

An assessment of environmental protection frameworks in the UK Overseas Territories



Produced by The Foundation for International Environmental Law and Development
(FIELD) and The Royal Society for the Protection of Birds (RSPB)
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Contents

Executive summary	3
Abbreviations and acronyms	8
Introduction	9
Methodology.....	10
Structure of the report.....	11
Environmental protection frameworks in UK Overseas Territories	12
Anguilla	12
Ascension	14
Bermuda.....	16
British Antarctic Territory (BAT)	18
British Indian Ocean Territory (BIOT)	20
British Virgin Islands (BVI).....	22
Cayman Islands	24
Cyprus Sovereign Base Areas (SBAs).....	26
Falkland Islands.....	28
Gibraltar	30
Montserrat.....	32
Pitcairn Islands	34
St Helena	36
South Georgia & the South Sandwich Islands (SGSSI)	38
Tristan da Cunha	40
Turks & Caicos Islands.....	42
Analysis	44
Table 1- Major issues that affect many or all Overseas Territories.....	45
Table 2- Overview of summary assessment of each Overseas Territory	46
Table 3- Summary of good practice & priorities for improvement	47
Conclusions	48
Annex 1 – Detailed assessment for each UK Overseas Territory	50
Annex 2- List of organisations consulted.....	52

Executive summary

The 14 UK Overseas Territories (OTs) are home to some of the world's most remarkable wildlife. These unique environments, ranging from vast coral reefs to windswept albatross islands, are highly vulnerable, containing over 90% of the threatened biodiversity for which the UK is responsible.

In an ambitious and welcome passage in the 2012 Overseas Territories White Paper, the Foreign Secretary announced 'a strategy of re-evaluation. We have not in the past devoted enough attention to the vast and pristine environments in the lands and seas of our Territories'. The Prime Minister further clarified the UK's ambition with regard to the OTs: 'we see an important opportunity to set world standards in our stewardship of the extraordinary natural environments we have inherited'.

The 2012 White Paper contained an explicit new strategic priority to strengthen the good governance of the OTs and ensure that the Territories 'abide by the same basic standards of good government as in the UK'. With the purpose of informing a concrete roadmap for this political ambition, the RSPB commissioned the Foundation for International Environmental Law & Development (FIELD) to jointly undertake this first ever analysis of OT environmental protection legislation and policy. This will enable the UK Government to fulfil its White Paper commitments by identifying good practice and outlining priority areas for improvement. A follow-up report is foreseen in 2015 to measure progress under this Government.

The key message from the analysis is that there are areas of best practice in many Territories, which can act as a beacon for others to emulate, but that many OTs still have significant gaps in their environmental governance which urgently need to be addressed. One size cannot fit all when it comes to the OTs, and the fundamental challenges of small populations, lack of capacity and lack of resources must be taken into account when it comes to strengthening their environmental protection frameworks. Increased input and strategically-focussed technical support from the UK Government is essential if the White Paper's aims are to be met. It is important to note that much of this can be achieved within existing budgetary constraints.

This analysis is phase one of a two-phase process. This first phase is based on two priority environmental policy areas: biodiversity protection and development planning. Phase two will in due course look at other relevant areas of environmental legislation and policy, such as fisheries management, biosecurity and climate change. The two policy areas of this first phase have been assessed against criteria based on what are widely accepted in the UK to be the fundamental elements of good environmental governance. This includes protecting threatened species from persecution, designating particularly valuable sites as protected areas, requiring major developments to undertake Environmental Impact Assessments (EIAs), and ensuring transparent procedures by which local communities can engage in development processes.

This report provides summary overviews for each OT, based on ‘green-lighting’ (where dark green is strong and pale green is weak) across 4 categories- ‘Species’ and ‘Sites’ (covering the biodiversity protection framework), and ‘Development Control’ and ‘People’ (covering development planning). At present, Gibraltar is the leader in environmental governance good practice, being the only Territory assessed as ‘strong’ across all four categories. Other OTs such as the British Virgin Islands and St Helena were found to have particular areas of best practice which could serve as useful models for others to emulate.

Species

Species protection is generally the area where OT legislative and policy frameworks are strongest, albeit with some specific areas for potential improvement. Notable good practice can be found in the British Antarctic Territory and Gibraltar.

Sites

Overall standards of site and habitat protection are highly variable. The British Virgin Islands and Gibraltar stand out for their general good practice here. Only three Territories however have strong terrestrial protected area networks where sites were selected on the basis of science-based criteria. Many of the others have few established reserves and/or a lack of permanent protection (sites having been disestablished). Seven Territories do have moderate to strong protections in place for their rich marine environments; by contrast, four OTs still have no marine protected areas.

Development Control

Gibraltar and St Helena provide examples to emulate in this category. An absence of development controls, or incomplete development frameworks that do not integrate environmental considerations, is meanwhile a common issue across many OTs. Five Territories have no legal requirement to undertake Environmental Impact Assessments (EIAs) before permitting major development proposals. Three of the more populous Territories are also lacking strategic development plans to identify respective areas for building and conservation and prevent uncontrolled development from spreading across their most valuable landscapes, coastlines and habitats.

People

Only Gibraltar scored ‘strong’ in this category. A lack of clear political accountability in development decision-making is a common challenge, with nine Territories scoring ‘weak’ or ‘very weak’ against this criteria. Open and transparent development procedures with clear lines of accountability and processes for appeals are vital to ensuring good government and preventing corruption. Wider participation in environmental decision-making and strengthened appeals procedures are needed. In many jurisdictions it is also currently very difficult to establish which environmental laws are in force. In part this is due to the frequent splitting of the environmental protection framework across a range of piecemeal and/or outdated pieces of legislation. Such a lack of legislative coherence, integration and transparency within Territories can impede the effectiveness of environmental legislation and undermine the rule of law.

The analysis has also revealed that many of the more populous Territories have draft pieces of legislation or policy that would remedy many of the most pressing gaps in their environmental governance. However at least five major environment bills, and the same number of development plans, are stalled within the political and bureaucratic process. For the smaller Territories, many of whose Environment Departments have only four-five staff members with little formal training, a lack of capacity and technical expertise is the major obstacle to developing environmental policy. Furthermore there is frequently a significant lack of capacity in their Attorney Generals' offices to draft the required legal ordinances. Through the implementation of the recommendations derived from the analysis of this report, significant progress can however be made towards strengthening environmental governance in the OTs and therefore 'cherishing their environments'.

RSPB Recommendations

The Foreign & Commonwealth Office (FCO)

Recommendation:

- Legal drafting capacity for many smaller OTs is seriously lacking. By summer 2013 the FCO should establish a dedicated *OTs Environmental Governance Taskforce* of legal staff to work with OT Attorney Generals and DEFRA to help draft required policy. Such a *Taskforce* should also work to enable sharing of good practice across the OTs.
- In those Territories with stalled environment bills, the FCO should direct its OT Governors to advocate strongly for their passage. Continued environmental and development funding from the UK Government in 2014/2015 should be made contingent on demonstrable progress on this front.
- Building on the White Paper's commitment to 'exemplary environmental management' in the uninhabited Territories, the FCO should work to ensure that by 2015 these Territories are rated as 'strong' in every category.

The Department for Environment, Food & Rural Affairs (DEFRA)

Recommendation:

- DEFRA currently has no dedicated staff working on OT biodiversity. By summer 2013, at least two full-time OT biodiversity policy staff should be established to assist the OTs develop appropriate legislative and policy solutions for biodiversity protection.
- DEFRA's new implementation plan for its OTs Biodiversity Strategy should contain a programme of work for proactive technical policy assistance to OT Governments.

The Department for International Development (DFID)

Recommendation:

- For Territories in receipt of budgetary aid, DfID should secure a cross-departmental agreement with FCO and DEFRA that funding in 2014/15 be contingent on delivering the Prime Minister's ambition to 'set world standards' in environmental governance.

Overseas Territory Governments

Recommendation:

- Those Territories with stalled environment bills or development plans should work urgently to achieve their passage as soon as possible.

Overview of summary assessment of each Overseas Territory

	Species	Sites	Development Control	People
Anguilla	Moderate	Weak	Very Weak / Absent	Very Weak / Absent
Ascension	Moderate	Weak	Very Weak / Absent	Very Weak / Absent
Bermuda	Moderate	Moderate	Moderate	Moderate
British Antarctic Terr.	Strong	Moderate	Strong	Moderate
British Indian Ocean Terr.	Moderate	Weak	Very Weak / Absent	Very Weak / Absent
British Virgin Islands	Weak	Strong	Moderate	Weak
Cayman Islands	Weak	Weak	Weak	Weak
Cyprus SBAs	Moderate	Strong	Weak	Very Weak / Absent
Falkland Islands	Moderate	Weak	Weak	Moderate
Gibraltar	Strong	Strong	Strong	Strong
Montserrat	Moderate	Weak	Moderate	Weak
Pitcairn Islands	Weak	Weak	Weak	Weak
St Helena	Moderate	Weak	Strong	Moderate
South Georgia & SSI	Moderate	Moderate	Very Weak / Absent	Very Weak / Absent
Tristan da Cunha	Moderate	Moderate	Very Weak / Absent	Weak
Turks and Caicos Islands	Weak	Moderate	Weak	Weak

Annex 1 contains further details for each OT against the specific criteria of each category, whilst the detailed background analysis for each Territory is available online at: www.rspb.org.uk/overseasterritories

Summary of good practice and priorities for improvement for each Overseas Territory

	Good Practice	Priority Gaps
Anguilla	Some sound legal instruments for protection of species and sites	Progressing the Physical Planning Bill and draft Environmental Protection Act; Ease of access to information; Accountability
Ascension	Robust elements of species conservation framework in place	Site protection designations; Development control procedures
Bermuda	Aspects of the species & sites protection framework	Strengthening EIA procedures; Increasing accountability around Special Development Orders
British Antarctic Terr.	Development control; The species & sites framework	Passage of the draft Antarctic Bill 2012; Improving clarity of legal framework
British Indian Ocean Terr.	Marine conservation declaration	Strengthening species & habitats framework; Establishing legal basis for the Marine Protected Area
British Virgin Islands	Robust elements of the site protection framework	Progressing the Environmental Management & Conservation of Biodiversity Bill and Planning Regulations
Cayman Islands	Elements of the species conservation framework	Progressing the National Conservation Bill and Development Plans for all three islands
Cyprus SBAs	Sites and elements of species legislation	Strengthening hunting regulations, development control and accountability in decision-making
Falkland Islands	Species protection legislation and elements of involving stakeholders	Marine area protection legislation; progressing EIA regulation
Gibraltar	Comprehensive legislation; Access to Information; Accountability	Management of the Southern Waters of Gibraltar SAC/SPA
Montserrat	Elements of species and sites legislation	Status of the Conservation & Environmental Management Bill and National Development Plan
Pitcairn Islands	Elements of species protection framework	Species Action Plans; Site designation and management plans
St Helena	Development control procedures	Site designations & management plans; Legislative basis for NCAs
South Georgia & SSI	Robust elements of species & site conservation framework	Development control provisions (EIA & SEA); Transparency & accountability in decision-making, including appeals
Tristan da Cunha	Elements of species & site protection framework	EIA procedures
Turks and Caicos Islands	Elements of species & sites framework	EIA legislation; Passing the 3 draft bills; Reviewing the Encouragement of Development Ordinance

Abbreviations and acronyms

ACAP - Agreement on the Conservation of Albatrosses and Petrels

Bonn Convention - Convention on the Conservation of Migratory Species of Wild Animals

CITES – Convention on International Trade in Endangered Species of Wild Fauna and Flora

DEFRA- Department for the Environment, Food & Rural Affairs (UK Government)

EIA – Environmental Impact Assessment

FCO- Foreign & Commonwealth Office (UK Government)

NCA- National Conservation Area (St Helena)

SAC – Special Area of Conservation (EU)

SCI – Site of Community Importance (EU)

SEA – Strategic Environmental Assessment

SPA- Special Protection Area (EU)

Introduction

The 14 UK Overseas Territories (OTs) are: Anguilla; Bermuda; British Antarctic Territory; British Indian Ocean Territory; British Virgin Islands; Cayman Islands; Falkland Islands; Gibraltar; Montserrat; Pitcairn Islands; South Georgia and the South Sandwich Islands; St Helena, Ascension and Tristan da Cunha; Turks & Caicos and the Sovereign Base Areas on Cyprus. In this assessment Ascension and Tristan da Cunha are treated separately from St Helena in accordance with the devolved nature of their environmental legislation.

According to a recent DEFRA report¹ it is estimated that over 90% of the UK's biodiversity is located in OTs, with more priority ecosystem types such as mangroves, corals, sea-grass beds and peatlands found in the OTs than in mainland UK. The OTs also have a high proportion of species found nowhere else in the world (endemic).

The marine environment is an important natural resource for many OTs, with fisheries one of the main sources of external income. Threats to OT biodiversity include invasive alien species (IAS), whose impacts are often most severe on island environments. A major threat is climate change. With the exception of the British Antarctic Territory, Gibraltar, and the Cyprus Sovereign Base Areas, OTs are small islands and among those that the Intergovernmental Panel on Climate Change (IPCC) has identified as virtually certain to experience the most severe ecological impacts of climate change.²

Tourism is important to local economies, but can also have negative impacts. Development pressures related to tourism can result in negative changes in land use. There is limited evidence of environmental issues arising from agriculture, with many OTs not keeping records on land areas used for agriculture.³

Although environmental management responsibilities are devolved to the OTs, many have only basic or incomplete legislative and policy frameworks in place for threatened biodiversity, and often lack the technical capacity to improve the situation due to their small size. The UK Government recognises its responsibility to help the OTs protect their environments, but has made no overall assessment of current environmental policy and legislation. Given the government's new strategic priority to strengthen good governance of the OTs, "putting environmental considerations at the heart of all decision-making"⁴, an assessment of the current state of key aspects of environmental governance is particularly timely. Moreover, many OT governments are actively trying to address issues of environmental governance at this time: for example, reviews of planning legislation are underway in the Falkland Islands and Gibraltar.

¹ The Environment in the United Kingdom's Overseas Territories: UK Government and Civil Society Support, DEFRA, January 2012, available at:

<http://www.defra.gov.uk/publications/files/pb13686-overseas-territory-environment.pdf>

² As above, p 6.

³ As above, pp 5 – 7.

⁴ The Overseas Territories, Security, Success and Sustainability, FCO, June 2012, available at:

<http://www.fco.gov.uk/resources/en/pdf/publications/overseas-territories-white-paper-0612/ot-wp-0612>

The study therefore aims to provide a first strategic overview of the OTs' environmental protection frameworks in order to inform and aid the UK Government's efforts to implement its White Paper commitments.

Methodology

The assessment of environmental protection frameworks is based on two priority policy areas considered across both the terrestrial and marine environments: biodiversity protection and development planning. These priorities have been assessed based on criteria set out in the analysis table (please see Annex 1), summarised below.

The detailed background analysis tables were prepared by the RSPB in collaboration with partners, including ground-truthing in the OTs (please see Annex 2 for a detailed list of organisations consulted). These can be found online: www.rspb.org.uk/overseasterritories. The Foundation for International Environmental Law and Development (FIELD) (Joy Hyvarinen and Sarah Wilson) reviewed the information and prepared this report jointly with the RSPB.

The analysis of the four categories covers the following criteria:

Species: the presence and adequacy of biodiversity protection legislation and policies, including the existence of an overarching and holistic duty for the conservation of biodiversity, with a stated ecological outcome, e.g. aiming for all threatened species to be in 'favourable conservation status'. Species conservation legislation and policies, including legal protection for threatened species and mechanisms for delivering targeted species conservation action. Factors to determine adequacy include: identification and prioritisation of threatened species in all taxa; presence of implementing regulations; hunting regulations; development and implementation of species action plans; identification of roles and responsibilities; adequate monitoring and review procedures.

Sites: the presence and adequacy of site and habitat based protection and conservation, including legislation for and designation of terrestrial and marine protected areas, with the concomitant establishment of site management plans, as well as provision for the protection of habitats outside of protected areas. Factors to determine adequacy include: designation of protected areas based upon scientific criteria, level of legal protections afforded, a strict liability regime based on the polluter-pays principle, and presence of management plans.

Development control: presence and adequacy of terrestrial and marine development controls, namely development consents legislation, development control plans and regulation for Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA). Factors to determine adequacy include: presence, enforceability and up-to-dateness of development control and policies, and integration of obligatory EIA and SEA processes into development control/plan regulation and processes.

People: The involvement of civil society in decision-making, and how decisions affecting the environment are governed. Factors to determine adequacy include: accountability in decision making, the existence (or not) of an open, consultative and transparent decision-making process with ability to appeal decisions, and an assessment of whether public and private lands are treated differently.

Structure of the report

The first part of the report provides summary overviews of environmental governance in each OT. These highlight key elements of the environmental protection frameworks and provide a simple, summary assessment of strengths and weaknesses.

The assessment focuses on: species; sites; development control; and people, as described above. The assessment is based on 'green-lighting' to a lesser or greater degree, where dark green indicates strong elements and lighter green weaker ones, with white indicating very significant weakness or a total absence of elements of the environmental protection framework.

The subsequent part of the report provides a general analysis and comparison, including tables with overviews of issues common to many OTs and an overview of each OT. This is followed by conclusions and recommendations.

An annex contains further details for each OT, with the same green-light scoring system applied as for the summary overviews above to identify strong and weak areas. A second annex provides details of the organisations who were consulted during the preparation and ground-truthing of this report.

Environmental protection frameworks in UK Overseas Territories

Anguilla

Species

Key elements of the species conservation framework are in place, in particular through the Biodiversity and Heritage Conservation Act 2009. However, it is not clear how far these have been implemented, for example in relation to species action plans, monitoring and review (a sea turtle action plan is under development). Implementing regulations are apparently under development. As noted below, access to information and lack of clarity in the status of legislation is an area of weakness.

Sites

The Biodiversity and Heritage Conservation Act allows for the designation of protected areas, creation of management plans, licensing and restriction of access and uses. This includes public consultation procedures for establishing, disestablishing and altering protected areas. Together with the Marine Parks Act 2000 and regulations it provides the main elements of the site protection framework. However, it is not clear that sites are designated on science-based criteria and site management plans appear to be absent or outdated.

Development control

The development control framework under the Land Development Control Act 2008 is limited and basic. For example, there is no strategic planning and there are no SEA or EIA procedures. Another weakness is the absence of a comprehensive development plan. However, the Physical Planning Bill 2001 would address some of the weaknesses, but it has not been enacted and is currently under review, with an unclear status.

People

Access to information, and lack of clarity regarding the status of legislation, is an area of weakness. For example, a draft Environmental Protection Act is currently under review, as has been a Physical Planning Bill since 2001, but information relating to their status is not readily available. The existing piecemeal legislation also creates lack of clarity. Lack of political accountability is a problem in relation to development control decisions and another weakness is the current absence of mandatory EIA procedures, which would enable public consultation and participation.

Overall assessment⁵

Species	Sites	Development control	People
Moderate	Weak	Very Weak / Absent	Very Weak / Absent

Key statutes	Key policies
Biodiversity and Heritage Conservation Act 2009	
Anguilla National Trust Act 2000	
Marine Parks Act 2000	
Land Development Control Act 2008	

Good practice

- A number of sound legislative instruments in place for the protection of sites and species

Priority gaps

- Progressing review and enactment of the **Physical Planning Bill 2001**
- Progressing review and enactment of the **draft Environmental Protection Act**
- Ease of access to information; accountability

⁵ The scored criteria which make up the overall assessment can be found in Annex 1. The detailed background information can be found online at: www.rspb.org.uk/overseasterritories

Ascension

Species

Species such as donkeys, goats, turtles and all wild birds are protected under the Wild Life Protection Ordinance and implementing regulations, with a licensing system. Strict control of dogs and cats is in place. Species action plans are not required by law, but have been developed for endemic plants and sea turtles. Under the Darwin Initiative work is starting on collecting information and developing action plans. There is a lack of legal requirement to monitor or review protection of threatened species, although plants and seabirds are monitored.

Sites

According to the National Protected Areas Ordinance 2003 the Governor may declare an area as a national park, nature reserve, sanctuary or an area of historic interest. The Ordinance sets out different features for the different areas – for example, a sanctuary is established primarily for ecological protection and avoidance of disturbance. There is a separate Green Mountain Protection Ordinance dating from 1955, but remains no protective legislation for the key Boatswain Bird Island site (although all access to the latter requires permission). Site designation emerges as an area of weakness: very few terrestrial reserves have been designated, and no marine protected areas have been designated.

Development control

The lack of a development control framework is an area of weakness. In addition, there are no EIA or SEA guidelines in place. In certain limited circumstances provisions of the National Protected Areas Ordinance might be used. According to the Ordinance, the Governor may order restrictions on development, deposit or discharge of wastes or harmful matter in any area which the Governor considers would have a direct or indirect harmful effect on the natural ecology of a national park, nature reserve or sanctuary or a living organism (including marine life). According to the National Protected Areas Ordinance a court can also order the demolition of a development that was not authorised by the Governor.

People

An elected Council guides decision-making on Ascension, and new legislation is subject to public consultation. The lack of EIA and SEA processes means that there is minimal public involvement in decisions relating to development.

Overall assessment⁶

Species	Sites	Development control	People
Moderate	Weak	Very Weak / Absent	Very Weak / Absent

Key statutes	Key policies
Wildlife Protection Ordinance 1944	Green Mountain National Park Management Plan (currently under revision)
Endangered Species Control Ordinance 1976	
Green Mountain Protection Ordinance 1955	
Dogs and Cats Ordinance 2000	
National Protected Areas Ordinance 2003	

Good practice

- Robust elements of species conservation framework in place

Priority gaps

- Site protection designations, especially for Boatswain Bird Island
- Development control, EIA and SEA procedures

⁶ The scored criteria which make up the overall assessment can be found in Annex 1. The detailed background information can be found online at: www.rspb.org.uk/overseasterritories

Bermuda

Species

The legislative framework for species protection is robust. The Protected Species Act 2003, Protection of Birds Act 1975, Endangered Animals and Plants Act 2006 and the Fisheries Act 1972 form the legislative framework for the protection of threatened species. In particular the Protected Species Act gives the power to make orders declaring any species of plant or animal to be a protected species, based on the IUCN Red List classifications. It also provides for review of classifications. A Bermuda Biodiversity Action Plan has been developed.

Sites

The site protection framework also has strong elements. The Bermuda National Parks Act 1986 allows for the establishment, designation and maintenance of national parks as well as regulation of activities within the parks. The Protected Species Act enables any critical terrestrial or marine habitat essential for the protection of a species to be designated a protected area. Under the Protection of Birds Act similar provisions exist. The Bermuda National Trust has also established a network of protected sites which are inalienable under the Bermuda National Trust Act 1969.

Development control

The Development and Planning Act 1974 and the associated regulations and plans form the development control framework. The Act mandates the implementation of development plans and local plans (Bermuda Plan 2008; City of Hamilton Plan 2001) through a consultative process. Development plans can designate areas for protection. The Act sets out a development control system which requires development proponents to submit an application, which is publicly notified and assessed against various criteria, but it does not specifically require an EIA to be conducted. SEA regulations are also lacking. Special Development Orders also have no EIA requirement and substitute Minister's discretion for compliance with the Bermuda Plan. The Bermuda Ombudsman recently set out recommendations for strengthening EIA procedures and other aspects of the environmental conservation framework.⁷

People

There is a significant degree of political accountability and a legislatively enshrined ability for members of the public to participate in the development process (e.g. ability to comment on development plans and local plans). One particular gap however is that Special Development Orders (SDOs) do not require public notice or allow appeals (other than judicial). As noted above the Bermuda Ombudsman has recently made recommendations for strengthening EIA procedures and reviewing legislation, especially with regard to SDOs.

⁷ The Ombudsman for Bermuda's Systemic Investigation into the Process and Scope of Analysis for Special Development Orders, *Today's Choices: Tomorrow's Costs*, February 10 2012, available at: <http://www.ombudsman.bm/images/pdfs/systemicreports/BdaOmb.SDO.12.pdf>

Overall assessment⁸

Species	Sites	Development control	People
Moderate	Moderate	Moderate	Moderate

Key statutes	Key policies
Protection of Birds Act 1975	Bermuda Plan 2008
National Parks Act 1986	Bermuda Biodiversity Action Plan 2003
Protected Species Act 2003	
Development and Planning Act 1974	
Fisheries Act 1972	
Bermuda National Trust Act 1969	

Good practice

- Species and sites framework

Priority gaps

- Strengthening EIA procedures
- Increasing accountability around Special Development Orders

Other references

The Ombudsman for Bermuda's Systemic Investigation into the Process and Scope of Analysis for Special Development Orders, Today's Choices: Tomorrow's Costs, February 10 2012, available at <http://www.ombudsman.bm/images/pdfs/systemicreports/BdaOmb.SDO.12.pdf>

⁸ The scored criteria which make up the overall assessment can be found in Annex 1. The detailed background information can be found online at: www.rspb.org.uk/overseasterritories

British Antarctic Territory (BAT)

Species

The overall environmental protection framework is created by the Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR) and the Protocol on Environmental Protection to the Antarctic Treaty. The UK Antarctic Act 1994 and associated Regulations implement these international obligations, and a proposed new UK Antarctic Bill would enhance some of these species protection elements. Native mammal, bird and plant species also have broad protection under the Environmental Protection Ordinance 1997. It is not clear that all needed species action plans are in place.

Sites

The site protection framework is robust, with the Environmental Protocol providing for designation of Antarctic Specially Protected Areas (ASPAs) or the less strong designation of Antarctic Specially Managed Areas (ASMAs). 26 ASPAs have been declared, and management plans are reviewed regularly. Further marine protection measures are being explored. Annex V of the Environmental Protocol sets out designation procedures. The proposed Antarctic Bill would implement the annex on liability to the Environmental Protocol of the Antarctic Treaty.

Development control

There are no development plans, but all activities undertaken in the British Antarctic Territory require a permit, including entry to the territory (failure to comply with a permit is a criminal offence). According to the Environmental Protocol to the Antarctic Treaty, EIAs are required anywhere in Antarctica and activities that are likely to have a more than minor or transitory impact must be considered by all Protocol Parties.⁹

People

UK permits are required for any British expedition anywhere in Antarctica under the 1994 Antarctic Act. Permit applications are listed publicly on the website of the Foreign and Commonwealth Office (FCO) and an appeals procedure exists. Under the Protocol public consultation is required. Overall there may be some room for improvement regarding the user-friendliness and transparency of information related to the complex framework and interaction of international agreements, UK legislation and British Antarctic Territory Ordinances, in light of public interest and the unique status of Antarctica.

⁹ For a list of Parties to the Environmental Protocol please see:
http://www.ats.aq/devAS/ats_parties.aspx?lang=e

Overall assessment¹⁰

Species	Sites	Development control	People
Strong	Moderate	Strong	Moderate

Key statutes	Key policies
Convention for the Conservation of Antarctic Marine Living Resources	
Protocol on Environmental Protection to the Antarctic Treaty	
UK Antarctic Act 1994	
Environmental Protection Ordinance 1997	

Good practice

- Development control
- Species and sites framework

Priority gaps

- Passage of the draft Antarctic Bill 2012
- Potential room for improvement regarding clarity and user-friendliness of legislative framework for environmental conservation

¹⁰ The scored criteria which make up the overall assessment can be found in Annex 1. The detailed background information can be found online at: www.rspb.org.uk/overseasterritories

British Indian Ocean Territory (BIOT)

Species

Most types of animals are protected. The Wildlife Protection Regulations 2003 make it an offence to kill, injure or take a live animal (including marine animals), as well as to destroy, damage or take the eggs of birds or turtles. Species action plans are currently absent, as are monitoring and review procedures.

Sites

Elements of the site protection framework are in place. The Protection and Preservation of Wild Life Ordinance 1970 permits the Commissioner to make regulations to declare any island or part of an island a 'Strict Nature Reserve' or 'Special Reserve'. No areas have been designated as Special Reserves, but the Strict Nature Reserves Regulations 1998 declared a number of islands to be 'Strict Nature Reserves', which make it an offence to enter and to undertake various specified activities without the permission of the BIOT Government.

The Diego Garcia Conservation (Restricted Areas) Ordinance 1994 designated a large part of Diego Garcia as a restricted area, requiring a permit for entry – this corresponds to the terrestrial part of the large Ramsar site that encompasses part of Diego Garcia as well as its lagoon and some of its coastal waters. In 2010 a Marine Protected Area was announced within the Environment (Protection and Preservation) Zone proclaimed in 2003, although the detailed environmental legislation and regulations required to fully establish this designation is not yet in place.

Development control

The planning framework consists of the Diego Garcia Final Governing Standards 2011, a bilateral agreement on environmental controls between the UK and the US. This is extensive operating documentation which applies to US military installations, and controls activity within the Base area. It is not clear what controls would be placed on development outside this area.

People

The governance situation in the BIOT is unique because of the territory's military nature and the strict controls that apply, as well as its complex and controversial history. The BIOT has no permanent population, only UK and US military personnel and the civilian employees of contractors to the military – mostly Filipino. The number of people on Diego Garcia varies significantly, depending on military needs. In early 2012 it was around 2,500. There are no inhabitants on the other islands. Access to BIOT is strictly controlled and subject to permit.

Overall assessment¹¹

Species	Sites	Development control	People
Moderate	Weak	Very Weak / Absent	Very Weak / Absent

Key statutes	Key policies
Wild Life Protection Regulations 2003	Diego Garcia Final Governing Standards 2011
Strict Nature Reserves Regulations 1998	
Fisheries Ordinance 2007	
Diego Garcia Conservation Ordinance 1994	

Good practice

- Marine conservation

Priority gaps

- Strengthening the framework for species and habitats
- Providing the legal underpinning for the Marine Protected Area

¹¹ The scored criteria which make up the overall assessment can be found in Annex 1. The detailed background information can be found online at: www.rspb.org.uk/overseasterritories

British Virgin Islands (BVI)

Species

Although elements of the legislative framework for species conservation are in place, it is patchy. The framework includes the Protection of Endangered Animals, Plants and Articles Ordinance 1981 and the Wild Birds Protection Ordinance 1982. The status of species action plans is not clear, nor is it clear to what extent monitoring and review take place in practice. The proposed Environmental Management & Conservation of Biodiversity Bill may help strengthen the framework.

Sites

Robust elements of the site protection framework are in place. The National Parks Act 2006 is one of the major pieces of conservation legislation. It allows for areas to be designated as, for example, nature reserves, wilderness areas or national parks. It makes it possible to restrict activities and access to terrestrial and marine areas. It also makes provision for voluntary conservation agreements with landowners. Science-based criteria form the basis for designations. Recent legal proceedings related to the Hans Creek area, protected under Fisheries Regulations 1997, have raised questions and controversy about the status of such areas. The current status of site management plans is not clear.

Development control

The Physical Planning Act 2004 sets out a development assessment regime, including restricting development, designating protection areas, controlling activities and access, and requiring EIA for certain activities (there are no SEA requirements). The Act provides for public participation and consultation on development and has mechanisms for enforcement and non-compliance, but it does not provide a comprehensive regime. In addition, there is no National Physical Development Plan in place. New Planning Regulations currently in development may help address some issues.

People

As noted above, the Physical Planning Act 2004 includes provisions related to publicity and public consultation. For example, in the preparation of a development plan the Planning Authority is to take steps to ensure publicity and that persons who may wish to make representations are made aware that they can do so. The Act also sets out an appeals process, but as noted the Act does not provide a comprehensive regime.

Overall assessment¹²

Species	Sites	Development control	People
Weak	Strong	Moderate	Weak

Key statutes	Key policies
National Parks Act 2006	British Virgin Islands Protected Areas System Plan 2007-2017
Fisheries Act 1997	
Physical Planning Act 2004	

Good practice

- Robust elements of site protection framework

Priority gaps

- Progressing, including potentially reviewing for purposes of strengthening, the proposed **Environmental Management & Conservation of Biodiversity Bill**
- Progressing the new **Planning Regulations** currently in development

Other references

Caribbean Natural Resources Institute (CANARI), Environmental mainstreaming in the British Virgin Islands, Greening the economy: towards sustainable development for the BVI, Final Project Report, May 2012.

¹² The scored criteria which make up the overall assessment can be found in Annex 1. The detailed background information can be found online at: www.rspb.org.uk/overseasterritories

Cayman Islands

Species

For terrestrial species only iguanas and non-domestic birds are protected under Cayman legislation. There is no legal protection for other species, including endemic reptiles, amphibians, bats and all plants. Hunting is an offence, but otherwise legislative species protection is weak. Species Action Plans are in place for 42 species. Marine species protection is stronger with outright protections in place for some vulnerable species and bag limits, size limits and closed seasons for several culturally important species. In addition a well established system of marine parks provides increased legal protection. Legislation is weak in relation to species monitoring and review, although long-term monitoring programmes are in place for several key species in practice. The draft National Conservation Bill (proposed since 2007) would significantly strengthen species protection.

Sites

Legislation enables designation of animal sanctuaries and marine parks. Four animal sanctuaries and several marine parks have been designated, although it is not clear whether the terrestrial designations were science-based. An area has been proposed as the first national park in line with the aim of the 2002 National Environmental Framework Policy to establish a system of protected areas. A Darwin Initiative project meanwhile aims to enhance the marine protected area system, for which there is a good enforcement structure in place. A management plan has been prepared for Booby Pond, the only Ramsar site, and two other plans are in preparation. Legislation has recently been passed to degazette the only animal sanctuary on Cayman Brac (Dennis Point Pond), which sets a worrying precedent. The National Trust law provides for the acquisition of land of environmental significance. Land acquired by the Trust may be declared inalienable and thus protected in perpetuity unless the declaration is overturned by a two-thirds majority of members. This is currently the only mechanism for significant long-term protection of terrestrial sites. The draft National Conservation Bill would significantly strengthen the sites framework.

Development control

The Development and Planning Law 2011 and associated regulations outline the procedures for preparing, approving and amending development plans and for approving development projects. Integration of environmental concerns into planning procedures is weak and there are no formal EIA requirements. The draft National Conservation Bill would introduce a formal process for triggering, scoping and conducting EIAs. The development plan for Grand Cayman is from 1997, despite the law requiring review every five years (zoning information was published in 2010). Other development plans are absent.

People

Political accountability for decision-making is limited as is the extent of transparency and consultation. Recently planning law was amended to limit the right of challenge to neighbouring land owners and make challenges in the 'national interest' by bodies such as the National Trust inadmissible.

Overall assessment¹³

Species	Sites	Development control	People
Weak	Weak	Weak	Weak

Key statutes	Key policies
Animals Law 2011	National Strategic Plan – Vision 2008
Endangered Species Protection and Propagation Law 1999	National Environmental Framework Policy 2002
Marine Conservation Law 2007	National Biodiversity Action Plan (2009)
Development and Planning Law 2011	
National Trust Law (2010 Revision)	

Good practice

- Elements of the species conservation framework

Priority gaps

- Enactment of the draft **National Conservation Bill**
- Updating of the **Development Plan for Grand Cayman**
- Creation of **Development Plans for Cayman Brac and Little Cayman**

¹³ The scored criteria which make up the overall assessment can be found in Annex 1. The detailed background information can be found online at: www.rspb.org.uk/overseasterritories

Cyprus Sovereign Base Areas (SBAs)

Species

The legislative framework for species protection in the Cyprus Sovereign Base Areas (SBAs) includes robust elements through implementation of provisions comparable to EU Directives, for example protection of all wild birds and European protected species. However, regulation of hunting is a problem area. The Republic of Cyprus has recently introduced a new points system and penalties, but old, weaker law still applies in the SBAs, creating a situation where an offending hunter caught in the SBAs can get away with weaker penalties.

Sites

The Game and Wild Birds Ordinance 2008 sets out a framework for designation of Special Protection Areas and conservation measures within sites, including management plans. The Protection and Management of Nature and Wildlife Ordinance 2007 provides for designation of Special Areas of Conservation (SACs), including management and protection measures. Three SPAs have been designated, and candidate SACs proposed. The Akrotiri Peninsula Environmental Management Plan was published in September 2012.

Development control

The Environmental Impact Assessment Ordinance 2010 implements provisions comparable to the EU EIA Directive. The Streets and Buildings Regulation Ordinance 1984 implements basic development control and rudimentary development plans and zoning. A main priority area identified for strengthening the environmental conservation framework is updating of development control and plan legislation, which is not well-developed or coherent. However, this is partially off-set by the robust EIA legislation and requirements for 'appropriate assessment' under other pieces of legislation. For example, under the Game and Wild Birds Ordinance 2008, projects which in the opinion of the Chief Officer may affect an SPA are subjected to appropriate assessment by 'a competent authority'.

People

Political accountability in decision making is lacking as there is no review by democratically elected bodies of decisions by public officials. The Environmental Impact Assessment Ordinance 2010 requires consultation on development applications, which provides a degree of transparency.

Overall assessment¹⁴

Species	Sites	Development control	People
Moderate	Strong	Weak	Very Weak / Absent

Key statutes	Key policies
Game and Wild Bird Ordinance 2008	Akrotiri Peninsula Environmental Management Plan
Protection and Management of Nature and Wildlife Ordinance 2007	
Streets and Building Regulation Ordinance 1984	
Environmental Impact Assessment Ordinance 2010	

Good practice

- Sites and elements of species legislation

Priority gaps

- Strengthening hunting regulations to bring them into line with Republic of Cyprus laws
- Improving the development control framework
- Accountability in decision-making

¹⁴ The scored criteria which make up the overall assessment can be found in Annex 1. The detailed background information can be found online at: www.rspb.org.uk/overseasterritories

Falkland Islands

Species

Birds, marine mammals, and freshwater fish have a high level of protection under current legislation. Butterflies, and some threatened endemic plants are also protected (revision of the protected plants list is planned). Species action plans are in place or being considered for key species, and hunting/use of wildlife is closely regulated. There is some weakness in relation to monitoring, with resources lacking to monitor many of the species of interest.

Sites

Currently, the Falklands do not have a strong protected areas network. Although legislation exists to designate nature reserves and national parks, none of the latter have been designated, and existing nature reserve designations were ad-hoc rather than based on science. Management plans are only in place for five of the 19 nature reserves. No marine protected areas have been designated, though there is provision for designation out to 15nm. Current legislation appears to be a barrier to further designations, however, Government and stakeholders have acknowledged the weakness of the current system and it is under review.

Development control

The Planning Ordinance 1991 requires permission to be granted for building work in Stanley. Some developments outside Stanley, such as quarrying, require planning permission, but most do not. This means that most developments with potential impact on wildlife do not currently require EIA or any permission. However, EIAs are required for marine developments. The Falkland Islands Government's Environmental Planning Department has drafted proposals for a general EIA regulation and is considering the potential need for SEA legislation, but limited drafting capacity at the Attorney-General's office is a bottleneck. The need for SEA for potential expansion of oil production activities has been highlighted. The Falklands Islands Government is expected to revise the Falkland Islands Structure Plan in 2013, and revision of the Planning Ordinance has also been proposed.

People

Generally, environmental management in the Falkland Islands is managed through a transparent process with involvement of stakeholders outside government. However, there are a lack of legal procedures to challenge developments that may impact on nature reserves, internationally designated sites or protected species, as planning permission is not generally required outside Stanley and as EIAs are not required or prepared for most developments.

Overall assessment¹⁵

Species	Sites	Development control	People
Moderate	Weak	Weak	Moderate

Key statutes	Key policies
Conservation of Wildlife and Nature Protection Ordinance 1999	Falkland Islands Biodiversity Strategy 2008-2018
Marine Mammal Ordinance 1992	Islands Plan 2010/15
National Parks Ordinance 1998	Stanley Town Plan 2001 – 2016
Planning Ordinance 1991	Falkland Islands Structure Plan
Offshore Minerals Ordinance 1994, amended 2011	

Good practice

- Species protection legislation
- Involvement of stakeholders in environmental decision-making (however, see below regarding development)

Priority gaps

- Marine area protection legislation
- Progress proposals for EIA regulation, including introducing clear process for challenging developments

Other references

Graham Tucker and Indrani Lutchman, Environmental Mainstreaming in the Falkland Islands, Workshop Scoping Report, 20 March 2012, Institute for European Environmental Policy (IEEP).

¹⁵ The scored criteria which make up the overall assessment can be found in Annex 1. The detailed background information can be found online at: www.rspb.org.uk/overseasterritories

Gibraltar

Species

A strong legislative framework for species conservation is in place. The Nature Protection Act 1991, the main legislation for transposing the EU Birds and Habitats Directives, protects a wide range of terrestrial and marine species and prohibits hunting.

Sites

The Rock of Gibraltar, previously a site of Community Interest (SCI), was designated a Special Area of Conservation (SAC) in August 2012; the site is also a Special Protection Area (SPA). There is a Gibraltar Biodiversity Action Plan and a comprehensive Management and Action Plan is in place for the Upper Rock Nature Reserve. Management of the Southern Waters of Gibraltar SAC/SPA is guided by the *Southern Waters of Gibraltar Management Scheme*. One of the issues that affects the management of the site is illegal fishing by Spanish vessels using methods which are prohibited under the Nature Protection Act 1991.

Development control

The development control framework has strong elements. The Town Planning Act 1999 does not mention species or habitats or make reference to the Nature Protection Act, but the 2009 Gibraltar Development Plan includes references to the environment and to biodiversity. A review of the Town Planning Act is under way. The Nature Protection Act requires consideration of the impacts of any proposed development on European sites, such as the Upper Rock Nature Reserve. The Town Planning (Environmental Impact Assessment) Regulations 2000 set out EIA procedures, including for developments with significant transboundary effects. Appeals processes are clear.

People

Generally, decision making appears to be open and accountable. The Freedom of Access to Information on the Environment Regulations 2005 implements the EU Directive on public access to environmental information.

Overall assessment¹⁶

Species	Sites	Development control	People
Strong	Strong	Strong	Strong

Key statutes	Key policies
Nature Protection Act 1991	Gibraltar Biodiversity Action Plan
Town Planning Act 1999	Management and Action Plan for Upper Rock Nature Reserve
Town Planning (Environmental Impact Assessment) Regulations 2000	2009 Gibraltar Development Plan
Freedom of Access to Information on the Environment Regulations 2005	

Good practice

- Comprehensive legislation
- Access to information, accountable decision making

Priority gaps

- Management of the Southern Waters of Gibraltar SAC/SPA

¹⁶ The scored criteria which make up the overall assessment can be found in Annex 1. The detailed background information can be found online at: www.rspb.org.uk/overseasterritories

Montserrat

Species

The main elements of species protection are in place, although for example the 1952 Turtles Act could benefit from updating, and it is not clear if adequate implementing measures are in place. Hunting is regulated and there is a legislative basis for identifying and prioritising threatened species. Additional species action plans and updating of the plan for the Montserrat Oriole are needed.

The Conservation & Environmental Management Bill 2008, which appears not to have progressed, would update and expand existing legislation in this and other areas.

Sites

Legislation related to designation of sites appears adequate, but it is not clear that site designations take place based on scientific criteria. Management plans appear to be lacking and it is not clear what, for example, a requirement for a 'statement of management objectives', to be included in wildlife reserve declarations under current legislation, requires in practice. Marine reserves can be created under the Fisheries Act 2002.

Development control

Weaknesses include lack of marine development controls. A significant concern is that the status of the National Development Plan is unclear, although plans for some areas are in place and available publicly. Although EIA provisions are in place, they are not comprehensive and there is no SEA requirement.

People

Although development processes require consultation and draft development plans must be published, the lack of comprehensive EIA procedures and absence of SEA means there is still a lack of accountability and public involvement in environmental decision making. The lack of clarity relating to the status of the Conservation & Environmental Management Bill and the National Development Plan also indicate that transparency and access to information are significant issues.

Overall assessment¹⁷

Species	Sites	Development control	People
Moderate	Weak	Moderate	Weak

Key statutes	Key policies
Forestry, Wildlife, National Parks and Protected Areas Act 2002	Montserrat Sustainable Development Plan 2008 - 2020
Endangered Animals and Plants Act 2002	
Physical Planning Act 1996	

Good practice

- Elements of species and sites legislation

Priority gaps

- Status of the **Conservation & Environmental Management Bill 2008**
- Status of the **National Development Plan**
- Access to information relating to legislation; transparency and clarity

¹⁷ The scored criteria which make up the overall assessment can be found in Annex 1. The detailed background information can be found online at: www.rspb.org.uk/overseasterritories

Pitcairn Islands

Species

Parts of the framework for species protection are in place. Killing, taking or molesting wild birds or taking eggs is prohibited, with some exceptions, and species such as certain whales are also protected, again with some exceptions. However, species action plans are lacking and monitoring and review procedures are neither anchored in legislation nor put into practice, largely due to a lack of capacity (the Pitcairn Natural Resources Division is manned by only part-time staff).

Sites

The Endangered Species Protection Ordinance 2004 makes it possible to declare “endemic management zones” with special habitat protection measures. No terrestrial or marine endemic management zones have been declared to date. Henderson Island has a management plan, but this has expired and been identified as needing updating.

Development control

Consent from the Council is required for any development and an EIA policy is in place. The development regime is basic, but taking into account the uniquely small size of the Pitcairn population (approx. 50 people) this may be adequate.

People

The elected Council is the decision-making body. Pitcairn has passed a wide-ranging Freedom of Information Ordinance in 2012, which includes a right to appeal any decision made not to publish information and which will enable more open and transparent Government. Subject to certain exemptions, the Ordinance gives any person the right to request information from a public authority.

Overall assessment¹⁸

Species	Sites	Development control	People
Weak	Weak	Weak	Weak

Key statutes	Key policies
Endangered Species Protection Ordinance 2004	Henderson Island Management Plan 2004-2009
Local Government Regulations 2012	EIA Policy
Freedom of Information Ordinance 2012	

Good practice

- Elements of species protection framework

Priority gaps

- Species actions plans
- Site designation and management plans
- Assistance: in light of the very small population size there is a significant need for legislative and other assistance

¹⁸ The scored criteria which make up the overall assessment can be found in Annex 1. The detailed background information can be found online at: www.rspb.org.uk/overseasterritories

St Helena

Species

Birds, turtles, dolphins and endemic higher plants have a high level of protection, although such protection does not extend to endemic invertebrates, fish or whale species. Species action plans are in place or being considered for some species, though are not required by law. A hunting licence system is established. There is some weakness in relation to monitoring, with resources lacking to monitor many of the species of interest, and no review provisions in legislation.

Sites

St Helena has only one formally designated protected area, with existing legislation to designate protected areas not yet implemented. Fourteen natural National Conservation Areas (NCAs) have been identified as part of the Land Development Control Plan, though these will remain policy instruments until a new Planning Ordinance is passed and individual management plans developed for each site. NCAs were partly identified on the basis of scientific grounds. No marine protected areas have been formally designated. Whilst one of the NCAs is a marine reserve, this has not been identified on formal scientific grounds.

Development control

There is a sound development control regime, with procedures clearly set out for consultation, decision-making, exemptions, enforcement powers and penalties. The Land Development Control Plan largely incorporates environmental safeguards. EIA is required and well integrated into the development process, although no SEA regulation is in place. An updated Planning Ordinance is expected shortly which will provide a legislative basis for the NCAs.

People

There is limited accountability in decision-making, as decisions are taken by the Planning and Development Control Board, members of which are appointed by the Governor and so are not necessarily democratically accountable. There is an ability to appeal decisions to an Appeals Tribunal, although the notice period for this is short.

Overall assessment¹⁹

Species	Sites	Development control	People
Moderate	Weak	Strong	Moderate

Key statutes	Key policies
Endangered Species Protection Ordinance 2003	Endangered Species Protection Order 1996
Birds Protection Ordinance 1996	Land Development Control Plan 2012
Land Planning & Development Control Ordinance December 2008	

Good practice

- Development control

Priority gaps

- Site designations and management plans
- Updated Planning Ordinance to give legislative basis to National Conservation Areas

Other references

Institutional Review of St Helena Government's Environmental Services and Functions, prepared for the Government of St Helena Island by Adi Associates Environmental Consultants Ltd, October 2008.

¹⁹ The scored criteria which make up the overall assessment can be found in Annex 1. The detailed background information can be found online at: www.rspb.org.uk/overseasterritories

South Georgia & the South Sandwich Islands (SGSSI)

Species

Native species are protected, including from hunting. The Commissioner can order measures of special protection for any species or their habitat, although there is no legal requirement to develop or implement species action plans. Monitoring and review procedures are not set out in legislation.

Sites

The site protection framework appears adequate, although clear requirements for management plans are lacking. The Wildlife and Protected Areas Ordinance enables the Governor to designate Specially Protected Areas (SPAs) and Marine Protected Areas (MPAs). The Marine Protected Areas Order 2012 established the South Georgia and South Sandwich Islands MPA.

Development control

Development control legislation and development plans appear to be absent. The classification of activities likely to cause significant damage to the habitat of a wild bird or mammal as an offence and related provisions do not provide adequate safeguards, although they might limit some developments. In addition, there is no route for appealing the grant of a permit by the Commissioner. According to a 2006 report available on the South Georgia and South Sandwich Island government website, the EIA procedures developed for the Environmental Protocol to the Antarctic Treaty form the basis for EIA policy.²⁰ However, there appear to be no legal requirements for EIA and SEA legislation is also lacking. There is no legislation regarding mineral resource extraction.

People

There are issues related to transparency and consultation when it comes to decision making. For example, the Commissioner, a named civil servant in the FCO, may under the Wildlife and Protected Areas Ordinance 2011 “of his or her own motion or on the application of any person”²¹ grant permits to undertake activities otherwise prohibited. Although this is subject to certain restrictions these provisions are an area of weakness. The lack of an appeals procedure for the Commissioner’s decisions on permits is also a concern.

²⁰ Morrison, Initial Environmental Evaluation for Proposed Reintroduction of Hydro Electric Power at Grytviken, South Georgia, April 2006, p 2.

²¹ Section 21, Wildlife and Protected Areas Ordinance 2011.1.

Overall assessment²²

Species	Sites	Development control	People
Moderate	Moderate	Very Weak / Absent	Very Weak / Absent

Key statutes	Key policies
Wildlife and Protected Areas Ordinance 2011	South Georgia Tourism Management Policy
	Marine Protected Areas Order 2012

Good practice

- Robust elements of species and site conservation framework

Priority gaps

- Development control provisions, in particular with regard to EIA and SEA requirements
- Transparency and accountability in decision-making, including appeals procedures

Other references

Morrison, Initial Environmental Evaluation for Proposed Reintroduction of Hydro Electric Power at Grytviken, South Georgia, April 2006.

²² The scored criteria which make up the overall assessment can be found in Annex 1. The detailed background information can be found online at: www.rspb.org.uk/overseasterritories

Tristan da Cunha

Species

The legislative framework provides robust general protection for all native species, complemented by the Tristan Biodiversity Action Plan 2006-2010 (a new version is currently in preparation and should be published early in 2013). An implementation plan is also in place for the Agreement on the Conservation of Albatrosses and Petrels (ACAP). There is a general prohibition on transporting native organisms between islands/islets and releasing live specimens not originally derived from an island/islet, with limited exceptions.

Sites

The site protection framework also has robust elements, such as a general prohibition on non-residents entering nature reserves without a permit. However, management plans are absent except for Gough and Inaccessible Islands, with a management plan now in preparation for Nightingale Island. It is not clear in legislation that new site designations would take place on science-based criteria.

Development control

The development control framework is very limited, and has not been seen as a local legislative priority. Under the Conservation of Native Organisms and Natural Habitats Ordinance 2006, permits are required for any construction or agricultural or horticultural activity within a nature reserve. Action points in the Tristan Biodiversity Action Plan (BAP) included that policies will be produced that require infrastructure/development projects to undergo EIAs and that proposed construction of a new harbour will undergo EIA, in particular to mitigate the potential introduction of invasive species.

People

The lack of EIA procedures and the absence of ability to appeal decisions is an area of weakness, although there is a right to comment on proposed declarations of nature reserves.

Overall assessment²³

Species	Sites	Development control	People
Moderate	Moderate	Very Weak / Absent	Weak

Key statutes	Key policies
Conservation of Native Organisms and Natural Habitats Ordinance 2006	Tristan Islands Sustainable Development Plan 2009-16
Agricultural Ordinance 1984	Gough & Inaccessible Islands World Heritage Site Management Plan 2010-2015

Good practice

- Elements of species and site protection framework

Priority gaps

- EIA procedures

²³ The scored criteria which make up the overall assessment can be found in Annex 1. The detailed background information can be found online at: www.rspb.org.uk/overseasterritories

Turks & Caicos Islands

Species

Parts of the legal framework for species protection are in place, largely for marine and bird species. The proposed Wildlife & Biodiversity Conservation Bill would provide some greater protections, but is stalled at draft stage. A draft Endangered Species Act, which would ratify and implement CITES, is meanwhile under review. There is a gap when it comes to species action plans and also monitoring and review procedures. Policy guidelines for protection of humpbacks and other cetaceans are in place, but these focus on whale watching operators and vessels.

Sites

A draft Protected Areas Act is pending. Due to the constitutional situation in the Turks and Caicos Islands in the last three years, legislative initiatives have been delayed. In the meanwhile elements of the site protection framework include the National Trust Ordinance, the Wild Birds Protection Ordinance, the Fisheries Protection Ordinance, Coast Protection Ordinance and the National Parks Ordinance. The site protection framework appears adequate, although the status of site management plans is not clear and management capacity is limited.

Development control

The legal framework for development control is not strong. The Physical Planning Ordinance 1998 only provides that the Director of Planning may require an EIA or economic feasibility study for proposed development - this is not a general requirement. EIAs are only legally required for proposed commercial or industrial developments within conservation areas. There is no current national development plan in place, and the relationship of other legislation with the Encouragement of Development Ordinance, highlighted below, is unclear. Illegal and unregulated development sprawl is a particular challenge, compounded by a lack of sufficient monitoring and enforcement capacity. The recent period of direct rule from the UK also appears to have set some concerning development precedents.

People

There is a need for more comprehensive EIA legislation. There are issues related to lack of accountability in decision making, but new Ordinances designed to strengthen accountability and integrity in public life have been introduced in 2012. The Encouragement of Development Ordinance 1998 is a concern, as it makes no reference to environmental or conservation concerns and appears to give the Governor great freedom to issue Development Orders.

Overall assessment²⁴

Species	Sites	Development control	People
Weak	Moderate	Weak	Weak

Key statutes	Key policies
Wild Birds Protection Ordinance 1998	Turks & Caicos Investment Policy 2012
Fisheries Protection Ordinance 1998	
Coast Protection Ordinance 1998	
National Parks Ordinance 1998	
Physical Planning Ordinance 1998	
Encouragement of Development Ordinance 1998	

Good practice

- Elements of species and sites framework

Priority gaps

- Passing the draft **Wildlife & Biodiversity Conservation Bill**, the draft **Endangered Species Act**, and the draft **Protected Areas Act**
- Comprehensive EIA legislation
- Creation of an up-to-date National Development Plan
- Clarifying relationship of the **Encouragement of Development Ordinance 1998** to other legislation and how environmental conservation safeguards can be put in place

²⁴ The scored criteria which make up the overall assessment can be found in Annex 1. The detailed background information can be found online at: www.rspb.org.uk/overseasterritories

Analysis

An assessment of the environmental protection frameworks in the OTs needs to take into account the special – and widely differing – circumstances of the OTs and the urgency of protecting their unique biodiversity.

In the June 2012 White Paper “The Overseas Territories: Security, Success and Sustainability”²⁵ the UK Government emphasised good government, transparency and accountability. The Foreign Secretary announced ‘a strategy of re-evaluation. We have not in the past devoted enough attention to the vast and pristine environments in the lands and seas of our Territories’. The Prime Minister further clarified the UK’s ambition with regard to the OTs: ‘we see an important opportunity to set world standards in our stewardship of the extraordinary natural environments we have inherited’.

In conjunction with this ambition to ‘cherish’ the environments of the OTs, the 2012 White Paper contained an explicit new strategic priority to ensure that the Territories ‘abide by the same basic standards of good government as in the UK’. The White Paper states that “The UK Government has a responsibility for overall good government of the Territories...” and says it will “[put] environmental considerations at the heart of all decision-making”. Although environmental management is devolved to local governments in-Territory, the UK government clearly has a role to play in supporting improvements and assisting in areas where capacity is limited, such as legislative drafting.

Cultural and other factors may mean that approaches that would be appropriate in mainland UK may not be appropriate in certain situations in OT. However, keystone features of environmental protection frameworks such as transparency, access to information and participation in environmental decision-making must rank high. As highlighted further in the conclusions and recommendations, the need for support and assistance to ensure that adequate environmental protection frameworks are in place is evident.

The first table below provides a summary overview of priority issues common to many OTs, based on the information provided in the detailed analysis carried out by FIELD. These emerge as priority areas for attention when it comes to strengthening of environmental protection frameworks, which could also benefit from a concerted approach across OTs. The second table provides an overview of the summary assessments of each OT, whilst the third table summarises areas of good practice and priority gaps for each Territory.

It should be noted that in conjunction with HMG, most of the OTs developed an Environmental Charter in the early 2000’s. These are individual agreements which list commitments to develop and implement sound environmental management practices, and clarify the roles and responsibilities of the HMG, OT Governments, the private sector, NGOs and local communities. They provide a useful framework in which to consider the environmental governance of the OTs.

²⁵ The Overseas Territories: Security, Success and Sustainability, June 2012, available at: <http://www.fco.gov.uk/resources/en/pdf/publications/overseas-territories-white-paper-0612/ot-wp-0612>

Table 1- Major issues that affect many or all Overseas Territories

Issue	Comments
Small populations, lack of capacity, lack of resources	These fundamental challenges facing OTs must be taken into account when it comes to strengthening environmental protection frameworks: increased support to OTs is essential
Absence of development controls or fragmented and/or incomplete legal frameworks that do not integrate environmental protection considerations	<p>Additional legislation, greater cohesion and integration needed in many OTs</p> <p>Absence of marine development controls notable</p> <p>Absence of SEA procedures is also an issue</p>
Enforcement, monitoring and review of biodiversity legislation	Need to strengthen enforcement (e.g. offence provisions absent or not being used), increase monitoring and review
Piecemeal and/or outdated environmental conservation legislation	Some legislation appears dated, in other cases there are issues with overlapping legislation, for example relating to site designations, creating lack of clarity
Public awareness	<p>Legislation and policies need to be accessible, clear and as user-friendly as possible</p> <p>Problems include many different pieces of unclear and overlapping legislation, and legislation not being easily accessible</p>
Decision making	<p>There is a need to strengthen collaboration and consultation (for example on development plans), rights of appeal, transparency and access to information</p> <p>In addition, decision making powers are in many cases concentrated in the hands of a small number of individuals (e.g. Commissioners, locally appointed officials), making democratic review procedures particularly important</p>

Table 2- Overview of summary assessment of each Overseas Territory

	Species	Sites	Development Control	People
Anguilla	Moderate	Weak	Very Weak / Absent	Very Weak / Absent
Ascension	Moderate	Weak	Very Weak / Absent	Very Weak / Absent
Bermuda	Moderate	Moderate	Moderate	Moderate
British Antarctic Terr.	Strong	Moderate	Strong	Moderate
British Indian Ocean Terr.	Moderate	Weak	Very Weak / Absent	Very Weak / Absent
British Virgin Islands	Weak	Strong	Moderate	Weak
Cayman Islands	Weak	Weak	Weak	Weak
Cyprus SBAs	Moderate	Strong	Weak	Very Weak / Absent
Falkland Islands	Moderate	Weak	Weak	Moderate
Gibraltar	Strong	Strong	Strong	Strong
Montserrat	Moderate	Weak	Moderate	Weak
Pitcairn	Weak	Weak	Weak	Weak
St Helena	Moderate	Weak	Strong	Moderate
South Georgia & SSI	Moderate	Moderate	Very Weak / Absent	Very Weak / Absent
Tristan da Cunha	Moderate	Moderate	Very Weak / Absent	Weak
Turks and Caicos Islands	Weak	Moderate	Weak	Weak

Table 3- Summary of good practice & priorities for improvement

	Good Practice	Priority Gaps
Anguilla	Some sound legal instruments for protection of species and sites	Progressing the Physical Planning Bill and draft Environmental Protection Act; Ease of access to information; Accountability
Ascension	Robust elements of species conservation framework in place	Site protection designations; Development control procedures
Bermuda	Aspects of the species & sites protection framework	Strengthening EIA procedures; Increasing accountability around Special Development Orders
British Antarctic Terr.	Development control; The species & sites framework	Passage of the draft Antarctic Bill 2012; Improving clarity of legal framework
British Indian Ocean Terr.	Marine conservation declaration	Strengthening species & habitats framework; Establishing legal basis for the Marine Protected Area
British Virgin Islands	Robust elements of the site protection framework	Progressing the Environmental Management & Conservation of Biodiversity Bill and Planning Regulations
Cayman Islands	Elements of the species conservation framework	Progressing the National Conservation Bill and Development Plans for all three islands
Cyprus SBAs	Sites and elements of species legislation	Strengthening hunting regulations, development control and accountability in decision-making
Falkland Islands	Species protection legislation and elements of involving stakeholders	Marine area protection legislation; progressing EIA regulation
Gibraltar	Comprehensive legislation; Access to Information; Accountability	Management of the Southern Waters of Gibraltar SAC/SPA
Montserrat	Elements of species and sites legislation	Status of the Conservation & Environmental Management Bill and National Development Plan
Pitcairn	Elements of species protection framework	Species Action Plans; Site designation and management plans
St Helena	Development Control procedures	Site designations & management plans; Legislative basis for NCAs
South Georgia & SSI	Robust elements of species & site conservation framework	Development control provisions (EIA & SEA); Transparency & accountability in decision-making, including appeals
Tristan da Cunha	Elements of species & site protection framework	EIA procedures
Turks and Caicos Islands	Elements of species & sites framework	EIA legislation; Passing the 3 draft bills; Reviewing the Encouragement of Development Ordinance

Conclusions

A lack of legislative coherence, integration and transparency impede the effectiveness of environmental legislation and may undermine the rule of law. Legal requirements that are not clear or accessible can stand in the way of access to justice.²⁶

Related to this is the importance of strengthening collaboration and consultation with the public, rights of appeal, transparency and access to information. Strengthening good government, a priority highlighted in the UK White Paper (please see above) is an important part of strengthening environmental protection frameworks. This is also relevant to the UK's relations with the OTs, including for example the legislative frameworks and procedures for decision making by Commissioners for the uninhabited OTs, which might benefit from review.

Some of the deficiencies identified in the OTs' environmental protection frameworks are common to a number of the OTs and indeed environmental regulation generally. Ecosystems and environmental media cannot be assessed in isolation and when they are assessed, it is often on the basis of imperfect information. Therefore, often conservation frameworks suffer from a lack of adequate baseline data and legislative fragmentation.

There are also a number of barriers to the effective implementation of environmental conservation legislation that are common to small island nations or territories with small GDPs. These issues include:

- a lack of technical knowledge or access to technical knowledge;
- limited baseline data on species, species populations and habitats, particularly endemic species;
- limited resources for effective implementation, enforcement and compliance of legislative provisions; and
- limited community awareness of obligations or responsibilities under environmental laws.

Addressing all these factors is vital to ensuring an effective and successful environmental conservation regime. Many of these barriers were identified by DEFRA in the 2012 report "The Environment in the United Kingdom's overseas Territories: UK Government and Civil Society Support"²⁷, however the analysis undertaken has identified the need for more assistance in this regard – the priority message emerging from the analysis is the need for additional legislative and policy support to the OTs.

Recently there has been a push to consolidate environmental laws in varying jurisdictions into one regime, often as an overarching development assessment regime. This holistic approach has a number of advantages including ease of reference for those being regulated

²⁶ UK Environmental Law Association, King's College London, Cardiff University's ESRC Centre for Business Relationships, Accountability, Sustainability & Society, *The State of UK Environmental Law in 2011-12: is there a case for legislative reform?* May 2012, p 6.

²⁷ Note 1 above.

as well as consistency and integration which often results in improved environmental outcomes. OTs have limited legislative drafting capacity, but aiming to integrate piecemeal legislation step-by-step or, resources permitting as comprehensive project, would help to strengthen environmental protection frameworks.

Part of this could include offering legislative assistance to help fill some of the gaps. For example, a support package with examples of legislation, templates and checklists could benefit a number of OTs.

Environmental protection frameworks in OTs need to look forward, searching for opportunities and also anticipating threats. As noted in the introductory section, climate change has been identified as a major threat to OTs, which may have considerable implications for environmental protection frameworks, including legislation. This first phase analysis did not explicitly include climate change as a criterion, so it does not emerge as a priority through the analysis tables. However, it is envisaged that further cross-Territory assessments of fisheries, biosecurity and climate change legislation will be conducted in due course. In the meantime, it is believed that the two policy areas focussed on in this report represent some of the most urgent priority areas for strengthening environmental protections in the UK Overseas Territories. These aspects of environmental governance will be returned to in a 2015 analysis to assess UK Government progress on implementing its White Paper commitments.

Annex 1 – Detailed assessment for each UK Overseas Territory

A) Biodiversity Protection

	Anguilla	Ascension	Bermuda	British Antarctic Territory	British Indian Ocean Territory	British Virgin Islands	Cayman Islands	Cyprus SBAs	Falkland Islands	Gibraltar	Montserrat	Pitcairn Islands	SGSSI	St Helena	Tristan da Cunha	Turks & Caicos
Overall Assessment: Species	**	**	**	***	**	*	*	**	**	***	**	*	**	**	**	*
- Overarching & holistic duty for conservation of biodiversity in legislation				***									**			**
- Ecological outcome stated (eg goal to reach Favourable Conservation Status)				***				***	**	***			*			
- Legal protection for threatened species & mechanisms for targeted species conservation action	**	**	**	**	**	**	*	**	**	***	**	*	***	**	**	**
- Identification & prioritisation of threatened species (all taxa)	**	*	**	***	*	**	**	***	**	***	***	*	***	**	**	*
- Implementing regulations present	**		**	***	***		*	***	**	***		*	**	**		
- Regulation of hunting	**	***	**	***	***	**	**	**	***	***	***	**	***	**	**	*
- Species action plans development & implementation	**	**	*	*			*		**	**	**		*	*	*	
- Monitoring & review procedures in place	**	*	**	*	*	*	**	**	*	**	***			*	*	
- Role & responsibilities identified	**	*	***	**		**	*	***	*		***	**	**	**	**	*
Overall Assessment: Sites	*	*	**	**	*	***	*	***	*	***	*	*	**	*	**	**
- Legislation for terrestrial & marine protected areas & level of legal protection	***	***	**	***	**	***	**	***	*	***	**	**	***	*	**	***
- Legislation for habitat protection provisions outside of protected areas	*	*	*	***		*	*	**		***	*		***		**	*
- Terrestrial protected areas designated on science-based criteria	*	*	*	***	*	***		**	*	***	*			*		*
- Marine protected areas designated on science-based criteria	**		*	*	**	***	*	**		***			**	*		*
- Strict liability regime based on the 'polluter-pays principle'	**	*	*		**	***		***	**	***	***	**		*	**	**
- Site management plans in place	*	*	**	***	**	**	*		*	***	*	*	*	*	**	*

Key:

*** = STRONG	** = MODERATE	* = WEAK	VERY WEAK / ABSENT
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B) Development Planning

	Anguilla	Ascension	Bermuda	British Antarctic Territory	British Indian Ocean Territory	British Virgin Islands	Cayman Islands	Cyprus SBAs	Falkland Islands	Gibraltar	Montserrat	Pitcairn Islands	SGSSI	St Helena	Tristan da Cunha	Turks & Caicos
Overall Assessment: Development Control			**	***		**	*	*	*	***	**	*		***		*
- Terrestrial & marine development control, planning and impact assessment primary legislation in place	*		**	***		**	*	*	**	***	**	**		**		**
- Development control legislation integrates species/sites/habitats law & procedures			*	***		**	*	**		**	*			***		**
- Development control enforcement powers and penalties	*		**	***		***	*	***	*	**	***	*	**	***		**
- Legislation for non-built development land-use control in place (eg:- Agriculture & Forestry)			**	***		**		*		***	***			*		
- Terrestrial development control plans in place, enforceable, up-to-date & integrate environmental policy			**	N/A		*		*	*	***	**			***		
- Marine development control plans in place, enforceable, up-to-date & integrate environmental policy	*			N/A		*										
- Regulation for Environmental Impact Assessment (EIA) in place and integrated into development processes				***		***		***	*	***	**	*		***		*
- Regulation for Strategic Environmental Assessment (SEA) in place & integrated into development plan process				*						***						
- Public & private land treated the same	*	N/A	**	N/A	N/A	***	**	**			***		N/A	***		**
Overall Assessment: People			**	**		*	*		**	***	*	*		**	*	*
- Political accountability in decision-making			**	**		*	*		**	***		**	*	*	*	*
- Consultative and transparent processes	*		**	***		*	*	*	**	***	***			**	*	**
- Ability to appeal decisions	**		**	**		**	**	**	***	***	**			**		**

Key:

*** = STRONG	** = MODERATE	* = WEAK	VERY WEAK / ABSENT
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Annex 2- List of organisations consulted

Anguilla

- Department of the Environment, Government of Anguilla
- Anguilla National Trust

Ascension

- Ascension Conservation Department, Ascension Island Government

Bermuda

- Department of Conservation Services, Government of Bermuda
- Bermuda National Trust
- Bermuda Audobon Society

British Antarctic Territory

- UK Foreign & Commonwealth Office

British Indian Ocean Territory

- UK Foreign & Commonwealth Office
- Chagos Conservation Trust

British Virgin Islands

- Department of Conservation & Fisheries, British Virgin Islands Government
- British Virgin Islands National Parks Trust
- Jost Van Dyke Preservation Society

Cayman Islands

- Department of Environment, Cayman Islands Government
- National Trust for the Cayman Islands

Cyprus Sovereign Base Areas

- BirdLife Cyprus

Falkland Islands

- Environmental Planning Department, Falkland Islands Government
- Falklands Conservation

Gibraltar

- Department of the Environment, Government of Gibraltar
- Gibraltar Ornithological & Natural History Society

Montserrat

- Department of the Environment, Montserrat Government
- Montserrat National Trust

Pitcairn

- Pitcairn Natural Resources Division, Pitcairn Islands Government

St Helena

- Environmental Management Directorate, St Helena Government
- St Helena National Trust

South Georgia & the South Sandwich Islands

- Government of South Georgia & the South Sandwich Islands
- South Georgia Heritage Trust

Tristan da Cunha

- Tristan da Cunha Conservation Department, Tristan da Cunha Government

Turks & Caicos Islands

- Department of Environment & Coastal Resources, Turks & Caicos Islands Government
- Turks & Caicos National Trust

Cross-Territory:

- UKOTA; JNCC; UKOTCF

FIELD and the RSPB would like to thank all those who contributed to the preparation of this report.

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The RSPB is part of BirdLife International, the global partnership of bird conservation organisations.

Front cover images: St Helena landscape by Jonathan Hall (RSPB), hawksbill turtle, British Indian Ocean Territory by Anne Sheppard, Henderson Island, Pitcairn by Jonathan Hall (RSPB), king penguin, Falkland Islands by Clare Stringer (RSPB) and surveying in the British Virgin Islands by Sarah Sanders (RSPB).

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