

ANTARCTICA AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Antarctica Act 1960 by giving power to make regulations to give effect to the agreed measures for the conservation of Antarctic fauna and flora, adopted under Article IX (1) of the Antarctic Treaty (the text of which is at present set out in the Schedule to the principal Act). Under that Article recommendations may be made for the adoption of measures in furtherance of the principles and objectives of the Treaty.

Clause 2 of the Bill inserts a new section 6A in the principal Act giving power to make such regulations.

Subsections (1) to (3) of the new section provide for regulations to be made to give effect to the agreed measures for the conservation of Antarctic fauna and flora (set out in the Schedule to the Bill) as adopted at the third consultative meeting held in Brussels in 1964 and amended at the fourth consultative meeting in Santiago in 1966 and the fifth consultative meeting in Paris in 1968, and to any future amendments that may hereafter be made to those measures. Such regulations may prohibit, except pursuant to a permit, the wilful killing, injuring, molesting, or taking of any native mammal or native bird in any part of Antarctica, the gathering of any native plant in a specially protected area, the driving of vehicles or movement on the ground of aircraft in a specially protected area, or the bringing into Antarctica of any animal or plant of a species that is not indigenous to Antarctica (see Articles VI, VIII, and IX of the agreed measures as set out in the Schedule to the Bill).

Subsection (4) of the new section provides that the regulations may be made to apply to New Zealand citizens or persons ordinarily resident in New Zealand, the owners or masters or crew members of New Zealand ships or pilots in command or crew members of New Zealand aircraft, persons being members of any expedition organised in New Zealand, and (in the Ross Dependency only) persons who are not nationals of Contracting Parties to the Antarctic Treaty.

Subsection (5) provides that any such regulations may extend to the high seas within Antarctica (cf. Article I (2)).

Subsection (6) deals with the issue of permits, etc. In paragraph (d) provision is made for the exemption of persons holding permits issued by Contracting Parties to the Treaty.

Subsection (7) provides for the imposition of penalties for breaches of the regulations, not exceeding 3 months' imprisonment or a fine of \$500.

Under subsection (8) the text of the agreed measures as set out in the new Schedule may be amended by Order in Council to give effect to any future amendment of those measures adopted under Article IX of the Treaty or Article XIV of the agreed measures.

Clause 3 adds the text of the agreed measures to the principal Act as a Second Schedule to that Act. In reproducing this text the words added to Article II (d) and (e) at the fifth consultative meeting have been included; and the definitions of specially protected species and areas adopted at the fourth and fifth consultative meetings have also been included in Annexes A and B.

Right Hon. Sir Keith Holyoake

ANTARCTICA AMENDMENT

ANALYSIS

Title		
1. Short Title		3. New Second Schedule added to principal Act
2. Regulations for conservation of Antarctic fauna and flora		Schedule

A BILL INTITULED

An Act to amend the Antarctica Act 1960

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Antarctica Amendment Act 1970, and shall be read together with and deemed part of the Antarctica Act 1960* (hereinafter referred to as the principal Act).

10 2. Regulations for conservation of Antarctic fauna and flora—The principal Act is hereby amended by inserting, after section 6, the following section:

*1960, No. 47

No. 55—1

“6A. (1) The Governor-General may from time to time, by Order in Council, make regulations for the purpose of giving effect to the agreed measures for the conservation of Antarctic fauna and flora set out in the Second Schedule to this Act (being measures recommended pursuant to Article IX (1) of the Treaty for approval by the Contracting Parties, as heretofore amended) and to any amendment of those agreed measures that may hereafter be made pursuant to the said Article IX or to Article XIV of those agreed measures.

“(2) Without limiting the generality of subsection (1) of this section, any regulations made for the purposes of that subsection may prohibit, except as permitted by or under the regulations,—

“(a) The wilful killing, injuring, molesting, or taking of any native mammal or native bird, or any attempt at any such act, in any part of Antarctica:

“(b) The gathering of any native plant within a specially protected area:

“(c) The driving of any vehicle, or the movement of any aircraft on the ground (whether it is being mechanically propelled or not), within a specially protected area:

“(d) The bringing into any part of Antarctica of any animal or plant of a species that is not indigenous to Antarctica.

“(3) Any regulations made for the purposes of this section may—

“(a) Designate as a specially protected species any species of mammal or bird which is for the time being specified in Annex A to the said agreed measures or which has been recommended for inclusion in that annex pursuant to Article IX (1) of the Treaty:

“(b) Designate (whether by reference to a map or otherwise) as a specially protected area any area which is for the time being specified in Annex B to the said agreed measures or which has been recommended for inclusion in that annex pursuant to Article IX (1) of the Treaty.

“(4) Any regulations under this section may be made to apply—

“(a) To any New Zealand citizen or any person ordinarily resident in New Zealand:

- “(b) To any person who is for the time being the owner or master or a member of the crew of a New Zealand ship or the pilot in command or a member of the crew of a New Zealand aircraft:
- 5 “(c) Subject to such exceptions and modifications as may be specified in the regulations, to any person who is for the time being a member of any expedition organised in New Zealand:
- 10 “(d) In the Ross Dependency, to any person who is not a national of any Contracting Party to the Treaty.
- “(5) Any regulations under this section may be made to extend and apply to the high seas within Antarctica.
- “(6) Any regulations under this section may—
- 15 “(a) Provide for the issue of permits, for any of the purposes of the regulations, by any person who is the holder for the time being of any specified office or appointment in New Zealand or Antarctica:
- “(b) Prescribe, or authorise any such person to prescribe, conditions subject to which such permits may be
- 20 “(c) Authorise any such person, subject to such conditions and limitations (if any) as may be prescribed in the regulations, to delegate to any other person all or any of his powers under the regulations:
- 25 “(d) Exempt from any of the provisions of the regulations the holder of any permit issued by any Contracting Party to the Treaty:
- “(e) Make such other provision as may be contemplated by or necessary to give full effect to the said agreed
- 30 measures.
- “(7) Any regulations under this section may prescribe, in respect of the contravention of or non-compliance with any of their provisions, penalties, on the summary conviction of any offender, not exceeding in any case imprisonment for a term
- 35 of 3 months or a fine of \$500, or both.
- “(8) If at any time the agreed measures set out in the Second Schedule to this Act are amended pursuant to Article IX (4) of the Treaty or to Article XIV of the said agreed measures, the Governor-General may by Order in Council
- 40 amend the Second Schedule to this Act for the purpose of giving effect to the amendment.”

3. New Second Schedule added to principal Act—(1) The principal Act is hereby further amended—

- (a) By omitting from the definition of the term "Treaty", in subsection (1) of section 2, the word "Schedule", and substituting the words "First Schedule":
- (b) By omitting from the Schedule the heading "Schedule", and substituting the following headings:

"SCHEDULES

"FIRST SCHEDULE":

- (c) By adding the new Second Schedule set out in the 10 Schedule to this Act.

SCHEDULE

Section 3 (1) (c)

NEW SECOND SCHEDULE ADDED TO PRINCIPAL ACT

"SECOND SCHEDULE

**AGREED MEASURES FOR THE CONSERVATION OF
ANTARCTIC FAUNA AND FLORA**

PREAMBLE

The Governments participating in the Third Consultative Meeting under Article IX of the Antarctic Treaty,

Desiring to implement the principles and purposes of the Antarctic Treaty;

Recognising the scientific importance of the study of Antarctic fauna and flora, their adaptation to their rigorous environment, and their interrelationship with that environment;

Considering the unique nature of these fauna and flora, their circumpolar range, and particularly their defencelessness and susceptibility to extermination;

Desiring by further international collaboration within the framework of the Antarctic Treaty to promote and achieve the objectives of protection, scientific study, and rational use of these fauna and flora; and

Having particular regard to the conservation principles developed by the Scientific Committee on Antarctic Research (SCAR) of the International Council of Scientific Unions;

Hereby consider the Treaty Area as a Special Conservation Area and have agreed on the following measures:

SCHEDULE—*continued*

“SECOND SCHEDULE—*continued*”

ARTICLE I

1. These Agreed Measures shall apply to the same area to which the Antarctic Treaty is applicable (hereinafter referred to as the Treaty Area) namely the area south of 60° South Latitude, including all ice shelves.

2. However, nothing in these Agreed Measures shall prejudice or in any way affect the rights, or the exercise of the rights, of any State under international law with regard to the high seas within the Treaty Area, or restrict the implementation of the provisions of the Antarctic Treaty with respect to inspection.

3. The Annexes to these Agreed Measures shall form an integral part thereof, and all references to the Agreed Measures shall be considered to include the Annexes.

ARTICLE II

For the purposes of these Agreed Measures:

- (a) “Native mammal” means any member, at any stage of its life cycle, of any species belonging to the Class Mammalia indigenous to the Antarctic or occurring there through natural agencies of dispersal, excepting whales.
- (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 or occurring there through natural agencies of dispersal.
- (c) “Native plant” means any kind of vegetation at any stage of its life cycle (including seeds), indigenous to the Antarctic or occurring there through natural agencies of dispersal.
- (d) “Appropriate authority” means any person authorised by a Participating Government to issue permits under these Agreed Measures. The functions of an authorised person will be carried out within the framework of the Antarctic Treaty. They will be carried out exclusively in accordance with scientific principles and will have as their sole purpose the effective protection of Antarctic fauna and flora in accordance with these Agreed Measures.
- (e) “Permit” means a formal permission in writing issued by an appropriate authority as defined at paragraph (d) above.
- (f) “Participating Government” means any Government for which these Agreed Measures have become effective in accordance with Article XIII of these Agreed Measures.

ARTICLE III

Each Participating Government shall take appropriate action to carry out these Agreed Measures.

*Antarctica Amendment*SCHEDULE—*continued*"SECOND SCHEDULE—*continued*

ARTICLE IV

The Participating Governments shall prepare and circulate to members of expeditions and stations information to ensure understanding and observance of the provisions of these Agreed Measures, setting forth in particular prohibited activities, and providing lists of specially protected species and specially protected areas.

ARTICLE V

The provisions of these Agreed Measures shall not apply in cases of extreme emergency involving possible loss of human life or involving the safety of ships or aircraft.

ARTICLE VI

1. Each Participating Government shall prohibit within the Treaty Area the killing, wounding, capturing or molesting of any native mammal or native bird, or any attempt at any such act, except in accordance with a permit.

2. Such permits shall be drawn in terms as specific as possible and issued only for the following purposes:

- (a) to provide indispensable food for men or dogs in the Treaty Area in limited quantities, and in conformity with the purposes and principles of these Agreed Measures;
- (b) to provide specimens for scientific study or scientific information;
- (c) to provide specimens for museums, zoological gardens, or other educational or cultural institutions or uses.

3. Permits for Specially Protected Areas shall be issued only in accordance with the provisions of Article VIII.

4. Participating Governments shall limit the issue of such permits so as to ensure as far as possible that:

- (a) no more native mammals or birds are killed or taken in any year than can normally be replaced by natural reproduction in the following breeding season;
- (b) the variety of species and the balance of the natural ecological systems existing within the Treaty Area are maintained.

5. The species of native mammals and birds listed in Annex A of these Measures shall be designated "Specially Protected Species", and shall be accorded special protection by Participating Governments.

6. A Participating Government shall not authorise an appropriate authority to issue a permit with respect to a Specially Protected Species except in accordance with paragraph 7 of this Article.

7. A permit may be issued under this Article with respect to a Specially Protected Species, provided that:

- (a) it is issued for a compelling scientific purpose, and
- (b) the actions permitted thereunder will not jeopardise the existing natural ecological system or the survival of that species.

SCHEDULE—*continued*

“SECOND SCHEDULE—*continued*”

ARTICLE VII

1. Each Participating Government shall take appropriate measures to minimise harmful interference within the Treaty Area with the normal living conditions of any native mammal or bird, or any attempt at such harmful interference, except as permitted under Article VI.

2. The following acts and activities shall be considered as harmful interference:

- (a) allowing dogs to run free,
- (b) flying helicopters or other aircraft in a manner which would unnecessarily disturb bird and seal concentrations, or landing close to such concentrations (e.g. within 200 m),
- (c) driving vehicles unnecessarily close to concentrations of birds and seals (e.g. within 200 m),
- (d) use of explosives close to concentrations of birds and seals,
- (e) discharge of firearms close to bird and seal concentrations (e.g. within 300 m),
- (f) any disturbance of bird and seal colonies during the breeding period by persistent attention from persons on foot.

However, the above activities, with the exception of those mentioned in (a) and (e), may be permitted to the minimum extent necessary for the establishment, supply and operation of stations.

3. Each Participating Government shall take all reasonable steps towards the alleviation of pollution of the waters adjacent to the coast and ice shelves.

ARTICLE VIII

1. The areas of outstanding scientific interest listed in Annex B shall be designated “Specially Protected Areas” and shall be accorded special protection by the Participating Governments in order to preserve their unique natural ecological system.

2. In addition to the prohibitions and measures of protection dealt with in other Articles of these Agreed Measures, the Participating Governments shall in Specially Protected Areas further prohibit:

- (a) the collection of any native plant, except in accordance with a permit;
- (b) the driving of any vehicle.

3. A permit issued under Article VI shall not have effect within a Specially Protected Area except in accordance with paragraph 4 of the present Article.

4. A permit shall have effect within a Specially Protected Area provided that:

- (a) it was issued for a compelling scientific purpose which cannot be served elsewhere; and
- (b) the actions permitted thereunder will not jeopardise the natural ecological system existing in that Area.

*Antarctica Amendment*SCHEDULE—*continued*"SECOND SCHEDULE—*continued*

ARTICLE IX

1. Each Participating Government shall prohibit the bringing into the Treaty Area of any species of animal or plant not indigenous to that Area, except in accordance with a permit.

2. Permits under paragraph 1 of this Article shall be drawn in terms as specific as possible and shall be issued to allow the importation only of the animals and plants listed in Annex C. When any such animal or plant might cause harmful interference with the natural system if left unsupervised within the Treaty Area, such permits shall require that it be kept under controlled conditions and, after it has served its purpose, it shall be removed from the Treaty Area or destroyed.

3. Nothing in paragraphs 1 and 2 of this Article shall apply to the importation of food into the Treaty Area so long as animals and plants used for this purpose are kept under controlled conditions.

4. Each Participating Government undertakes to ensure that all reasonable precautions shall be taken to prevent the accidental introduction of parasites and diseases into the Treaty Area. In particular, the precautions listed in Annex D shall be taken.

ARTICLE X

Each Participating Government undertakes to exert appropriate efforts, consistent with the Charter of the United Nations, to the end that no one engages in any activity in the Treaty Area contrary to the principles or purposes of these Agreed Measures.

ARTICLE XI

Each Participating Government whose expeditions use ships sailing under flags of nationalities other than its own shall, as far as feasible, arrange with the owners of such ships that the crews of these ships observe these Agreed Measures.

ARTICLE XII

1. The Participating Governments may make such arrangements as may be necessary for the discussion of such matters as:

- (a) the collection and exchange of records (including records of permits) and statistics concerning the numbers of each species of native mammal and bird killed or captured annually in the Treaty Area;
- (b) the obtaining and exchange of information as to the status of native mammals and birds in the Treaty Area, and the extent to which any species needs protection;
- (c) the number of native animals or birds which should be permitted to be harvested for food, scientific study, or other uses in the various regions;
- (d) the establishment of a common form in which this information shall be submitted by Participating Governments in accordance with paragraph 2 of this Article.

SCHEDULE—*continued*

“SECOND SCHEDULE—*continued*

2. Each Participating Government shall inform the other Governments in writing before the end of November of each year of the steps taken and information collected in the preceding period of 1st July to 30th June relating to the implementation of these Agreed Measures. Governments exchanging information under paragraph 5 of Article VII of the Antarctic Treaty may at the same time transmit the information relating to the implementation of these Agreed Measures.

ARTICLE XIII

1. After the receipt by the Government designated in Recommendation I–XIV (5) of notification of approval by all Governments whose representatives are entitled to participate in meetings provided for under Article IX of the Antarctic Treaty, these Agreed Measures shall become effective for those Governments.

2. Thereafter any other Contracting Party to the Antarctic Treaty may, in consonance with the purposes of Recommendation III–VII, accept these Agreed Measures by notifying the designated Government of its intention to apply the Agreed Measures and to be bound by them. The Agreed Measures shall become effective with regard to such Governments on the date of receipt of such notification.

3. The designated Government shall inform the Governments referred to in paragraph 1 of this Article of each notification of approval, the effective date of these Agreed Measures and of each notification of acceptance. The designated Government shall also inform any Government which has accepted these Agreed Measures of each subsequent notification of acceptance.

ARTICLE XIV

1. These Agreed Measures may be amended at any time by unanimous agreement of the Governments whose Representatives are entitled to participate in meetings under Article IX of the Antarctic Treaty.

2. The Annexes, in particular, may be amended as necessary through diplomatic channels.

3. An amendment proposed through diplomatic channels shall be submitted in writing to the designated Government which shall communicate it to the Governments referred to in paragraph 1 of the present Article for approval; at the same time, it shall be communicated to the other Participating Governments.

4. Any amendment shall become effective on the date on which notifications of approval have been received by the designated Government and from all of the Governments referred to in paragraph 1 of this Article.

5. The designated Government shall notify those same Governments of the date of receipt of each approval communicated to it and the date on which the amendment will become effective for them.

6. Such amendment shall become effective on that same date for all other Participating Governments, except those which before the expiry of two months after that date notify the designated Government that they do not accept it.

*Antarctica Amendment*SCHEDULE—*continued*“SECOND SCHEDULE—*continued*”

ANNEXES TO THESE AGREED MEASURES

ANNEX A

Specially protected species

Species recommended for inclusion in this Annex pursuant to Article IX (1) of the Antarctic Treaty

1. All species of the genus *Arctocephalus*, Fur Seals.
2. *Ommatophoca rossi*, Ross Seal.

ANNEX B

Specially protected areas

Areas recommended for inclusion in this Annex pursuant to Article IX (1) of the Antarctic Treaty

1. Taylor Rookery, Mac. Robertson Land. Lat. 67° 26' S, long. 60° 50' E.
2. Rookery Islands, Holme Bay. Lat. 67° 37' S, long. 62° 33' E.
3. Ardery Island and Odbert Island, Budd Coast. Lat. 66° 22' S, long. 110° 28' E, and lat. 66° 22' S, long. 110° 33' E.
4. Sabrina Island, Balleny Islands. Lat. 66° 54' S, long. 163° 20' E.
5. Beaufort Island, Ross Sea. Lat. 76° 58' S, long. 167° 03' E.
6. Cape Crozier, Ross Island. Lat. 77° 32' S, long. 169° 19' E.
7. Cape Hallett, Victoria Land. Lat. 72° 18' S, long. 170° 19' E.
8. Dion Islands, Marguerite Bay, Antarctic Peninsula. Lat. 67° 52' S, long. 68° 43' W.
9. Green Island, Berthelot Islands, Antarctic Peninsula. Lat. 65° 19' S, long. 64° 10' W.
10. Byers Peninsula, Livingston Island, South Shetland Islands. Lat. 62° 38' S, long. 61° 05' W.
11. Cape Shirreff, Livingston Island, South Shetland Islands. Lat. 62° 28' S, long. 60° 48' W.
12. Fildes Peninsula, King George Island, South Shetland Islands. Lat. 62° 11' S, long. 58° 52' W.
13. Moe Island, South Orkney Islands. Lat. 60° 45' S, long. 45° 41' W.
14. Lynch Island, South Orkney Islands. Lat. 60° 40' S, long. 45° 38' W.
15. Southern Powell Island and adjacent islands, South Orkney Islands. Lat. 60° 45' S, long. 45° 02' W.

ANNEX C

Importation of animals and plants

The following animals and plants may be imported into the Treaty Area in accordance with permits issued under Article IX (2) of these Agreed Measures:

- (a) sledge dogs,
- (b) domestic animals and plants,
- (c) laboratory animals and plants.

SCHEDULE—*continued*

“SECOND SCHEDULE—*continued*

ANNEX D

Precautions to prevent accidental introduction of parasites and diseases into the Treaty Area

The following precautions shall be taken:

1. *Dogs*: All dogs imported into the Treaty Area shall be inoculated against the following diseases:

- (a) distemper;
- (b) contagious canine hepatitis;
- (c) rabies;
- (d) leptospirosis (*L. canicola* and *L. icterohaemorrhagicae*).

Each dog shall be inoculated at least two months before the time of its arrival in the Treaty Area.

2. *Poultry*: Notwithstanding the provisions of Article IX (3) of these Agreed Measures, no living poultry shall be brought into the Treaty Area after 1st July, 1966.”