



BERMUDA

PROTECTED SPECIES AMENDMENT ACT 2014

2014 : 19

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WHEREAS it is expedient to amend the Protected Species Act 2003 to expand the circumstances in which the Minister may permit destruction of a protected species, to provide for the destruction of critical habitats, to require that action be taken to minimize the negative impact on protected species and critical habitats, to enable the Minister to issue a licence for the rehabilitation and captive breeding of protected species, and to make related amendments;

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 which amends the Protected Species Act 2003 ("the principal Act") may be cited as the Protected Species Amendment Act 2014.

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Amends section 2

2 Section 2 of the principal Act is amended by inserting in its proper alphabetical position the following definition—

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

Amends section 4

3 Section 4 of the principal Act is amended—

(a) by repealing subsection (1) and replacing it with the following—

“(1) Where the Minister proposes to make an order under—

- (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.”;

- (b) in subsections (4) and (5) by inserting after the words “section 5” the words “, section 5A”; and
- (c) by inserting after subsection (5) the following—

“(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).”.

Amends section 8

4 Section 8 of the principal Act is amended—

(a) in subsection (1)—

- (i) by deleting the words “The Minister” and substituting the words “Subject to subsection (1A) the Minister”;
- (ii) in paragraph (c) by deleting after the semicolon the word “or”;
- (iii) in paragraph (d) by deleting the full stop and replacing it with a semicolon;
- (iv) by inserting after paragraph (d) the following—

“(e) rehabilitating injured protected species or establishing a rehabilitation programme for injured protected species; or

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(f) establishing a captive breeding or rearing programme to introduce or reintroduce protected species into the wild.”; and

(b) by inserting after subsection (1) the following—

“(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. ”.

Amends section 8A

5 Section 8A of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting the words “The Minister” and substituting the words “Subject to subsection (1A) the Minister”;

(ii) in paragraph (c) by deleting after the semicolon the word “and”;

(iii) in paragraph (d) by deleting the full stop and substituting “; and”;

(iv) by inserting after subsection (d) the following—

“(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.”; and

(b) by inserting after subsection (1) the following—

“(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. ”.

Amends section 9

6 Section 9(1)(c) of the principal Act is amended by—

(a) inserting before the word “transports” the word “or”; and

(b) deleting the words “or has in his possession”.

Amends section 10

7 Section 10 of the principal Act is amended—

(a) in the heading by inserting immediately after the word “species” the words “or critical habitats”;

(b) by numbering the existing provision as subsection (1) and in that subsection—

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- (i) deleting the words “The Minister” and substituting the words “Subject to subsection (2) the Minister”;
- (ii) inserting after the words “destroy particular members of a protected species” the words “or critical habitat”;
- (iii) inserting after paragraph (a) the following—

“(aa) it is necessary to do so to prevent destruction to a building or structure;”; and

- (c) by inserting after subsection (1) the following—

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

Inserts section 10A

8 The principal Act is amended by inserting immediately after section 10 the following—

“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, translocation, 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. ”.

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Amends Section 12

9 Section 12 of the principal Act is amended by repealing subsection (2) and replacing it with the following—

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

[Assent Date: 27 June 2014]

[Operative Date: 27 June 2014]