM.
6. The Committee shall review and provide advice on the criteria for proposing native mammals, birds, plants or invertebrates for designation as a Specially Protected Species.
7. Any Party, the Committee, the Scientific Committee on Antarctic Research or the Commission for the Conservation of Antarctic Marine Living Resources may propose a

species for designation as a Specially Protected Species by submitting a proposal with justification to the ATCM.

8. A permit shall not be issued to a Specially Protected Species unless the taking:

- (a) is for a compelling scientific purpose; and
- (b) will not jeopardise the survival or recovery of that species or local population;

9. The use of lethal techniques on Specially Protected Species shall only be permitted where there is no suitable alternative technique.

10. Proposals for the designation of a species as a Specially Protected Species shall be forwarded to the Committee, the Scientific Committee on Antarctic Research and, for native mammals and birds, the Commission for the Conservation of Antarctic Marine Living Resources, and as appropriate, the Meeting of the Parties to the Agreement on the Conservation of Albatrosses and Petrels and other organisations. In formulating its advice to the ATCM on whether a species should be designated as a Specially Protected Species, the Committee shall take into account any comments provided by the Scientific Committee on Antarctic Research, and, for native mammals and birds, the Commission for the Conservation of Antarctic Marine Living Resources, and as appropriate, the Meeting of the Parties to the Agreement on the Conservation of Albatrosses and Petrels and other organisations.

11. All taking of native mammals and birds shall be done in the manner that involves the least degree of pain and suffering practicable.

ARTICLE 4

INTRODUCTION OF NON-NATIVE SPECIES AND DISEASES

1. No species of living organisms not native to the Antarctic Treaty area shall be introduced onto land or ice shelves, or into water, in the Antarctic Treaty area except in accordance with a permit.

2. Dogs shall not be introduced onto land, ice shelves or sea ice.

3. Permits under paragraph 1 above shall:

- (a) be issued to allow the importation only of cultivated plants and their reproductive propagules for controlled use, and species of living organisms for controlled experimental use; and
- (b) specify the species numbers and, if appropriate, age and sex of the species to be introduced, along with a rationale, justifying the introduction and precautions to be taken to prevent escape or contact with fauna or flora.

4. Any species for which a permit has been issued in accordance with paragraphs 1 and 3 above shall, prior to expiration of the permit, be removed from the Antarctic Treaty area or be disposed of by incineration or equally effective means that eliminates risk to native fauna or flora. The permit shall specify this obligation.

5. Any species, including progeny, not native to the Antarctic Treaty area that is introduced into that area without a permit that has been issued in accordance with paragraph 1 and 3 above, shall be removed or disposed of whenever feasible, unless the removal or disposal

would result in a greater adverse environmental impact. Such removal or disposal may include by incineration or by equally effective means, so as to be rendered sterile, unless it is determined that they pose no risk to native flora or fauna. In addition, all reasonable steps shall be taken to control the consequences of that introduction to avoid harm to native fauna or flora.

6. Nothing in this Article shall apply to the importation of food into the Antarctic Treaty area provided that no live animals are imported for this purpose and all plants and animal parts and products are kept under carefully controlled conditions and disposed of in accordance with Annex III to the Protocol.

7. Each Party shall require that precautions are taken to prevent the accidental introduction of micro-organisms (e.g., viruses, bacteria, yeasts, fungi) not present naturally in the Antarctic Treaty area.

8. No live poultry or other living birds shall be brought into the Antarctic Treaty area. All appropriate efforts shall be made to ensure that poultry or avian products imported into Antarctica are free from contamination by diseases (such as Newcastle's Disease, tuberculosis, and yeast infection) which might be harmful to native flora and fauna. Any poultry or avian products not consumed shall be removed from the Antarctic Treaty area or disposed of by incineration or equivalent means that eliminates the risks of introduction of micro-organisms (e.g. viruses, bacteria, yeasts, fungi) to native flora and fauna.

9. The deliberate introduction of non-sterile soil into the Antarctic Treaty area is prohibited. Parties should, to the maximum extent practicable, ensure that non-sterile soil is not unintentionally imported into the Antarctic Treaty area.

ARTICLE 5

INFORMATION

Each Party shall make publicly available information on prohibited activities and Specially Protected Species to all those persons present in or intending to enter the Antarctic Treaty area with a view to ensuring that such persons understand and observe the provisions of this Annex.

ARTICLE 6

EXCHANGE OF INFORMATION

1. The Parties shall make arrangements for:
 - (a) collecting and annually exchanging records (including records of permits) and statistics concerning the numbers or quantities of each species of native mammal, bird, plant or invertebrate taken in the Antarctic Treaty area; and
 - (b) obtaining and exchanging information as to the status of native mammals, birds, plants, and invertebrates in the Antarctic Treaty area, and the extent to which any species or population needs protection.
2. As early as possible, after the end of each austral summer season, but in all cases before 1 October of each year, the Parties shall inform the other Parties as well as the Committee

of any step taken pursuant to paragraph 1 above and of the number and nature of permits issued under this Annex in the preceding period of 1 April to 31 March.

ARTICLE 7

RELATIONSHIP WITH OTHER AGREEMENTS OUTSIDE THE ANTARCTIC TREATY SYSTEM

Nothing in this Annex shall derogate from the rights and obligations of Parties under the International Convention for the Regulation of Whaling.

ARTICLE 8

REVIEW

The Parties shall keep under continuing review measures for the conservation of Antarctic fauna and flora, taking into account any recommendations from the Committee.

ARTICLE 9

AMENDMENT OR MODIFICATION

1. This Annex may be amended or modified by a measure adopted in accordance with Article IX (1) of the Antarctic Treaty. Unless the measure specifies otherwise, the amendment or modification shall be deemed to have been approved, and shall become effective, one year after the close of the Antarctic Treaty Consultative Meeting at which it was adopted, unless one or more of the Antarctic Treaty Consultative Parties notifies the Depositary, within that time period, that it wishes an extension of that period or that it is unable to approve the measure.

2. Any amendment or modification of this Annex which becomes effective in accordance with paragraph 1 above shall thereafter become effective as to any other Party when notice of approval by it has been received by the Depositary.

APPENDICES TO THE ANNEX
APPENDIX A:
SPECIALLY PROTECTED SPECIES

Ommatophoca rossii, Ross Seal.