



BERMUDA

PROTECTED SPECIES ACT 2003

2003 : 15

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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:—

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### Citation

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

### Definitions

2 In this Act—

“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;

“conservation” means the preservation, protection, or restoration of the natural environment, natural ecosystems, vegetation, wildlife and genetic diversity;

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

“level of protection”, and “level 1”, “level 2” and “level 3”, have the meanings given in section 5A and the Schedule;

“licensed researcher” includes an authorized officer and a person authorized under section 8;

“Minister” means the Minister responsible for the environment;

“mitigation action” has the meaning given in section 10A;

“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;

“recovery” includes any action that enables conservation of a protected species, and such action includes monitoring, assessment, research, restoration, maintenance and management;

“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.

*[Section 2 "Minister" deleted and substituted by BR 5 / 2011 para. 5 effective 25 February 2011; definitions "conservation", "level of protection", "licensed researcher", and "recovery" inserted by 2011 : 40 s. 2 effective 20 January 2012; definition "mitigation action" inserted by 2014 : 19 s. 2 effective 27 June 2014; "Minister" deleted and substituted by 2016 : 21 s. 2 effective 1 April 2016]*

### 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—

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- (a) section 5 declaring a species to be a protected species and the requisite level of protection;
- (b) section 5A amending the allocated levels of protection; or
- (c) 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 Environment and Natural Resources 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, section 5A 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, section 5A or section 6.

(6) A notice published in accordance with subsection (1) shall not be subject to section 6 of the Statutory Instruments Act 1977 (parliamentary scrutiny of statutory instruments).

*[Section 4 subsection (1) amended by 2011 : 40 s. 3 effective 20 January 2012; subsection (1) repealed and replaced, subsections (4) and (5) amended and subsection (6) inserted by 2014 : 19 s. 3 effective 27 June 2014; subsection (2) amended by 2016 : 21 s. 2 effective 1 April 2016]*

### Protected species

5 (1) The Minister may make an order declaring any species of plant or animal to be a protected species so as to safeguard and maintain threatened species and protect Bermuda's special and fragile natural resources.

(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

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of which is available for public inspection in the office of the Director of Environment and Natural Resources.

(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.

*[Section 5 subsection (1) amended by 2011 : 40 s. 4 effective 20 January 2012; subsection (3) amended by 2016 : 21 s. 2 effective 1 April 2016]*

### Level of protection

5A (1) When declaring a species to be a protected species under section 5, the Minister shall allocate to that protected species a level of protection that is either level 1, level 2 or level 3, as set out in the Schedule.

(2) In order to determine the appropriate level of protection, the Minister shall examine the best scientific information available and shall consider—

- (a) the level of expertise needed for each stage of recovery;
- (b) the optimal strategy for the successful recovery of the species;
- (c) the projected involvement of the community in the conservation of the species.

(3) The Minister shall review the level of protection given to a protected species under this section and shall amend the level if he considers that to be appropriate.

*[Section 5A inserted by 2011 : 40 s. 5 effective 20 January 2012]*

### 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 Environment and Natural Resources 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 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;

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- (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.

*[Section 6 subsection (2) amended by 2016 : 21 s. 2 effective 1 April 2016]*

### 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) Subject to subsection (1A) 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;
- (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;
- (d) conducting a horticulture programme or a species enhancement programme for a protected species;

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- (e) rehabilitating injured protected species or establishing a rehabilitation programme for injured protected species; or
- (f) establishing a captive breeding or rearing programme to introduce or reintroduce protected species into the wild.

(1A) Before issuing a licence under this section the Minister shall consider whether a protected species or critical habitat may be negatively impacted under such licence and, if so, he shall determine whether to impose any mitigation action under section 10A.

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

*[Power of Minister to issue licences delegated to the Director of Conservation Services by GN 298 / 2012; subsection (1) amended and subsection (1A) inserted by 2014 : 19 s. 4 effective 27 June 2014]*

### Permits

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

- (a) relocation of a protected species or critical habitat in order to assist in the propagation, proliferation or survival of the protected species;
- (b) restoration or maintenance of a protected species or critical habitat in order to assist in the propagation, proliferation or survival of the protected species;
- (c) destruction of a protected species or critical habitat where such protected species or habitat is immovable, in order to prevent risk to the health and safety of a human or to prevent destruction to a building or structure;
- (d) installation of utilities, trenching for underground cabling, erection of fences and walls, and the establishment of moorings where such activities will impact a protected species or critical habitat; and
- (e) developing or maintaining land specified in the permit, where the Minister is satisfied that such activity is reasonable in the special circumstances of the case.

(1A) Before issuing a permit under this section the Minister shall consider whether a protected species or critical habitat may be negatively impacted under such permit and, if so, he shall determine whether to impose any mitigation action under section 10A.

(2) A permit is not required for the—

- (a) planting or introduction into the environment of a protected species; and
- (b) routine maintenance of a protected species involving minor action which does not jeopardize the health of a protected species.

*[Section 8A inserted by 2011 : 40 s. 6 effective 20 January 2012; Power of Minister to issue permits delegated to the Director of Conservation Services by GN 298 / 2012; subsection (1) amended and subsection (1A) inserted by 2014 : 19 s. 5 effective 27 June 2014]*

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### Offences

- 9 (1) A person who, unless authorized under section 8 or 8A—
- (a) wilfully damages, destroys, removes or obstructs the habitat or nest of any protected species; or
  - (b) wilfully damages, destroys, injures, disturbs, uproots, fells or kills a level 1 protected species; or
  - (c) takes, imports, exports, sells, purchases, or transports a level 1 protected species or any part of a level 1 protected species,

commits an offence and is liable on summary conviction to a fine of \$25,000 or two years imprisonment.

- (2) A person who, unless authorized under section 8 or 8A—
- (a) wilfully damages, destroys, injures, disturbs, uproots, fells or kills a level 2 protected species; or
  - (b) takes, imports, exports, sells or purchases a level 2 protected species or any part of a level 2 protected species,

commits an offence and is liable on summary conviction to a fine of \$15,000 or one year imprisonment.

(3) A person who, unless authorized under section 8 or 8A, wilfully damages, destroys, injures, disturbs, uproots, fells or kills a level 3 protected species commits an offence and is liable on summary conviction to a fine of \$5,000 or six months imprisonment.

- (4) A person who—
- (a) contravenes any regulations or does any act in contravention of an order or any prohibitions or restrictions imposed by an order under this Act;
  - (b) fails to comply with the terms and conditions of a licence under section 8 or a permit under section 8A;
  - (c) makes any false statement to an authorized officer or for the purpose of obtaining a licence or a permit; or
  - (d) obstructs an authorized officer in the execution of his functions under this Act,

commits an offence and is liable on summary conviction to a fine of \$5,000 or six months imprisonment.

*[Section 9 repealed and replaced by 2011 : 40 s. 7 effective 20 January 2012; subsection (1)(c) amended by 2014 : 19 s. 6 effective 27 June 2014]*

### Control or destruction of protected species or critical habitats

- 10 (1) Subject to subsection (2) the Minister may direct an authorized officer to control or destroy particular members of a protected species or critical habitat if the Minister is satisfied that—

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- (a) it is necessary to do so for the protection of public health or safety;
- (aa) it is necessary to do so to prevent destruction to a building or structure;
- (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.

(2) Before issuing a direction under this section the Minister shall determine whether to impose any mitigation action under section 10A.

*[Section 10 amended by 2014 : 19 s. 7 effective 27 June 2014]*

### Duty to take mitigation action

10A (1) In order to determine whether any mitigation action should be taken under this Act the Minister shall assess the chance of survival of any protected species or critical habitat by examining its—

- (a) natural attributes;
- (b) physical conditions;
- (c) life cycle;
- (d) ecological value; and
- (e) any other matter that he considers relevant to its survival.

(2) Where the Minister is satisfied that mitigation action should be taken under this Act he shall direct, or impose as a term or condition of a licence or permit, that specified mitigation action be taken and that such action be carried out by—

- (a) the holder of a licence or permit;
- (b) a landowner or any other person with a right to occupy or use the land to which a licence, permit or direction applies; or
- (c) an authorized officer.

(3) In this section “mitigation action” means any action (including relocation, transplantation, restoration, replacement or destruction of protected species or critical habitats) taken to minimize the negative impact on, and overall health of, a protected species or critical habitat.

*[Section 10A inserted by 2014 : 19 s. 8 effective 27 June 2014]*

### 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—



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- (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) Unless this Act expressly provides otherwise, any statutory instrument made under this Act shall be subject to the negative resolution procedure.

*[Section 12 subsection (2) repealed and replaced by 2014 : 19 s. 9 effective 27 June 2014]*

### 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.

### 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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SCHEDULE

(Section 5A )

LEVELS OF PROTECTION FOR PROTECTED SPECIES

| <u>Level of Protection</u> | <u>Requirements for Protection and Recovery</u>  |
|----------------------------|--|
| Level 1                    | (a) A high level of expertise is required for each stage of recovery.<br>(b) Optimal strategy for recovery of the species involves licensed researchers only.<br>(c) No community involvement is permitted in the conservation of the species.   |
| Level 2                    | (a) A medium level of expertise is required for each stage of recovery.<br>(b) Optimal strategy for recovery of the species involves licensed researchers and individuals holding permits under section 8A.<br>(c) Community involvement in the conservation of the species is restricted to individuals holding permits under section 8A. |
| Level 3                    | (a) A low level of expertise is required for each stage of recovery.<br>(b) Optimal strategy for recovery of the species involves the general community.<br>(c) General community involvement is permitted in the conservation of the species.   |

*[Schedule inserted by 2011 : 40 s. 8 effective 20 January 2012]*

[Assent Date: 2 December 2003]

[Operative Date: 1 March 2004]

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*[Amended by:*

BR 5 / 2011

2011 : 40

2014 : 19

2016 : 21]