

PROTECTED SPECIES ACT 2003



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PROTECTED SPECIES ACT 2003

[Date of Assent: 2 December 2003]

[Operative Date: 2 December 2003]

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WHEREAS it is expedient to enable orders to be made for the conservation, restoration, protection and propagation of plants and animals of Bermuda that are threatened:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:—

Citation

1 This Act may be cited as the Protected Species Act 2003.

Definitions

2 In this Act —

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"authorized officer" means a police officer, park ranger, conservation officer or other officer of the Ministry of the Environment and such other persons as may be authorized in writing by the Minister;

"critical habitat" means any land, including land covered by water, which is essential to the conservation of any protected species;

"Minister" means the Minister responsible for the environment;

"protected area" means an area designated as a protected area under section 6;

"protected species" means any species of plant or animal, declared by an order under section 5 to be a protected species;

"regulations" means regulations under section 12;

"take" in relation to any protected species of animal, includes to injure, disturb, harass, kill, capture and collect and, in relation to any protected species of plant, includes to pick, break, cut, uproot, destroy, damage and remove.

Administration

3 The Minister is responsible for the administration of this Act.

Notice of intention to make an order under section 5 or 6

4 (1) Where the Minister proposes to make an order under section 5 declaring a species to be a protected species or under section 6 designating an area to be a protected area, he shall, by publication of a notice in the Gazette, set out the details of the proposal and in the case of an order under section 6, the location and boundaries of the protected area, and the restrictions proposed to be imposed on activities within that area.

(2) The Minister shall cause a copy of the notice under subsection (1) to be deposited with the Director of Conservation Services for public inspection.

(3) The notice under subsection (1) shall invite representations from the public and, in particular, from landowners whose property may be affected.

(4) No order shall be made under section 5 or section 6 until 30 days have elapsed since the publication of the notice required by subsection (1).

(5) The Minister may dispense with the notice under subsection (1) where he considers that there is an urgent necessity to make an order under section 5 or section 6.

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Protected species

5 (1) The Minister may make an order declaring any species of plant or animal to be a protected species.

(2) Before making an order under subsection (1) the Minister shall examine the best scientific information available and shall consider—

- (a) the distribution of the species throughout the world;
- (b) the number (with particular regard to the number of sexually mature members) and distribution of the species in Bermuda;
- (c) the location of, and threats to, the habitat of the species; and
- (d) natural or man-made factors affecting or potentially affecting the vulnerability or survival of the species, including destruction of habitat, over-exploitation, disease, predacity and use of chemicals.

(3) An order under subsection (1) shall classify the protected species as critically endangered, endangered or vulnerable in accordance with the criteria set out in the International Union for the Conservation of Nature Red List of Threatened Species, a copy of which is available for public inspection in the office of the Director of Conservation Services.

(4) The Minister shall review orders under this section and shall revoke an order when he is satisfied that the threat to the protected species has decreased to the extent that special protection is no longer needed.

Critical habitat

6 (1) Without prejudice to section 28 of the Development and Planning Act 1974, the Minister may by order designate as a protected area any critical terrestrial or marine habitat essential for the protection of a specified protected species and specify the location and boundaries of the area and the order may impose such prohibitions or restrictions on activities within the area as the Minister may consider necessary for the protection of that species.

(2) The Minister shall cause a map of each protected area to be published in the Gazette and deposited with the Director of Conservation Services for public inspection.

(3) Where a protected area is privately owned, the Minister may enter into an agreement with the owner for the protection and management of the habitat of a specified species.

(4) An agreement under subsection (3) may restrict or regulate the development or use of land within the protected area and the

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Minister may enforce an agreement against the owner and his successors in title as a restrictive covenant.

(5) In the case of a critical marine habitat the order may impose restrictions—

- (a) prohibiting the mooring of a vessel;
- (b) prohibiting the anchoring of a vessel;
- (c) imposing speed limits on marine traffic; and
- (d) prohibiting or restricting the movement of marine traffic,

within the protected area.

(6) In the case of a critical terrestrial habitat the order may impose restrictions—

- (a) prohibiting or restricting entry to the protected area; and
- (b) with respect to activities within the protected area.

Recovery plans for protected species

7 (1) The Minister shall, in respect of a protected species, develop and publish a recovery plan which shall include—

- (a) the identification of the species and its habitat;
- (b) the identification of threats to the species;
- (c) a statement of the measures to be taken to eliminate or reduce the threats to the species; and
- (d) a description of the management action to be taken to enhance the species and its habitat to ensure the survival of the species.

(2) A recovery plan under subsection (1) shall be developed and published—

- (a) in the case of a critically endangered or endangered species, within one year; and
- (b) in the case of a vulnerable species, within three years,

of the making of the order under section 5.

Licences

8 (1) The Minister may issue a licence, on such terms and conditions as he may determine, authorizing the holder of the licence to engage in any activity that would otherwise be prohibited or restricted by this Act for the purpose of—

- (a) scientific research relevant to the conservation or survival of a particular protected species;

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- (b) establishing or maintaining a population of protected species for exhibition to the public at a recognized institution, museum or nature reserve;
- (c) conducting an aquaculture programme or project in respect of a protected species; or
- (d) conducting a horticulture programme or a species enhancement programme for a protected species.

(2) The Minister may suspend or revoke a licence if the licensee is convicted of an offence under section 9.

Offences

9 Any person who—

- (a) except as authorized under section 8, takes, imports, exports, sells, purchases, transports or has in his possession a protected species or any part of a protected species;
- (b) contravenes a provision of this Act or any regulations or does any act in contravention of an order or any prohibitions or restrictions imposed by an order under this Act;
- (c) in a protected area wilfully destroys, damages, removes or obstructs the habitat or nest of a protected species;
- (d) fails to comply with the terms and conditions of a licence under section 8;
- (e) makes any false statement to an authorized officer or for the purpose of obtaining a licence; or
- (f) obstructs an authorized officer in the execution of his functions under this Act,

is guilty of an offence and is liable on summary conviction to a fine of \$5,000 or imprisonment for 6 months or, in the case of a second or subsequent offence, to a fine of \$10,000 or imprisonment for 6 months and, where the offence is a continuing offence, is liable on summary conviction to a fine of \$1,000 for each day on which the offence continues.

Control or destruction of protected species

10 The Minister may direct an authorized officer to control or destroy particular members of a protected species if the Minister is satisfied that —

- (a) it is necessary to do so for the protection of public health or safety;

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- (b) it is expedient to do so for the protection of other members of a protected species; or
- (c) it is appropriate to do so in the case of an infected or injured member of the protected species.

Powers of authorized officers

11 (1) An authorized officer shall have the powers of a police officer for the purposes of enforcement of this Act.

(2) Where an authorized officer has reasonable grounds for believing that an offence has been committed against this Act he may, without a warrant—

- (a) enter and search any land, building (except one used exclusively as a dwelling house), tent or structure of any kind in which he has reason to believe that evidence of the commission of such offence is to be found;
- (b) in any place stop, detain, and search any vehicle or vessel which appears to have been used or is being used in the commission of an offence against this Act;
- (c) seize any vehicle, vessel, weapon, or thing in connection with which an offence appears to have been committed against this Act or any plant, animal or marine species or any thing whatsoever which he has reason to believe is being possessed in contravention of this Act;
- (d) stop, detain, search and arrest any person whom he reasonably suspects of having committed an offence against this Act.

(3) Any thing seized under subsection (2) shall, subject to any order of the court, be forfeited to the Crown.

Regulations and orders

12 (1) The Minister may make regulations for administering this Act and for giving effect to its objects and intentions and, in particular, for ensuring the proper use, management and administration of protected areas and for the survival and conservation of protected species.

(2) Regulations under subsection (1) and orders under sections 5 and 6 are subject to the negative resolution procedure.

Savings

13 Nothing in this Act shall derogate from the Agriculture Act 1930, the Fisheries Act 1972, the Care and Protection of Animals Act 1975, the Protection of Birds Act 1975, the Marine Board Act 1962 or the Bermuda National Parks Act 1986.

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Commencement

14 This Act comes into operation on such date as the Minister may appoint by notice published in the Gazette.

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