

THE WILDLIFE CONSERVATION AND MANAGEMENT ACT

(No. 47 of 2013)

IN EXERCISE of the powers conferred by section 116 (2) (f) of the Wildlife Conservation and Management Act, 2013, the Cabinet Secretary for Environment and Natural Resources, makes the following Regulations:-

WILDLIFE CONSERVATION AND MANAGEMENT (PROTECTION OF ENDANGERED AND THREATENED ECOSYSTEMS, HABITATS AND SPECIES) REGULATIONS, 2016

PART 1- PRELIMINARY

Citation and commencement

1. (1) These Regulations may be cited as the Wildlife Conservation and Management (Protection of Endangered and Threatened Ecosystems, Habitats and Species) Regulations, 2016.

(2) These Regulations shall come into force on the date of their publication in the Kenya Gazette.

Interpretation

2. In these Regulations, unless the context otherwise requires –

“Act” means the Wildlife Conservation and Management Act, No. 47 of 2013;

“darting” in relation to a live specimen of a listed threatened or protected animal species, means to shoot the specimen with a projectile loaded with a tranquilising, narcotic, immobilising, or similar agent;

“ecosystem” means community of living organisms in conjunction with non-living components of their environment interacting as a system.

“habitat” means the ecological or environmental area that is inhabited by a specific species of animal or plant

“permit” means a permit issued under the Act or the Regulations formulated under the Act;

“habitat destruction” means the alteration or modification of the habitat of a specimen of a listed species in any way, to the extent that specimen of such species are no longer capable of surviving in the altered or modified habitat

“harassing” means behaviour or conduct that threatens, disturbs or torments a listed species marine species, and includes-

- (a) the insertion of a tag to a listed threatened or protected marine species for the purpose of tracking or monitoring;
- (b) in case of a whale, approaching a whale with a vessel or aircraft closer than 300 meters;
- (c) in the case of turtles, photographing turtles at night or digging up nests or eggs;

“listed species” means species listed in Sixth Schedule of the Act;

“person” means a natural or juristic person;

“protected species” means any species which is of such high conservation value or national importance that it requires national protection;

“release” means to intentionally-

- (a) cease exercising physical control over;
- (b) cease having possession;
- (c) free from its controlled environment

a live specimen of a listed threatened or protected species;

“specimen” means a portion or quantity of wildlife material for use in testing, examination, education, study or research;

“threatening activity” means any activity which threatens, or may threaten-

- (a) the survival, abundance or evolutionary development of an indigenous species or ecological community; or
- (b) the ecological integrity of an ecosystem;

“translocation” means the process of capturing a specimen of a listed threatened or protected animal species at a particular location, the conveying or transporting of such specimen and the release of the specimen in another location; and

“vulnerable species” means any indigenous species facing an extremely high risk in the wild in the medium-term future, although not a critically endangered species.

Application of Regulations

3. These Regulations apply to the protection of endangered and threatened ecosystems, habitats and species in Kenya.

Objectives

4. The purpose of these Regulation is to-
 - (a) implement the classification of ecosystems, habitats and species into the following categories-
 - (i) critically endangered;

- (ii) endangered;
 - (iii) vulnerable;
 - (iv) protected; and
 - (v) threatened.
- (b) provide for protection of ecosystems that are threatened or endangered so as to maintain their ecological integrity;
- (c) provide for the protection of species that are threatened, endangered, vulnerable, or protected to ensure their survival in the wild;
- (d) implement Kenya's obligations under international agreements regulating international trade in endangered species; and
- (e) ensure sustainable management and utilisation of biodiversity.

PART II- LISTED ECOSYSTEMS

Protection of endangered and threatened ecosystems

5. (1) Upon their publication in the Gazette in accordance with section 46 of the Act, this part shall apply to endangered and threatened ecosystems and habitats.

(2) The Service shall-

- (a) identify the agencies that it shall permit to deal with fragile ecosystems;
- (b) identify the officers and offices that shall regulate access to fragile ecosystems;
- (c) create corridors and buffer zones and take such measures, as the Service considers necessary for the protection of fragile ecosystems;
- (d) regulate the removal or introduction of any species or genetic material into the ecosystem; and
- (e) take measures to maintain the natural balance in the ecosystem.

Prohibited activities in listed ecosystems

6. (1) The following activities are prohibited in listed ecosystems-

- (a) mining, quarrying and extraction of oil and gas or exploration thereof;
- (b) introduction and movement of species out of the ecosystem;
- (c) introduction of invasive species;
- (d) research without the written authority of the Service; and
- (e) any threatening activity in a listed ecosystem including-
 - i. any activity of a nature that may negatively impact on the ecosystem; and
 - ii. any activity for which a permit is required under the Act.

(2) Notwithstanding the provisions of sub-regulation (1), any activity to be carried out in a listed ecosystem may only be carried out pursuant to permit issued in accordance with the Act and the Regulations formulated under it.

PART III-LISTED SPECIES

Protection of listed species

7. (1) Species listed in Sixth Schedule of the Act are critically endangered, endangered and vulnerable species.
- (2) Listed species shall be protected according to;
- (a) the Convention on Biological Diversity and Convention on International Trade in Endangered Species of Wild Flora and Fauna and any other law regulating listed species.
 - (b) the Act,
 - (c) these Regulations.

Conservation of listed species

8. (1) The Service shall, in consultation with the relevant lead agencies, impose bans, restrictions or similar measures on the access and use of any listed species in order to ensure its maximum conservation and sustainability.
- (2) The Service shall determine and take full recovery and rehabilitation measures of listed species required to ensure its restoration into its natural habitat.
- (3) The Service may issue licenses for the establishment and maintenance of facilities for the recovery and rehabilitation of listed species

Restricted activities with regard to listed species

9. (1) Restricted activities involving listed species in regulation 8 include-
- (a) any activity which is of a nature that may negatively impact on the survival of a listed species; and
 - (b) any of the following activity carried out without a permit issued under the Act or Regulations-
 - (i) catching, capturing or intentionally killing any living specimen of a listed species by any means, methods or device whatsoever, including searching, pursuing, driving, lying in wait; luring; alluring; discharging a missile or injuring with intent to hurt, catch, or kill any such specimen;
 - (ii) gathering, collecting or plucking any specimen of a listed species;
 - (iii) picking parts of, or cutting, chopping off, uprooting, damaging or destroying, any specimen of a listed species;
 - (iv) importing into Kenya, any specimen of a listed species;
 - (v) exporting from Kenya, including re-exporting from Kenya, any specimen of a listed species;
 - (vi) having in possession or exercising physical control over any specimen of a listed species;

- (vii) growing, breeding or in any other way propagating any specimen of a listed species or causing it to multiply;
- (viii) conveying, moving or otherwise trans locating any specimen of a listed species;
- (ix) selling or otherwise trading in, buying, receiving, giving, donating or accepting as a gift, or in any way acquiring or disposing of any specimen of a listed species;
- (x) darting of a specimen of a listed threatened or protected animal species;
- (xi) release of a specimen of a listed threatened or protected animal species;
- (xii) harassing a specimen of a listed marine species;
- (xiii) attracting a live specimen of a listed marine species;
- (xiv) attracting of a live specimen of a listed species or protected marine species; and
- (xv) any other proscribed activity which involves a specimen of a listed species

(2) Notwithstanding the provisions of sub-regulation (1) , any activity to be carried out with regards to listed species may only be carried out pursuant to permit issued in accordance with the Act and the Regulations formulated under it.

Management of listed species

10. (1) The import, export or transit of any of the listed species is prohibited and allowed only line with international conventions, and particularly the Convention on International Trade in Endangered Species of Wild Flora and Fauna.

(2) All dealings in the listed species shall be in compliance with the conservation and management plan of the species in question.

(3) Any person dealing in listed species shall provide proof of adequate accommodation and safety for the animal(s).

(4) The Service shall register and regulate any institutions of learning that shall keep listed species for research purposes.

(5) No trade or commercial exhibition shall be made of the listed species except those expressly permitted by the permit and the conservation plan approved by the service.

(6) Permits and certificates issued by other jurisdictions shall be subject to these Regulations and the provisions of the Act.

(7) The Service shall have the authority to alter the terms of a permit, licence, or other authorization issued by any other jurisdiction for movement of species into or through the territory of Kenya.

PART III-LISTED SPECIES AND ECOSYSTEM

Inventory of species

11. (1) The Service shall, within 12 months of the commencement of these Regulations identify and prepare an inventory of the listed ecosystems, habitats and species in Kenya.

(2) The inventory shall be maintained and updated annually by the Service.

(3) The inventory shall be public record of the Service and shall be accessible to any person upon application to the Service:

provided that the Service shall retain the authority to keep any data on the listed species as classified confidential data in the interest of safeguarding the listed species.

Monitoring

12. The Service shall-

(1) monitor the status and components of the listed species and ecosystems in Kenya and take necessary measures to prevent and control their depletion; and

(2) review the efficacy of the protective measures herein and take stock of any emerging scientific knowledge in the protection of listed species and ecosystems.

PART IV- FINAL

Overlapping laws

13. (1) These Regulations do not preclude any stricter measures that may be taken by the Service to protect any species in compliance with international treaties and conventions that Kenya is a signatory to.

(2) These Regulations shall not prejudice any steps the Service may take in line with new or emerging scientific knowledge in respect of the protection of any species.

(3) The Service shall without prejudice to these Regulations regulate the introduction and removal of any species from the ecosystem.

(4) The Regulations made herein shall be complimentary to the provisions made under the Environment Management and Coordination Act, No. 8 of 1999.

Offences

14. Any person who without a permit carries out a prohibited activity under these Regulations commits an offence and shall be liable on conviction to such penalty as provided for under the Act.