

A BILL

entitled

PROTECTED SPECIES AMENDMENT ACT 2011

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WHEREAS it is expedient to amend the Protected Species Act 2003;

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 Amendment Act 2011.

Amends section 2

2 Section 2 of the Protected Species Act 2003 ("the principal Act") is amended by inserting the following definitions in appropriate alphabetical order—

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

“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;

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

Amends section 4

3 Section 4(1) of the principal Act is amended by inserting after “protected species” the words “and the requisite level of protection,” .

Amends section 5

4 Section 5 of the principal Act is amended by repealing subsection (1) and replacing it with the following—

“(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.”

Inserts section 5A

5 The principal Act is amended by inserting after section 5 the following—

“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.”.

Inserts section 8A

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

“Permits

8A (1) 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—

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- (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; and
 - (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.
- (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. ”.

Repeals and replaces section 9

7 Section 9 of the principal Act is repealed and replaced with the following—

“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, transports or has in his possession 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,

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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. ”.

Inserts Schedule

8 The principal Act is amended by inserting at the end the following Schedule—

“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. (b) Optimal strategy for recovery of the species involves licensed researchers only. (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. (b) Optimal strategy for recovery of the species involves licensed researchers and individuals holding permits under section 8A.

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- (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.
- (b) Optimal strategy for recovery of the species involves the general community.
- (c) General community involvement is permitted in the conservation of the species.

”.

Commencement

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

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EXPLANATORY MEMORANDUM

This Bill seeks to make a number of amendments to the Protected Species Act 2003 (“the principal Act”).

Clause 1 is self-explanatory.

Clause 2 amends section 2 of the principal Act to add new definitions, including “conservation” and “recovery”.

Clause 3 makes a minor amendment to section 4 of the principal Act which is consequential on new section 5A inserted by clause 5.

Clause 4 replaces section 5(1) of the principal Act to clarify the purpose of a protected species order.

Clause 5 inserts new section 5A into the principal Act. This introduces the concept of the three levels of protection: level 1 (the highest level of protection), level 2 (medium) and level 3 (the lowest level of protection), recognising that not all protected species need the same level of protection. The significance of the three different levels of protection is set out in the Schedule inserted by clause 8. After examining the best scientific information available, the Minister must categorise every protected species as level 1, 2 or 3 depending on the level of protection required, and the protected species and levels of protection will be set out in a new Protected Species Order to be made under section 5.

Clause 6 inserts new section 8A into the principal Act which provides for the Minister to issue permits to persons to carry out conservation and related activities which would otherwise be prohibited. Subsection (2) clarifies that a permit is not required for planting or routine maintenance of a protected species.

Clause 7 replaces section 9 of the principal Act so as to increase the penalties for offences, in particular those relating to level 1 and level 2 protected species.

Clause 8 inserts the Schedule which sets out the significance of the three levels of protection which will be allocated to protected species, in particular the permitted level of community involvement in the conservation of a protected species.

Clause 9 provides for commencement.