



PROTECTED AREAS BILL 2010

(NO. 6 OF 2010)



PROTECTED AREAS BILL 2010

(No. 6 of 2010)

A

BILL

Entitled

AN ACT FOR THE DECLARATION AND MANAGEMENT OF PROTECTED AREAS OR AREAS WHERE SPECIAL MEASURES NEED TO BE TAKEN TO CONSERVE BIOLOGICAL DIVERSITY AND THE REGULATION OF BIOLOGICAL DIVERSITY AND PROSPECTING RESEARCH AND FOR RELATED MATTERS

ENACTED by the National Parliament of Solomon Islands.

ARRANGEMENT OF CLAUSES

PART 1 - PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Objects of the Act

PART 2 – ESTABLISHMENT, FUNCTIONS AND POWERS OF THE PROTECTED AREAS ADVISORY COMMITTEE

4. Establishment of the Advisory Committee
5. Functions of the Advisory Committee
6. Powers of the Advisory Committee
7. Delegation of functions and powers
8. Meeting procedures
9. Allowances

PART 3 – DECLARATION AND PROTECTION OF PROTECTED AREAS

10. Declaration of protected areas
11. Register of protected areas
12. Management committees

PART 4 – PROTECTED AREAS TRUST FUND

13. Establishment of the Fund
14. Management of the Fund

15. Purpose of the Fund

**PART 5 – REGULATION OF BIOLOGICAL DIVERSITY
RESEARCH AND BIOLOGICAL PROSPECTING**

16. Prohibition on biodiversity or bioprospecting research
17. Power to issue permits
18. Application for permits

PART 6 – ENFORCEMENT AND OTHER OFFENCES

19. Appointment of inspectors
20. Powers of inspectors
21. Offence of obstruction
22. Infringement notices

PART 7 - MISCELLANEOUS

23. Appeal
24. Regulations
25. Exclusion of Research Act
26. Transitional

PROTECTED AREAS BILL 2010

PART 1 - PRELIMINARY

Short title and commencement

1. This Act may be cited as the Protected Areas Act 2010, and commences on the day appointed by the Minister, by notice in the *Gazette*.

Interpretation

2. In this Act, unless the context otherwise requires –

“Advisory Committee” means the Protected Areas Advisory Committee established by section 4;

“area” means an area of land or water, and includes any building, structure or thing;

“biological diversity” means the variability among living organisms from all sources, and includes terrestrial and marine species (including the genes they contain) and other aquatic ecosystems and the ecological complexes of which they are part and the diversity within species, between species and of ecosystems, and “biodiversity” has a corresponding meaning;

“biological resources” includes genetic resources, traditional knowledge, organisms or parts thereof, populations of species, any other biotic component of ecosystems with actual or potential use or value for humanity;

“biological prospecting” means the search for plant, animal or marine species from which medicinal drugs or other commercially valuable compounds can be obtained, and “bioprospecting” has a corresponding meaning;

“biotechnology” means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use;

“Director” means the Director of the Environment and Conservation Division established under the Environment Act 1998;

“ecosystem” means a dynamic complex of plant, animal and marine species and micro-organism communities and their non-living environment interacting as a functional unit;

“Fund” means the Protected Areas Trust Fund established under Part 4;

“genetic material” means any material of plant, animal, marine species, microbial or other origin containing functional units of heredity;

“genetic resource” means genetic material of actual or potential value;

“habitat” means the place or type of site where an organism or population naturally occurs;

“inspector” means a person appointed as such under section 19;

“management committee” means a management committee of a protected area appointed under section 12;

“non-governmental organisation” means any group, body or entity whether or not established by law (other than any governmental body, authority or agency) responsible for financing, managing, administering, regulating or controlling any matter relating to this Act;

“permit” means a permit issued under section 17 for biological diversity research or biological prospecting research;

“protected area” means an area declared under Part 3;

“sustainable use” means the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations;

“technology” includes biotechnology.

Objects of the Act

- 3. The objects of this Act are –**
- (a) to establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity;
 - (b) to develop, where necessary, guidelines for the selection, establishment and management of protected areas or areas where special measures need to be taken to conserve biological diversity;
 - (c) to regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use;
 - (d) to promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings;
 - (e) to promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of the protected areas; and
 - (f) to rehabilitate and restore degraded ecosystems and promote the recovery of threatened species, such as, through the development and implementation of plans or other management strategies.

**PART 2 –ESTABLISHMENT, FUNCTIONS AND POWERS
OF THE PROTECTED AREAS ADVISORY COMMITTEE**

Establishment of
the Advisory
Committee

4. (1) This section establishes the Protected Areas Advisory Committee consisting of the following members who are to be appointed by the Minister –

- (a) a chairperson;
- (b) a deputy chairperson;
- (c) four members to represent non-governmental organisations;

(d) four other members.

(2) When appointing the members of the Advisory Committee, the Minister shall take into account experience and skills in resource and conservation management and representatives from the fishery and forestry industries.

(3) The Permanent Secretary may, in writing, designate a public officer within the Ministry responsible for this Act to be the Secretary to the Advisory Committee.

5. The functions of the Advisory Committee are –

Functions of the
Advisory
Committee

- (a) to advise the Government on any policy matter in relation to this Act;
- (b) to advise on the carrying out, implementation and monitoring of the objects of this Act, as set out in section 3;
- (c) to assist formulate, develop, approve, implement, monitor and review a national bio-diversity strategy and action plan, in collaboration with the relevant stakeholders, including non-governmental organisations;
- (d) to formulate and approve a code of conduct relating to the standards and conduct of non-governmental organisations which deals with matters relating to this Act, in collaboration with them;
- (e) to advise the Minister on matters relating to the implementation of the Convention on the Biological Diversity, and any other matter relating to this Act; and
- (f) to perform other functions given to it under this Act or any other written law.

6. (1) The powers of the Advisory Committee are –
- (a) to assist the Government to carry out regular review of the policies relating to and of this Act;
 - (b) to assist in the implementation and enforcement of this Act;
 - (c) to oversee and supervise the functions of management committees;
 - (d) to enter and inspect any declared protected areas;
 - (e) if requested by the Minister, to carry out any inquiry and make a report to the Minister on any matter relating to this Act;
 - (f) to negotiate and provide advice on matters in relation to permits;
 - (g) to require holders of permits to provide reports to it;
 - (h) to require non-governmental organisations dealing with matters relating to this Act to provide reports on their activities to it; and
 - (i) to exercise any other power conferred upon it under this Act or any other written law.
- (2) Any non-governmental organisation that submits any report under subsection (1)(h) may, after consulting the Advisory Committee, indicate part of the report that is not to be disclosed because it is confidential except with the prior written consent of the non-governmental organisation or by order of a court or as authorised under any other written law.
- (3) A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine not exceeding 2,000 penalty units.

7. The Advisory Committee may, with the approval of the Minister, delegate by notice in the *Gazette* its functions or powers to provincial governments or other organisations or persons.

Delegation of
functions and
powers

8. (1) The Advisory Committee shall meet at least once every three months to be convened by the Chairperson.

Meeting
procedures

(2) The Chairperson or the Deputy Chairperson shall preside at a meeting.

(3) If the Chairperson and the Deputy Chairperson are both absent, the members present may select a member to preside at that meeting.

(4) The quorum of the Advisory Committee is five members.

(5) The presiding member has an ordinary vote and in the case of equality of votes has a casting vote.

(6) A member who has an interest in any matter before the Advisory Committee shall disclose the interest to the Committee.

(7) A member who declares an interest under subsection (6) shall not take part in the deliberations and voting on the matter.

(8) The Advisory Committee may regulate its own procedures, subject to this Act.

9. The members of the Advisory Committee are entitled to prescribed allowances.

Allowances

PART 3 – DECLARATION AND PROTECTION OF PROTECTED AREAS

10. (1) The Minister may, on the recommendation of the Director, declare by order in the *Gazette* any area as a protected area of biological diversity significance if the area –

Declaration of
protected areas

- (a) possesses significant genetic, cultural, geological or biological resources;
 - (b) constitutes the habitat of species of wild fauna and flora of unique national or international importance;
 - (c) merits protection under the Convention Concerning the Protection of World Cultural and Natural Heritage; or
 - (d) requires special measures to be taken to conserve biological diversity.
- (2) Before making any recommendations to the Minister, the Director shall –
- (a) conduct meetings and consultation with the owners of the area or other persons who may be affected by the proposed declaration;
 - (b) undertake consultation with the relevant Ministries and relevant provincial government;
 - (c) carry out field study appraisal and assess and evaluate the biodiversity significance of the area;
 - (d) verify the rights and interests in the area;
 - (e) identify, assess and evaluate the conservation, protection and management options for the area; and
 - (f) publish in a newspaper having wide circulation in Solomon Islands a prescribed public notice setting out the area to be declared and the biodiversity significance of the area.
- (3) The public notice published under subsection (2)(f) shall provide for a period of not less than thirty days in

which any person may, in writing, object to or support the proposed declaration.

(4) The owner of any area, including any non-governmental organisation managing a conservation area, may apply to the Director for the area to be declared by the Minister as a protected area.

(5) When the Director receives an application under subsection (4), the Director shall follow the procedures set out in subsection (2)(b) to (f).

(6) The Minister shall declare any area proposed under subsection (4) as a protected area, if the Director recommends to the Minister that the area complies with subsections (1) and (7)(a), (b) and (d).

(7) The Minister shall, before declaring an area as a protected area under subsection (1), ensure that –

- (a) the conservation objectives of the protected area are identified and are in accordance with sound conservation practices;
- (b) the boundaries of the area are accurately identified, or otherwise demarcated and surveyed;
- (c) the consent and approval are obtained from persons having rights or interests in the area; and
- (d) an appropriate conservation, protection or management plan is developed for the area to ensure that the conservation objectives of the protected area will be achieved.

(8) The Minister may, on the recommendation of the Director, amend, vary, suspend or revoke the protected area by order in the *Gazette*, in accordance with the prescribed procedures.

(9) Any amendment or variation to any protected area shall follow the procedures set out in this section.

Register of
protected areas

11. (1) The Director shall establish and maintain a register of protected areas.

(2) The Minister responsible for Forests or the Minister responsible for Fisheries may recommend to the Minister any area within his respective responsibility that has been protected or declared under the written law relating forestry or fishery to be registered under the register of protected areas if the area meets any requirement under section 10(1).

(3) The Minister may, upon receiving any recommendation under subsection (2), approve the registration of the area as a protected area if the Director recommends to the Minister that the area meets any requirement under section 10(1) and section 10(7)(a), (b) and (d).

Management
committees

12. (1) The Advisory Committee may appoint management committees consisting of owners of the protected areas, public officers, provincial government officers and any other persons to manage one or more protected areas.

(2) Notwithstanding subsection (1), a management committee may consist of –

- (a) only persons who are residing in the vicinity of the protected area; or
- (b) persons who are responsible for the administration and management of such area under any existing agreement, arrangement or understanding in relation to matters under this Act or other written laws regulating the environment.

(3) The functions of a management committee are –

- (a) to develop, formulate, implement, monitor and review conservation, protection or

management plan in respect of its protected area;

- (b) to manage the protected area under its control and supervision;
 - (c) to perform any other function the Advisory Committee may assign in writing to the management committee or given to the management committee under this Act or any other written law.
- (4) The Advisory Committee may provide technical support to a management committee.
- (5) The members of a management committee are entitled to prescribed allowances.
- (6) The meeting procedures of management committees are to be prescribed by regulations.

PART 4 – PROTECTED AREAS TRUST FUND

13. (1) The Protected Areas Trust Fund is established under this section as a special fund under section 100(2) of the Constitution.

Establishment of
the Fund

- (2) The Fund shall consist of the following–
- (a) moneys appropriated by Parliament for the purpose of the Fund;
 - (b) any donation or bequests to the Fund from sources other than from public funds;
 - (c) any interest accrued to the Fund.

14. The Funds shall be managed in accordance with the Public Finance and Audit Act (Cap.120) and any financial instructions issued under that Act.

Management of
the Fund

Purpose of the Fund

15. The Funds shall, on the advice of the Advisory Committee, be used for the establishment, management and other matters relating to protected areas or for other purposes as are prescribed by regulations.

PART 5 – REGULATION OF BIOLOGICAL DIVERSITY RESEARCH AND BIOLOGICAL PROSPECTING

Prohibition of biodiversity or bioprospecting research

16. (1) No person shall undertake any biodiversity research or bioprospecting research except with a permit issued under this Part.

(2) Part III of the Wildlife Protection and Management Act 1998 applies to the importation and exportation of specimens in relation to a permit.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding 500,000 penalty units or to imprisonment for a term not exceeding five years.

Power to issue permits

17. (1) The Advisory Committee has the power to issue a permit, subject to other terms and conditions the Advisory Committee may determine, authorising the holder to undertake biodiversity research or bioprospecting research or both.

(2) Any bioprospecting research permit and the relevant agreement mentioned under section 18(5)(b) require the prior endorsement of Cabinet.

(3) The power under subsection (1) includes the following powers –

- (a) to refuse the application for the permit;
- (b) to vary, suspend or cancel the permit;
- (c) to impose, vary, suspend or cancel conditions of the permit.

(4) The permit shall be issued in the prescribed form.

(5) The Advisory Committee shall give reasons for refusing an application for the permit.

(6) The Advisory Committee shall give the permit holder an opportunity to be heard if the Advisory Committee decides to cancel or to vary or impose new conditions on the permit.

(7) A permit shall not be transferred or assigned to any other person.

(8) A permit that is transferred or assigned contrary to subsection (7) shall be void.

18. (1) A person may, in the prescribed form accompanied by the prescribed fee, apply to the Director for a permit.

Application for
permits

(2) The prescribed form shall set out –

- (a) the full particulars of the applicant, including a list of persons who may be involved in the research;
- (b) nature, extent, type and method of research;
- (c) beneficiaries to the research; and
- (d) any other relevant information.

(3) When the Director receives an application, the Director shall within the prescribed period forward the application to the Advisory Committee for the processing and consideration of the application.

(4) The Advisory Committee may require the applicant to provide further information to it when determining an application for a permit.

(5) Subject to section 17(2), the Advisory Committee shall not approve any application for a permit involving customary land or customary fishing areas unless the Advisory Committee is satisfied that –

- (a) the written consent of the owners of the customary land or fishing areas is attached to the application;
- (b) an agreement is entered into with the owners relating to right of access, acquisition of biological resource, technology transfer, monetary benefit or compensation on the biological prospecting, acquisition of biological resources or for any commercial benefit that may be obtained as a result of the permit;
- (c) the applicant has submitted a plan outlining the nature and extent of the research, investigation and sampling method, specimens to be removed and a monitoring and auditing system to verify all activities to be undertaken;

(6) When the Advisory Committee has made a decision on the application, the Director shall as soon as possible inform the applicant, including the reasons for the decision if refused and the right of appeal under section 23.

PART 6 –ENFORCEMENT AND OTHER OFFENCES

Appointment of
inspectors

19. (1) The Minister may, on the recommendation of the Director, appoint public officers, provincial government officers or any other person as inspectors for the purposes of enforcing the provisions of this Act, in accordance with the prescribed terms and conditions.

(2) The Director shall issue an identification card to any officer or person appointed under subsection (1), which shall be returned to the Director upon cessation of appointment.

20. (1) Subject to any directions issued by the Advisory Committee, the powers of inspectors are –

- (a) to inspect any protected area in order to ascertain whether a provision of this Act has been contravened;
- (b) to prepare any report on any matter within the protected area upon any written directions by the Advisory Committee;
- (c) to assist a management committee in the management and protection of its protected area;
- (d) to stop and search any person, vessel, vehicle or thing within a protected area if the inspector has reasonable ground to believe that the person has contravened this Act in relation to any protected matter within the protected area;
- (e) to require any person who is undertaking any biodiversity research or bioprospecting research to produce his permit for inspection;
- (f) to stop any person carrying out any biodiversity research or bioprospecting research who is without a permit or cannot produce such permit;
- (g) to report any contravention of this Act to the Police.

(2) The Minister may, in consultation with the Director of Public Prosecutions, appoint suitably qualified persons, including any inspector if the inspector is so qualified, to institute proceedings in relation to the offences under this Act.

21. A person who, in any way, obstructs any person when performing any function or powers under this Act commits an offence and is liable on conviction to a fine not exceeding 10,000 penalty units.

22. (1) An inspector may issue infringement notices, in the prescribed form, for breach of any offence under this Act or any regulation.

(2) Regulation shall –

- (a) prescribe a list of offences to be the subject of infringement notices; and
- (b) prescribe the fixed penalties, which shall be an amount not exceeding one-fifth of the maximum penalty units specified for that offence.

(3) Infringement notices shall –

- (a) set out the name and address of the offender;
- (b) set out the offence prescribed for infringement notice;
- (c) set out the prescribed fixed penalty;
- (d) provide for payment of the fixed penalty, whether or not the offence is admitted, and for election to the court if the offence is disputed, including the venue for payment; and
- (e) set out any other prescribed information.

(4) Any infringement notice shall be issued on behalf of the Director.

(5) If the fixed penalty is paid in full, including any incidental costs, no further proceedings shall be instituted against the person in respect of that offence.

PART 7 – MISCELLANEOUS

23. (1) A person who is aggrieved by the decision of the Advisory Committee under Part 5 may appeal to the Minister, within twenty-eight days from the date of the decision, who shall hear and determine the appeal and if the appeal is allowed refer the matter to the Advisory Committee for its reconsideration.

(2) The Minister may appoint a panel consisting of a legal practitioner and not more than two other members to hear the appeal and make a report to the Minister, including any recommendation on whether or not the appeal should be allowed.

24. The Minister may make regulations to give effect to the provisions of or for the purposes of this Act, and in particular –

Regulations

- (a) to prescribe fees and forms for the purposes of this Act;
- (b) to prescribe standards, guidelines or codes of environment practice for the purpose of this Act;
- (c) to prescribe classes of protected areas and any additional procedures;
- (d) to further regulate protection of protected areas;
- (e) to prescribe penalties for offences created under any regulations not exceeding 100,000 penalty units or to imprisonment for a term not exceeding two years;
- (f) to further regulate matters relating to biological prospecting, and in particular matters relating to genetic resources;
- (g) to provide for procedures for appeal; and
- (h) to make regulations in relation to matters required to be prescribed under this Act.

25. The Research Act (Cap. 152) does not apply to any biodiversity research and bioprospecting research.

Exclusion of
Research Act

26. (1) Any existing permit issued under the Research Act (Cap.152) or under any agreement, arrangement or understanding before the commencement of this Act in relation to biodiversity or bioprospecting research shall continue except that such permit shall be regulated under this Act from the commencement of this Act.

Transitional

(2) The Director may issue written directions to the holder of any permit under subsection (1) for compliance with the requirement of this Act.

PROTECTED AREAS BILL 2010

OBJECTS AND REASONS

In addition to the objects in clause 3 of the Bill, the objects of the Bill are –

- (a) to establish a committee to be responsible the matters relating biodiversity;
- (b) to provide for mechanisms for the declaration of areas as protected areas;
- (c) to establish a trust fund for the management of protected areas;
- (d) to regulate biological prospecting and biological diversity research; and
- (e) to provide for enforcement provisions.

.....

**MINISTER FOR ENVIRONMENT, CONSERVATION AND
METEOROLOGY**

EXPLANATORY MEMORANDUM

- Clause 1 Provides for the short title and commencement provisions to be appointed by the Minister in the Gazette.
- Clause 2 Defines certain terms used in the Bill. Most of the technical environmental terms are the definitions used in the Convention;
- Clause 3 Sets out the objects of the Bill primarily targeting conservation of certain areas of biological diversity significance and regulation of biological diversity and prospecting research.
- Clause 4 Establishes the Protected Areas Advisory Committee consisting of ten members.
- Clause 5 Provides for the functions of the Advisory Committee.
- Clause 6 Provides for the powers of the Advisory Committee.
- Clause 7 Empowers the Advisory Committee to delegate its functions and powers.
- Clause 8 Sets out the meeting procedures of the Advisory Committee.
- Clause 9 Provides for the allowances of the Advisory Committee.
- Clause 10 Empowers the Minister to declare any area as a protected area if the area has biological diversity significance. The owners of an area have the right to apply voluntarily to the Minister to declare their area as a protected area. Any NGO that is managing an area that qualifies for protection can also apply.
- Clause 11 Establishes a register of protected areas.
- Clause 12 Provides for the appointment and functions of management committees of protected areas. The members can be entirely from persons living in the vicinity of the protected area or NOGs managing a such area.
- Clause 13 Establishes the Protected Areas Trust Fund.

- Clause 14 Provides for the management of the Fund.
- Clause 15 Provides for the purpose of the fund.
- Clause 16 Prohibits biological diversity or prospecting research except with a research permit.
- Clause 17 Empowers the Advisory Committee to issue research permits. A research permit cannot be transferred.
- Clause 18 Provides for the procedures for applying for a research permit.
- Clause 19 Provides for appointment of inspectors for the purpose of the Act.
- Clause 20 Sets out the powers of inspectors.
- Clause 21 Creates the offence of obstructing persons exercising powers, etc.
- Clause 22 Provides for issuing of infringement notices.
- Clause 23 Provides for an appeal mechanism for research permit.
- Clause 24 Empowers the Minister to make regulations.
- Clause 25 Excludes biodiversity research and bioprospecting research from the Research Act.
- Clause 26 Provides for transitional provisions.

.....

**MINISTER FOR ENVIRONMENT, CONSERVATION AND
METEOROLOGY**