

SUBSIDIARY LEGISLATION 549.35**MARINE MAMMALS PROTECTION
REGULATIONS**

12th August, 2003

LEGAL NOTICE 203 of 2003, as amended by Legal Notice 426 of 2007.

- 1.** The title of these regulations is the Marine Mammals Protection Regulations. Title.
- 2.** In these regulations, unless the context otherwise requires: Interpretation.
- "the Act" means the Environment Protection Act; Cap. 549.
- "competent authority" means the Environment and Resources Authority as prescribed by the Nomination of the Competent Authority Order, and such other body or person as the Minister responsible for the environment may by order in the Gazette prescribe and different bodies or persons may be designated as the competent authority for different provisions and different purposes of these regulations; S.L. 549.19
- "Director" means the Director responsible for environment protection with the competent authority, or his designated representative;
- "export" means the taking out of Malta of any specimen;
- "import" means the bringing into Malta of any specimen;
- "maltreat" means to subject a specimen to treatment or to put a specimen in a situation which is not natural in its life cycle, with the exception of specimens held for medical treatment or in dolphinarium or oceanaria with the permission of the Director of the competent authority;
- "Minister" means the Minister responsible for the Environment;
- "permit" means a prior permission issued in terms of these regulations, and on the basis of the provisions of regulations 7 and 8;
- "specimen" means any marine mammal of the species or lower taxon listed in the Schedule, whether alive or dead, whether whole or in part, whether in the original form or after having undergone any transformation. It includes any part or derivative thereof, as well as any goods which appear, from an accompanying document, the packaging or a mark or label, or from any other circumstances, to be parts or derivatives of animals of those species;
- "take" means to remove from the natural habitat.
- 3.** The species of marine mammals listed in the Schedule are declared to be protected marine mammal species for the purpose of article 54(2)(m)(ii) of the Act. Declaration.
- 4.** The competent authority shall be responsible for the administration and implementation of these regulations. Administrative authority.

Protection of
species.

5. (1) No person shall, directly or indirectly, pursue, take or attempt to take, maltreat or attempt to maltreat, kill or attempt to kill, possess, sell by any method, buy, exchange, re-introduce, import or export any specimen of species listed in the Schedule.

(2) Any marine mammal accidentally caught during normal fishing activities shall be immediately released, and if such release is not possible it shall be landed at the fish market in Valletta or in Gozo, and shall be surrendered immediately to the Director responsible for fisheries, who shall then deal with it in consultation with the Director responsible for veterinary services and the competent authority.

Documentary
evidence.

6. Any person who has in his possession any specimen the import of which is subject to these or other regulations, shall retain in his possession and until such time as that specimen remains in his possession, all permits, certificates and licences relative to the import of that specimen.

Permits and
conditions.

7. (1) The competent authority may issue a permit to authorize:

- (a) the taking and keeping of any specimen for *bona fide* scientific studies or educational purposes,
- (b) the import or export of any specimen,
- (c) the re-introduction of specimens,
- (d) the performance of any activity which would otherwise not be permitted under these regulations to dolphinarium or oceanaria which at the time of the coming into force of these regulations are already in possession of live specimens, provided that such permit is limited to the replacement or replenishment of specimens:

Provided that the competent authority shall not issue such a permit if in its opinion such activities threaten any species or lead to the endangering of the biological diversity of Malta.

(2) The person requesting a permit for activities referred to in subregulation (1), hereafter referred to as the applicant, shall submit an application in writing to the competent authority.

(3) In order to enable the competent authority to assess a permit request, the application shall contain the relevant documents and any other requisite information requested by the competent authority.

(4) The competent authority may, to ensure compliance with these regulations:

- (a) amend, suspend or revoke any permit and, or other such authorization instruments,
- (b) impose such conditions as it may deem fit, provided that a special condition may be imposed upon the applicant, to submit within a month from the expiry of the permit or at the end of the calendar year, whichever is the earliest, information relevant to the activities

permitted.

(5) A copy of any published results and other publications relevant to activities carried out in accordance with the permit shall reach the competent authority within three months from the date of publication.

(6) The period of validity of such permit shall also be established at the discretion of the competent authority, provided that the validity of the permit may not exceed one calendar year from date of issue.

(7) The competent authority shall reserve the right not to issue or renew any permit if the applicant in question has not fulfilled or honoured any of the conditions and obligations arising from any other permit issued by the Director or the competent authority under these regulations or other relevant regulations.

(8) The Director may, on behalf of the competent authority, in cases of emergency or grave danger, authorize the possession or keeping on a temporary basis, or the disposal of any specimen, and in so doing he may issue any such directives he may deem fit.

8. (1) Persons, public entities and other institutions having been granted a permit under these regulations will be maintained in a national public register.

Public register and confidential information.

(2) Where its disclosure affects one or more of the items mentioned in the Freedom of Access to Information on the Environment Regulations, the applicant may indicate the information in the permit application submitted pursuant to these regulations that should be treated as confidential. Verifiable justification must be given in such cases.

S.L. 549.39

(3) The competent authority shall decide, after consultation with the applicant, which information will be kept confidential and shall inform the applicant of its decision.

(4) Except where the competent authority determines that there is a threat to the safeguarding of the biodiversity, in no case may the following information be kept confidential:

- the name and address of the applicant,
- the institution, if any, requiring the permit,
- the species, biotope, natural habitat, site or area involved,
- the aim and purpose of the application,
- the benefits arising from the permit,
- the possible impacts on local biodiversity, including the species, biotope, natural habitat, or area involved,
- the evaluation of foreseeable effects, in particular any harmful effects on the environment.

(5) The competent authority shall not divulge to third parties any information decided to be confidential according to subregulation (2), and shall protect intellectual property rights relating to the data received.

(6) If, for whatever reasons, the applicant withdraws the application, the competent authority must respect the confidentiality of the information supplied.

Relation with other regulations.

9. Nothing contained in these regulations shall be construed to prejudice the observance of any another law or regulations.

Offences and penalties.
Amended by:
L.N. 426 of 2007.

10. (1) Any person who shall take, maltreat, kill, possess, sell by any method, buy, exchange, import or export any specimen in contravention of these regulations, and any person who contravenes any restriction, prohibition or requirement imposed by or under these regulations, and any person who conspires or attempts, or aids, abets, counsels, or procures any other person to commit any of the above offences, shall be guilty of an offence.

(2) Any person who commits an offence against these regulations shall, on conviction, be liable -

- (a) on a first conviction, to a fine (*multa*) of not less than two hundred and thirty-two euro and ninety-four cents (€232.94) for each specimen;
- (b) on a second or subsequent conviction, to a fine (*multa*) of not less than five hundred and eighty-two euro and thirty-four cents (€532.34) but not exceeding two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37) for each specimen, or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

(3) Without prejudice to the provisions of subregulation (2), the court may also order any person who is found guilty of committing an offence under these regulations, to pay for the expenses incurred by the competent authority as a result of the said offence, the revocation of the permit issued under these regulations and the confiscation, retention and disposal of the *corpus delicti*.

SCHEDULE
PROTECTED MARINE MAMMALS

Scientific name	Maltese name	English name
CETACEA		
<i>Balaenoptera acutorostrata</i>	Balena Żghira; Balenottera Żghira, Balena ta' Geddumha Ppuntat	Minke Whale
<i>Balaenoptera borealis</i>	Balenottera tan-Nofsinhar	Sei Whale
<i>Balaenoptera physalus</i>	Balena Kbira; Balenottera Kbira, Baliena Mbaċċa	Fin Whale; Finback Whale
<i>Delphinus delphis</i>	Denfil Komuni	Common Dolphin
<i>Eubalaena glacialis</i>	Baliena tat-Tramuntana	Northern Right Whale
<i>Globicephala melas</i> (= <i>Globicephala meleana</i>)	Balena Sewda	Long-Finned Pilot Whale
<i>Grampus griseus</i>	Denfil Griż; Denfil ta' Risso; Monka tal-Punent	Risso's Dolphin
<i>Kogia simus</i>	Balena ta' Mnehirha Ċatt	Dwarf Sperm Whale
<i>Megaptera novaeangliae</i>	Balena tal-Hwienah Kbar	Humpback Whale
<i>Mesoplodon densirostris</i>	Balena ta' Blainville	Blainville's Beaked Whale
<i>Orcinus orca</i>	Orka	Killer Whale
<i>Phocoena phocoena</i>	Denfil Iswed	Common Porpoise; Harbour Propoise
<i>Physeter macrocephalus</i> (= <i>Physeter catodon</i>)	Gabdoll	Sperm Whale
<i>Pseudorca crassidens</i>	Pseudorka	False Killer Whale
<i>Sousa chinensis</i>	Denfil tal-Bahar l-Ahmar	Indo-Pacific Humpback Dolphin
<i>Stenella coeruleoalba</i>	Stenella	Striped Dolphin
<i>Steno bredanensis</i>	Denfil tat-Tikki	Rough-Toothed Dolphin
<i>Tursiops truncatus</i>	Denfil Geddumu Qasir	Bottlenose Dolphin
<i>Ziphius cavirostris</i>	Balena ta' Kuvjer	Cuvier's Beaked Whale
PINNIPEDIA		
<i>Monachus monachus</i>	Bumerin; Monka, Foka Monka	Mediterranean Monk Seal