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1975, No. 16

An Act to establish a Director of Conservation as a corporation, for the Conservation of Nature and Natural Resources, the Protection of Historic Sites, and the Protection of the Environment

(15 September 1975)

BE IT ENACTED by the Legislative Assembly of the Cook Islands in session assembled and by the authority of the same, as follows:-

1. Short Title - This Act may be cited as the Conservation Act 1975.
2. Interpretation - In this Act, unless the context otherwise requires -

"Animal" means any member alive or dead, of the animal kingdom (other than man) and includes -

- (a) eggs or parts of eggs; and
- (b) the skin, feathers, horns, shell or any other part of an animal;

"Director" means the Director of Conservation appointed under this Act:

"Historic site" means an Historic site established under this Act:

"Local Organisation" means any Body, Council, Committee or Club established and recognised in the Cook Islands:

"Minister" means the Minister appointed under the Constitution as responsible for Conservation:

"Park" means a Park, a reserve, a World Park and historic site established under this Act:

"Plant" includes any plant, tree, shrub, herb, flower, nursery stock, culture, vegetable, or other vegetation; and also includes any fruit, seed, spore, and portion or product of any plant:

"Reserve" means a Reserve established under this Act:

"Service" means the Conservation Service established by this Act:

"Wildlife" means -

- (a) animals and plants that are indigenous to the Cook Islands and the territorial sea of the Cook Islands;
- (b) migratory animals that periodically or occasionally visit the Cook Islands or the territorial sea of the Cook Islands.

3. Object of this Act - The object of this Act is to make provision for the protection and conservation of the natural resources of the Cook Islands and the territorial sea of the Cook Islands, and to establish national parks, reserves, and historic sites.

PART I - DIRECTOR OF CONSERVATION

4. Director of Conservation - (1) There shall be a Director of Conservation who shall be a corporation with perpetual succession.

(2) The corporation shall have a seal, and may sue or be sued in its corporate name.

(3) All courts, judges and persons acting judicially shall take judicial notice of the seal of the corporation affixed to documents and shall presume that it was duly affixed.

(4) At all times after the first appointment of a person to the office of Director, the corporation shall continue in existence notwithstanding any vacancy in that office.

5. Functions - (1) The functions of the Director shall be -

- (a) to administer, manage and control parks, reserves, world parks and historic sites;
- (b) to protect, conserve, manage and control wildlife;
- (c) to protect, conserve, manage and control forest and tree resources, and carry out afforestation and tree-planting measures;
- (d) to protect, conserve, manage and control water catchments and water resources;
- (e) to protect and conserve soil resources, and carry out erosion control and related works:

- (f) to prevent, control and correct pollution of air, water and land resources:
- (g) to provide, and assist in the provision of, training in the skills associated with performing any of the above functions:
- (h) to carry out investigations and research relevant to the protection and conservation of the natural resources of the Cook Islands and the territorial sea of the Cook Islands:
- (i) to make recommendations to the Minister in relation to -
 - (i) the establishment and naming of parks, reserves, world parks and historic sites:
 - (ii) the protection and conservation of wildlife, forests, soil and water resources.
- (j) to administer the Conservation Fund established under this Act; and
- (k) to do anything incidental or conducive to the performance of any of the foregoing functions -

(2) Except as otherwise provided by this Act, the Director shall perform his functions and exercise his powers in accordance with any directions given by the Minister.

6. Powers - (1) The Director shall have power to do all things that are necessary or convenient to be done for or in connection with the performance of his functions and, in particular, shall have power -

- (a) to enter into contracts;
- (b) to erect buildings and structures and carry out works in the public interest on any park, reserve, or historic site;
- (c) to accept gifts, devises and bequests made to the Director whether on trust or otherwise, and to act as trustee of moneys or other property vested in the Director upon trust; and
- (d) to do anything incidental to any of his powers.

(2) Notwithstanding anything contained in this Act, any moneys or property vested in the Director upon trust shall be dealt with in accordance with the powers and duties of the Director as trustee.

(3) The Director shall have power to perform any of his functions in co-operation with a Department of State or with a local organisation.

7. Control of wildlife - (1) The Director may -

- (a) formulate and implement; and
- (b) co-operate with a department or local organisation in formulating and implementing programmes for the purposes of the protection, conservation, management and control of wildlife.

(2) A programme formulated under subsection (1) of this section shall be based upon, among other matters -

- (a) an examination of the habitat of the wildlife to which the programme relates;
- (b) an evaluation of the extent to which parks and reserves assist in the conservation of the wildlife to which the programme relates;

- (c) an assessment and analysis of the population of the wildlife to which the programme relates; and
 - (d) consideration of the obligations of the Cook Islands under agreements between Cook Islands and other countries relating to the protection and conservation of wildlife,
- and shall provide for the review, at appropriate intervals, of the matters referred to in paragraphs (a), (b), (c), and (d).
- (3) A programme shall not be implemented by the Director under this section until it has been approved by the Minister.

8. Delegation of powers - (1) Subject to any directions of the Minister, the Director may, by writing signed by him, delegate to any officer of the Service all or any of his powers and functions under this Act (except this power of delegation).

(2) A power or function so delegated may be exercised or performed by the delegate in accordance with the instrument of delegation.

(3) A delegation under this section is revocable at will and does not prevent the exercise of a power or the performance of a function by the Director.

9. Appointment of Director - (1) The Director shall be appointed by the High Commissioner on the advice of the Minister.

(2) The Director, shall hold office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the instrument of appointment.

(3) The Director shall be appointed for such period, not exceeding 7 years, as is specified in the instrument of appointment, but shall be eligible for re-appointment.

(4) A person who attained the age of 65 years shall not be appointed or re-appointed as the Director, and a person shall not be appointed or re-appointed as the Director for a period that extends beyond the date on which he will attain the age of 65 years.

(5) The Director shall be paid such remuneration and allowances as may be determined by Order in Executive Council.

(6) The Minister may grant leave of absence to the Director upon such terms and conditions as to remuneration or otherwise as the Minister determines.

(7) The Director may resign his office by writing signed by him and delivered to the High Commissioner.

(8) (i) The High Commissioner may terminate the appointment of the Director by reason of misbehaviour or physical or mental incapacity.

(ii) If the Director -

(a) engages in paid employment outside the duties of his office without the approval of the Minister;

(b) is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or for 28 days in any 12 months; or

(c) becomes bankrupt or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit,

the High Commissioner shall terminate his appointment.

(9) (i) The Minister may appoint a person to act as the Director -

- (a) during a vacancy in the office of Director, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the Director is absent from duty or from the Cook Islands, or for any reason, is unable to perform the functions of his office.
- (ii) A person appointed to act during a vacancy shall not continue so to act for more than 12 months.
- (iii) The Minister may -
- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person appointed under this section; and
 - (b) at any time terminate such an appointment.
- (iv) Where a person is acting in the office of Director in accordance with paragraph (i) (b) of this subsection and the office becomes vacant while he is so acting, he may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever ever first happens.
- (v) The appointment of a person under this section shall cease to have effect if he resigns the appointment by writing signed by him and delivered to the Minister.
- (vi) The validity of anything done by a person appointed under this section shall not be called in question on the ground that the occasion for his appointment had not arisen or that his appointment had ceased to have effect.
- (vii) At any time when a person is acting in the office of Director he has, and may exercise, all the powers, and shall perform all the functions, of the Director.
- (10) A person shall not be appointed to be the Director unless he has such qualifications and experience in connection with the conservation and management of natural resources as, in the opinion of the High Commissioner, render him suitable for the appointment.

10. Establishment of Service - (1) There is established by this Act, for the purpose of assisting the Director in the performance of his functions, a Service by the name of the Conservation Service.

(2) The Director may from time to time appoint such officers, and employees as may be deemed necessary at such salary or other remuneration as he thinks fit, subject to the approval of the Minister, and may define their duties and functions.

PART II - NATIONAL PARKS AND SIMILAR AREAS

11. National Parks - (1) The High Commissioner may from time to time on the advice of the Minister declare that any land, lagoon, reef, or island, or portion of the sea-bed and its superjacent waters in the territorial sea of the Cook

Islands shall be a National Park subject to this Act.

(2) The High Commissioner may from time to time on the advice of the Minister add any land, lagoon, reef, island, or portion of the sea-bed and its superjacent waters in the territorial sea of the Cook Islands to any Park declared under subsection (1) of this section.

12. Reserves - The High Commissioner may from time to time on the advice of the Minister declare that any land, lagoon, reef, or island, or portion of the sea-bed and its superjacent waters in the territorial sea of the Cook Islands shall be a reserve subject to this Act and may specify the purpose or purposes for which such reserve is so declared.

13. World Parks - (1) The High Commissioner may from time to time on the advice of the Minister declare any land, lagoon, reef or island, or portion of the sea-bed and its superjacent waters in the territorial sea of the Cook Islands, as a World Park.

(2) An area declared as a World Park under subsection (1) of this section shall be managed in accordance with an agreement made between the Minister and the International Union for the Conservation of Nature and Natural Resources or similar body approved by the High Commissioner.

14. Historic sites - The High Commissioner may from time to time on the advice of the Minister declare that any land or place shall be an historic site under this Act.

15. Revocation of areas - Notwithstanding anything in this Act, the High Commissioner shall not revoke a declaration made under this part except in accordance with a resolution passed by the Legislative Assembly in pursuance of a motion of which notice has been given not less than 15 sitting days before the motion is moved.

16. Agreement with landowners - (1) The High Commissioner shall not take action under this Part of this Act in connection with land not vested in the Crown or the Cook Islands Government except in accordance with an agreement made between the Minister and the person in whom, or body or family in which the land is vested.

(2) For the purposes of subsection (1) of this section the agreement may be based upon a resolution passed under section 51 of the Land (Facilitation of Dealings) Act 1970 and duly confirmed by the Court.

17. Plan of management - (1) As soon as practicable after a park, reserve or historic site has been declared, the Director shall prepare a plan of management in respect of that park reserve or historic site.

(2) When the Director has prepared a plan of management in respect of a park, reserve or historic site, the Director shall, by public notice -

- (a) state that a plan of management has been prepared in respect of that park, reserve or historic site;
- (b) specify the place or places where such a plan is displayed and may be inspected by interested persons.
- (c) invite interested persons to make representations in connection with the proposed plan by such date, not being less than 1 month after the date of publication of the notice in the Cook Islands Gazette, as is specified in the notice; and
- (d) specify an address to which such representations may be forwarded.

(3) A person may, not later than the date specified in the notice, make representations to the Director in connection with the proposed plan of management, and the Director shall give due consideration to any representations so made.

(4) In the preparation of the plan of management, regard shall be had to the following objects:-

- (a) in the case of a park - the protection, conservation and management of wildlife and natural features, and the encouragement and regulation of the appropriate use, appreciation and enjoyment of the park by the public;
- (b) in the case of a reserve - the regulation of the use of the reserve for the purpose for which it was declared;
- (c) in the case of an historic site - the preservation of buildings, objects and areas of historical and archaeological interest;
- (d) the protection of special features, including objects and sites of biological, historical, archaeological, geological, and geographical interest;
- (e) the protection of the water catchment values of a park or reserve; and
- (f) the protection of each park, reserve or historic site against damage.

Minister -

- (5) The Director shall thereupon submit to the
 - (a) the plan or management; and
 - (b) if representations have been made under subsection (3) of this section - those representations, together with the comments of the Director on those representations.
- (6) The Minister may -
 - (a) accept the plan of management as so submitted; or
 - (b) refer it to the Director, together with his suggestions, for further consideration.

(7) The Director shall thereupon consider the Minister's suggestions, and then resubmit the plan of management to the Minister for his approval.

(8) As soon as practicable after a plan of management has been resubmitted to him in accordance with subsection (7) of this section the Minister shall cause it to be laid before Cabinet for adoption.

(9) The plan of management shall come into force as soon as it has been formally adopted by Cabinet, and the Director shall then manage the national park, reserve or historic site in accordance with that plan and not otherwise.

(10) The Director may at any time, not being less than five years after the adoption of a plan of management amend that plan, and subsections (2) to (9) of this section and this subsection, apply in relation to any such amendment in like manner as they apply in relation to a plan of management.

PART III - FINANCIAL PROVISIONS

18. Conservation Fund - The general funds of the Director shall consist of -

- (a) All moneys accruing in respect of the park or received by way of penalties, fees, rents, royalties, or otherwise under this Act, and the same shall be paid to the Director accordingly;
- (b) All moneys from time to time appropriated by the Legislative Assembly of the Cook Islands for National Park purposes:

- (c) All moneys from time to time received by way of grants, donations and subsidies for purposes authorised under this Act:
- (d) All other moneys received by the Director in any manner and from any source as part of his general revenue.
19. Bank accounts - (1) The Director shall keep such bank account or bank accounts as may be determined from time to time.
(2) No money shall be withdrawn from the bank except by cheque or other instrument (not being a promisory note or bill) signed by such person or persons in such manner as the Director from time to time determines.
20. Borrowing powers - Subject to the approval of Cabinet, the Director may borrow money whether by way of mortgage, debentures, bonds, overdraft, or otherwise and may mortgage or charge any of his property, whether present or future, in such manner as the Director thinks fit.
21. Accounts - The Director shall keep full and correct accounts of all money received and expended by him.
(2) At the end of every financial year, the Director shall cause to be prepared full and true statement and account of all income and expenditure in that year, together with a balance sheet as at the last day of the financial year.
(3) The accounts and financial statements of the Director shall be presented for examination in conjunction with the audit required pursuant to Article 71 of the Constitution.
22. Preparation of estimates - The Director shall prepare and submit to the Minister annual estimates of receipts and expenditure, in such form as the Minister directs, covering the operations of the Director in the exercise of his powers and functions.
23. Annual reports - (1) The Director shall as soon as practicable after the end of each financial year furnish to the Minister a report of proceedings and operations for the preceding financial year, and shall attach to the report a copy of audited accounts.
(2) A copy of each annual report shall be laid before the Legislative Assembly as soon as practicable after the presentation to the Legislative Assembly of the annual report of the Audit Office.
24. Contracts - (1) Any contract which if made between private persons, must be by deed shall, if made by the Director be in writing under a common seal.
(2) Any contract which, if made between private persons, must be in writing signed by the parties to be charged therewith shall be under the common seal of the Director.

PART IV - MISCELLANEOUS

25. Appointment of conservation officers and rangers -
(1) The Director may, by instrument in writing, appoint an officer or employee of the Service to be a conservation officer or ranger.
(2) The Director shall by virtue of this subsection be a conservation officer.
26. Powers of conservation officers, rangers and constables - Any conservation officer or ranger, or any constable, without further warrant of authority than this section, and any other person in the employment of the Crown authorised in writing in that behalf by the Director, may summarily interfere to prevent any actual or attempted breach of this Act or of any regulations made under this Act.

27. Regulations - (1) The High Commissioner may from time to time by Order in Executive Council, after consideration of any recommendations thereon made to him by the Minister, make all such regulations as may, in his opinion, be deemed necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the generality of sub section (1) of this section regulations may be made -

- (a) providing for the functions and powers to be conferred and the duties to be imposed, upon conservation officers and rangers.
- (b) providing for the protection and conservation of wildlife.
- (c) regulating or prohibiting trade and commerce in connexion with wildlife.
- (d) regulating or prohibiting the pollution of air, water or land, and the depositing or dumping of litter, rubbish or any substance of a dangerous, noxious or offensive nature.
- (e) providing for the protection and preservation of World Parks, parks, reserves and historic sites, and things in World Parks, parks, reserves and historic sites.
- (f) regulating or prohibiting public use of and entry to World Parks, parks, reserves or historic sites, or to parts of any such World Park, park, reserve or historic site.
- (g) providing for the prevention and control of soil erosion and siltation, and of the taking of gravel, sand, soil, rock, coral or like material
- (h) providing for the prevention and control of the clearing, cutting, lopping, felling, burning or removal of trees and other plants.
- (i) regulating or prohibiting the collection of specimens in World Parks, parks, reserves or historic sites.
- (j) prescribing fines or penalties not exceeding \$500 in any case for failure to comply with the provision of any regulation under this Act.
- (k) providing for any matter incidental to or connected with any of the foregoing.

(3) All regulations made under this section shall be laid before the Legislative Assembly within 28 days after the date of the making thereof if the Legislative Assembly is then in Session and, if not, shall be laid before the Legislative Assembly within 28 days after the commencement of the next ensuing session.

This Act is administered by the Director of Conservation.