
CHAPTER 244A
MARINE MAMMAL PROTECTION

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CHAPTER 244A

MARINE MAMMAL PROTECTION

An Act to make provision for the protection of marine mammals. *12 of 2005*

[Assent 2nd August, 2005]

[Commencement 10th August, 2005] *S.I. 71/2005.*

1. This Act may be cited as the Marine Mammal Protection Act. *Short title.*

2. In this Act — *Interpretation.*

“captive marine mammal” means a marine mammal under human care and maintained in a captive marine mammal facility;

“captive marine mammal facility” means premises open to the public and licensed under section 6, for the holding, maintenance and display of marine mammals belonging to the family Delphinidae and any other marine mammal that the Minister may designate by Order published in the Gazette;

“exclusive economic zone” means the exclusive economic zone of The Bahamas as set out in section 8 of the Archipelagic Waters and Maritime Jurisdiction Act; *Ch. 282.*

“inter island” means existing or occurring between two or more islands;

“marine mammal” means any mammal which is morphologically adapted to the marine environment;

“marine mammal product” means any item which consists, or is composed in whole or in part, of any marine mammal;

“Minister” means the Minister responsible for wild animals;

“The Bahamas” includes the exclusive economic zone;

“vehicle” includes a motor vehicle, aircraft or boat;

“wild occurring marine mammal” means any marine mammal that is free roaming and is not confined by any man made boundary.

Prohibits import,
etc. without a
permit or licence.

3. (1) No person shall, except pursuant to a licence or permit granted by the Minister under section 5 —

- (a) import, or attempt to import into The Bahamas, any marine mammal or marine mammal product;
- (b) export, or attempt to export, from The Bahamas, any marine mammal or marine mammal product;
- (c) sell, or attempt to sell a marine mammal or a marine mammal product;
- (d) possess, or attempt to possess, within The Bahamas, any marine mammal or marine mammal product;
- (e) conduct, or attempt to conduct scientific research within The Bahamas on any marine mammal;
- (f) transport, or attempt to transport, inter-island or intra-island within The Bahamas, any marine mammal;
- (g) operate a vehicle for commercial purposes within The Bahamas to engage in or facilitate the observation or interaction with any wild occurring marine mammal.

(2) A person who contravenes any of the provisions of this section commits an offence.

Prohibits taking,
harassing, etc. of
a marine
mammal.

4. (1) No person shall take, harass, hunt, kill or attempt to take, harass, hunt, kill any marine mammal within The Bahamas.

- (2) Subsection (1) shall not apply —
 - (a) where it is necessary that a marine mammal be taken to ensure the preservation of such marine mammal;
 - (b) to a person authorized to rescue or attempt to rescue a stranded or beached marine mammal.

(3) A person who rescues a stranded or beached marine mammal pursuant to subsection (2) shall provide a report to the Minister within forty-eight hours of the stranding and of any actions taken.

(4) A person who contravenes any of the provisions of this section commits an offence.

5. (1) The Minister may upon application grant to a person a licence or permit pursuant to section 3(1) if the Minister is satisfied that —

Power of
Minister to grant
licence or permit.

- (a) it is necessary that a marine mammal product be imported into The Bahamas for the preservation of a marine mammal or for scientific research or educational purposes;
- (b) a marine mammal should be imported for captive purposes in a licensed facility;
- (c) it is necessary that a marine mammal be exported from The Bahamas for the preservation of that marine mammal;
- (d) it is necessary that a marine mammal product be exported from The Bahamas for the preservation of that product or for scientific research or educational purposes;
- (e) a marine mammal held in a facility should be sold due to that facility having exceeded its permitted carrying capacity or for the well being of the marine mammal;
- (f) a marine mammal should be transported within The Bahamas;
- (g) the scientific research proposed should be conducted on marine mammals or marine mammal products within The Bahamas;
- (h) it is necessary to allow a person to operate a vehicle to transport or attempt to transport within The Bahamas any marine mammal;
- (i) it is necessary to allow a person to operate a vehicle to engage in or facilitate the observation or interaction with any wild occurring marine mammal;
- (j) it is necessary to ensure compliance with any local laws and international conventions to which The Bahamas is a party.

(2) Every licence or permit granted under the provisions of this section shall be subject to such terms and conditions as the Minister thinks fit.

(3) The Minister may prescribe the manner in which any of the purposes for which a licence or permit is granted, is to be carried out.

(4) The Minister shall prior to granting a permit or licence under this section take into consideration the highest international practices and protocols in respect of marine mammals.

(5) The Minister may revoke or refuse to renew a licence or permit issued under this section —

- (a) where there is a breach of the Act or any regulations made thereunder;
- (b) where there is a breach of the terms or conditions for which the licence or permit has been issued; or
- (c) where it is necessary to ensure the sustainability of marine mammals in The Bahamas.

(6) The Minister shall prior to revoking a licence give notice to the licensee stipulating the grounds on which he proposes to revoke the licence and the Minister shall afford the licensee an opportunity to explain why the licence should not be revoked, and may give to the licensee an opportunity to remedy any default within such period as the Minister may specify.

(7) For the purposes of this section, “scientific research” means research, the results of which —

- (a) are likely to be accepted for publication in a referred scientific journal;
- (b) are likely to contribute to the basic knowledge of marine mammal biology or ecology; or
- (c) are likely to identify, evaluate, or resolve conservation problems.

6. (1) No person shall operate a captive marine mammal facility for any purpose unless —

- (a) that person obtains a licence to operate a captive marine mammal facility; and
- (b) the premises are licensed to be operated as a captive marine mammal facility.

(2) The Minister may upon application grant a licence to operate a captive marine mammal facility if the

Prohibits
operation of
captive marine
mammal facility
without a licence.

Minister is satisfied that the applicant is fit to be the holder of such a licence.

(3) The Minister may upon application grant to a person a licence for premises to be used as a captive mammal facility if the Minister is satisfied that —

- (a) the premises and location with regard to neighboring premises;
- (b) the proposed facilities and equipment;
- (c) the operation of the facility;
- (d) the proposed marine mammal husbandry programme;
- (e) the proposed education programmes and human/marine mammal interactive programmes; and
- (f) any proposed scientific research and exhibits,

are in keeping with the standards and guidelines as are prescribed.

(4) The Minister may revoke or refuse to renew the licence of a captive marine mammal facility, if the facility is managed in a manner contrary to the Act or any regulations or in such manner that the revocation of the licence is required in the interest of the public or the well being of the marine mammal.

(5) Every licensee shall adhere to any prescribed standards and guidelines for the operation of a captive marine mammal facility.

(6) Before the Minister refuses to grant or renew a licence or revokes a licence under this section, the Minister shall give notice to the applicant, of the grounds on which he proposes to refuse to grant or renew the licence.

(7) The Minister shall afford the applicant an opportunity of satisfying the Minister why the licence should be granted or renewed, and may give to the applicant an opportunity to remedy any default within such period as may be specified by the Minister.

7. (1) The Minister in consultation with the Director of Fisheries may, by instrument in writing appoint a person including a “designated veterinarian” as defined in the Marine Mammal (Captive Dolphins Facilities) Regulations to be a marine mammal inspector for the purposes of this

Marine mammal inspectors.

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Act and such person shall have and may exercise the functions assigned to a marine mammal inspector by or under this Act.

(2) A marine mammal inspector in exercising any of the powers conferred on him by this section shall on demand produce such means of identification as may be necessary to show that he is a marine mammal inspector for the purposes of this Act.

(3) A marine mammal inspector may at any time stop, go on board and search any vehicle within the exclusive economic zone, and if he has reason to suspect that any person on board such vehicle has contravened any of the provisions of this Act or of any regulations made thereunder, he may without summons, warrant or other process seize the vehicle and detain it and any person found on board.

(4) A marine mammal inspector may for the purposes of ensuring that the provisions of this Act and any regulations made thereunder are complied with at a reasonable time enter any premises wherein any marine mammal is or is suspected to be held captive and the licensee or every person found on the premises shall afford the inspector all reasonable assistance and furnish him with such information as the inspector may reasonably require for the purposes of ensuring that there is no breach of the provisions of this Act or any regulations made thereunder.

(5) A marine mammal inspector may stop and search any vehicle within The Bahamas where the inspector has reasonable grounds to believe that a marine mammal is being held or transported.

(6) A marine mammal inspector may seize any marine mammal or product which he has reasonable grounds to believe has been taken in contravention of this Act and may either release as early as possible or place such marine mammal or product in the care and custody of a licensed captive marine mammal facility for rehabilitation and at the expense of the offender if convicted.

(7) A marine mammal inspector may arrest any person whom he has reasonable grounds to believe, has committed an offence under this Act.

(8) Where any vehicle or thing is seized or detained or any person is detained under this section by a marine

mammal inspector, the inspector shall take such vehicle, thing or person as soon as may be to the nearest or most convenient place in The Bahamas and there deliver it into the custody of the most senior police officer.

(9) A marine mammal inspector may take or cause to be taken any sample or specimen for the purpose of ensuring that there is no breach of the provisions of this Act or any regulations made thereunder.

(10) Any person who —

(a) fails to comply with any of the provisions of this section;

(b) knowingly makes any false or misleading statement either orally or in writing to a marine mammal inspector engaged in carrying out his duties under the Act,

commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

8. No action shall be brought against any marine mammal inspector in respect of anything done or omitted to be done by the inspector in good faith in the execution of his powers and duties under this Act or any regulations made thereunder.

Immunity of marine mammal inspectors.

9. (1) No person shall resist, obstruct, assault, threaten with violence, bribe or attempt to bribe or otherwise interfere with a marine mammal inspector in the exercise of any powers conferred on him under this Act.

Interference of marine mammal inspectors.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding six months or to both that fine and imprisonment.

10. Where an offence under this Act has been committed by any person on board or employed on a vehicle, the operator of that vehicle also commits the offence.

Liability of operator.

11. Where on delivering a person into the custody of a police officer in accordance with section 7, the marine mammal inspector makes a complaint to that officer that such person has committed an offence under this Act, the police officer shall as soon as possible, cause such person

Persons in custody to be brought before Magistrate's Court.

to be brought before a Magistrate's Court to be dealt with according to law.

Detention of
seized vehicles.

12. Where a vehicle or thing is delivered into the custody of a police officer at any place by a marine mammal inspector in accordance with section 7, that vehicle or thing shall be detained in the custody of the Commissioner of Police at the order of the Minister or at such place as the Minister may direct pending the outcome of any legal proceedings under this Act or its release on bond or other form of security in accordance with the provisions of section 13.

Release of
detained vehicles
on bond.

13. (1) The Minister shall, on application therefor, order the release of any vehicle, together with its gear, stores, cargo, fishing net or other fishing appliance, or thing seized under this Act on receipt of a satisfactory bond or other form of security from the owner or other person claiming such property.

(2) The Minister shall determine whether a bond or other form of security is satisfactory within the meaning of subsection (1).

Powers of court.

14. (1) Where a person is convicted of an offence under this Act, the court, in addition to any other penalty imposed —

- (a) may, on motion order that any vehicle together with its gear, stores, cargo, fishing net or other fishing appliance, or thing used in the commission of the offence be forfeited;
- (b) shall order that any marine mammal caught in the commission of an offence be forfeited and disposed of in a manner determined by the Director of Fisheries;
- (c) may order that any licences or permits issued under this Act be canceled or suspended and that no new licences or permits be issued in respect of the person or captive marine mammal facility involved in the offence for such period of time as the court may specify.

(2) The powers granted under subsection (1)(a) and (b) may also be exercised by the court in civil proceedings instituted by motion where —

- (a) no person has been charged with an offence; or

(b) a person charged with an offence has been acquitted.

(3) If forfeiture is not requested by order of the court, an action for forfeiture may be brought in the Supreme Court, in which case the proceedings shall be by motion.

15. Unless the contrary is otherwise proven —

Presumptions.

- (a) any marine mammal found on board a vehicle which has been used in the commission of an offence under this Act is presumed to have been taken in the commission of that offence;
- (b) any marine mammal found in the possession of a person within the exclusive economic zone is presumed to have been taken within that area; and
- (c) in any proceedings under this Act following the seizure of a vehicle by a marine mammal inspector on board any Government or other enforcement vehicle, where the place in which an event is alleged to have occurred is in issue, the place stated in a certified copy of the relevant entry in the log book or other official record maintained by the appropriate officer of the Government as being that place in which the event occurred is presumed to be the place in which such event occurred.

16. Where a person is charged with having committed an offence under this Act for which a licence, permit, authority or the permission of any person is required for the doing of any act, the onus shall be on that person to prove that at the time of the offence the requisite licence, permit, authority or permission was duly held.

Onus of proof.

17. Any vessel together with its gear, store and cargo and any vehicle, fishing net, other fishing appliance or thing ordered to be forfeited under section 14 shall be sold or otherwise disposed of as the Minister of Finance may direct.

Disposal of vessels etc. forfeited.

18. (1) Unless specified otherwise, a person who commits an offence under this Act shall be liable, on summary conviction to a minimum fine of five thousand dollars but not exceeding twenty-five thousand dollars or to imprisonment not exceeding eighteen months or to both such fine and imprisonment.

Penalties.

(2) A person who commits an offence under section 6 shall be liable to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(3) For the purposes of subsection (1), the court may, in addition, order that any marine mammal to which the offence has been committed shall be forfeited and disposed of as directed by the Minister.

Regulations.

19. The Minister may make regulations generally for giving effect to the provisions of this Act, and without prejudice to the generality of the foregoing, may, make regulations to —

- (a) prescribe the form of any applications referred to in the Act;
- (b) prescribe the form of licences or permits that may be issued under the Act;
- (c) provide for the charging of fees for permits or licences issued under the Act;
- (d) provide for the protection and care of different species of marine mammals;
- (e) provide for the manner in which a marine mammal may be observed, interacted with, taken, imported or exported;
- (f) provide for the number, age, size or sex of any marine mammal which may be taken, imported, exported or sold;
- (g) provide for the standards and guidelines of different types of captive marine mammal facilities.