

A BILL

entitled

INVASIVE ALIEN SPECIES ACT 2021

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WHEREAS it is expedient, in the interest of the economy, human and animal health, for the prevention and restoration of environmental damage caused by invasive alien species, and to facilitate international cooperation in respect of invasive alien species, to create a regulatory framework to prohibit or control the importation, possession, reproduction, cultivation, growing and supplying of invasive alien species; and to manage invasive alien species in Bermuda including eradicating, reducing and preventing the spread of invasive alien species that have established in Bermuda;

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:

### *Preliminary Provisions*

#### Citation

1 This Act may be cited as the Invasive Alien Species Act 2021.

#### Interpretation

2 In this Act, unless the context indicates otherwise—

“application fee” means the application fee prescribed under the Government Fees Regulations 1976;

“approved agent” means a person licensed by the Director pursuant to section 22 to perform a bio-security risk assessment in respect of an application for a permit or a licence;

“authorized officer” means an officer of—

- (a) the Department;
- (b) the Department of Customs;
- (c) the Department of Parks;
- (d) the Department of Health;
- (e) the Coast Guard;
- (f) the Bermuda Police Service,

who may perform the duties of the Director referred to in section 23;

“bio-security” means the management of risks posed by organisms to the economy, environment and public health through exclusion, mitigation, adaptation, control and eradication;

“bio-security risk assessment” means an assessment prepared by an approved agent in which the threats and risks associated with the introduction of a species to Bermuda's economy, environment and public health are evaluated;

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- “Department” means the Department of the Environment and Natural Resources;
- “Director” means the Director of the Department;
- “dispose of an invasive species” means that the species is humanely disposed of (in the case of an animal) or destroyed;
- “emergency plan” means a plan prepared by the Director under section 14 for the early detection and rapid response to an invasive species;
- “invasive species” means—
- (a) a prohibited invasive species;
  - (b) a restricted “category A” invasive species; and
  - (c) a restricted “category B” invasive species;
- “land” includes any land covered by water such as canals, marshes and ponds;
- “licence” means a licence issued by the Director under section 11;
- “management plan” means a plan prepared by the Director under section 14 to eradicate, reduce or prevent the spread of an invasive species;
- “Minister” means the minister responsible for the environment;
- “non-native species” means a species, subspecies or lower taxon, introduced as a result of intentional or accidental dispersal by human activities outside its natural past or present distribution, and includes any part, gametes, seeds, eggs, or propagules of such species that might survive and subsequently reproduce;
- “permit” means a permit issued by the Director under section 11;
- “pest species” referred to in section 21 means any species, strain or biotype of a plant, animal, microbe or pathogenic agent, or any organism, other than an invasive species which—
- (a) causes disease; or
  - (b) is detrimental to or capable of harming or adversely affecting animals or animal products, plants or plant products, human beings or the environment, and includes noxious weeds;
- “precautionary principle” referred to in section 11 means principle 15 of the Rio Declaration on Environment and Development 1992;
- “prohibited invasive species” means a prohibited invasive alien species defined in section 4(1) and listed in Schedule 1;
- “restricted “category A” invasive species” means a restricted invasive alien species defined in section 6(1) and listed in Schedule 2;
- “restricted “category B” invasive species” means a restricted invasive alien species defined in section 7(1) and listed in Schedule 3;

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“restricted invasive species” means—

- (a) a restricted “category A” invasive species; and
- (b) a restricted “category B” invasive species;

“sections of the Department” means those sections of the Department specializing in veterinary services, plant protection, marine resources, terrestrial conservation, marine conservation, and bio-diversity; and includes the Department of Health as the Director sees fit;

“species” means a group of living organisms consisting of similar individuals capable of exchanging genes or interbreeding;

“viable” means alive or capable of sustaining growth, development or reproduction, and is not clearly deceased upon observation;

“website” means www.gov.bm.

### Functions of Director

- 3
- (1) The Director shall perform the duties assigned to him under this Act.
  - (2) The Director shall consult with the relevant sections of the Department—
    - (a) before advising the Minister regarding modifications to Schedule 1, 2 or 3;
    - (b) when considering applications for a permit or licence under section 11;
    - (c) when preparing a plan under section 14;
    - (d) when considering making application to a Magistrate under section 20;
    - (e) when advising the Minister regarding an application for an exemption under section 21;
    - (f) when considering applications for a licence under section 22 as an approved agent;
    - (g) before giving a direction under section 30,

and the Director shall take into consideration the advice of the relevant sections of the Department when making his decision.

### *Prohibited Invasive Species*

#### Invasive species that are prohibited

- 4
- (1) A prohibited invasive species is any species of viable flora or fauna listed in Schedule 1, and includes any hybrid, off-spring or propagule of such species.
  - (2) No person shall—
    - (a) import a prohibited invasive species;
    - (b) possess, reproduce, cultivate, grow, supply or give to another, sell, lease, trade or buy a prohibited invasive species;

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- (c) release, or fail to prevent the escape of, a prohibited invasive species into the environment;
  - (d) shelter or sustain a prohibited invasive species in the wild.
- (3) A person who contravenes subsection (2) commits an offence.

Minister may amend Schedule 1

5 (1) The Minister may, on the advice of the Director, make orders modifying Schedule 1 by adding to or deleting from the list of prohibited invasive species set out in that Schedule.

(2) Notwithstanding subsection (1), the Minister may as a matter of urgency and on the advice of the Director, declare a species to be a prohibited invasive species by notice published in the Gazette; and Schedule 1 is deemed amended accordingly on the day such notice is published.

(3) Orders made and notices published under this section are subject to the negative resolution procedure.

### *Restricted Invasive Species*

Invasive species that are “category A” restricted species

6 (1) A restricted “category A” invasive species is any species of viable flora or fauna listed in Schedule 2, and includes any hybrid, off-spring or propagule of such species.

(2) No person shall release, or fail to prevent the escape of, a restricted “category A” invasive species into the environment.

(3) No person shall—

- (a) import a restricted “category A” invasive species except under a permit issued by the Director under section 11;
- (b) reproduce, cultivate, grow, sell, supply or give to another a restricted “category A” invasive species except under a licence issued by the Director under section 11.

(4) A person who contravenes subsection (2) or (3) commits an offence.

Invasive species that are “category B” restricted species

7 (1) A restricted “category B” invasive species is any species of viable flora or fauna listed in Schedule 3, and includes any hybrid, off-spring or propagule of such species.

(2) No person shall release, or fail to prevent the escape of, a restricted “category B” invasive species into the environment.

(3) No person shall—

- (a) import a restricted “category B” invasive species except under a permit issued by the Director under section 11;

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(b) buy, sell, lease or trade a restricted “category B” invasive species except under a licence issued by the Director under section 11.

(4) A person who contravenes subsection (2) or (3) commits an offence.

Minister may amend Schedules 2 and 3

8 (1) The Minister may, on the advice of the Director, make orders modifying Schedule 2 or Schedule 3 by adding to or deleting from the list of restricted invasive species set out in those Schedules.

(2) Notwithstanding subsection (1), the Minister may as a matter of urgency and on the advice of the Director, declare a species to be a restricted “category A” invasive species or a restricted “category B” invasive species by notice published in the Gazette; and Schedule 2 or Schedule 3 is deemed amended accordingly on the day such notice is published.

(3) Orders made and notices published under this section are subject to the negative resolution procedure.

Applying for a permit or licence

9 (1) A person who, in relation to a restricted “category A” invasive species, wishes to conduct an activity referred to in—

(a) section 6(3)(a) shall before doing so make application to the Director for a permit;

(b) section 6(3)(b) shall before doing so make application to the Director for a licence.

(2) A person who, in relation to a restricted “category B” invasive species, wishes to conduct an activity referred to in—

(a) section 7(3)(a) shall before doing so make application to the Director for a permit;

(b) section 7(3)(b) shall before doing so make application to the Director for a licence.

(3) An application shall be made on the form issued by the Department accompanied with—

(a) such documents and information as may be prescribed by Regulations;

(b) a bio-security risk assessment prepared by an approved agent;

(c) any other documents or information requested by the Director that would assist in determining the application; and

(d) the application fee.

(4) A person who, in relation to an application, provides false or misleading documents or information in a material respect commits an offence.

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(5) An approved agent who, in relation to a bio-security risk assessment, provides false or misleading information in a material respect commits an offence.

### Applying for determination of other non-native species

10 (1) This section applies where a person wishes to import a non-native species that is not listed in Schedule 1, Schedule 2 or Schedule 3.

(2) A person to whom subsection (1) applies must, before importing the non-native species apply to the Director for a determination as to whether the species is an invasive species.

(3) The application shall be made on the form issued by the Department accompanied with—

- (a) such documents and information as may be prescribed by Regulations;
- (b) any other documents or information requested by the Director that would assist in determining the application, including a bio-security risk assessment; and
- (c) the application fee.

(4) A person who, in relation to an application, provides false or misleading documents or information in a material respect commits an offence.

(5) An approved agent who, in relation to a bio-security risk assessment, provides false or misleading information in a material respect commits an offence.

(6) Where the Director determines that the non-native species is a restricted invasive species, the person may apply under section 9 for a permit to import the species; but the person need not comply with subsection (3) of that section.

### Consideration of applications

11 (1) Where an application is made under section 9 in relation to a non-native species that is not listed in Schedule 2 or Schedule 3, the Director shall deny the application based on the precautionary principle.

(2) When granting an application for a permit or licence, the Director may attach such conditions or restrictions as he considers appropriate.

(3) Where the Director grants an application he shall issue a permit or licence; and where an application is denied he shall issue a written notice stating—

- (a) the reason for the decision; and
- (b) that the person may apply under section 26 for the decision to be reviewed by the Minister.

(4) The Director shall not issue a permit or licence retroactively.

(5) Where, after issuing a permit or a licence, the Director has reasonable cause to believe that an offence has been committed under section 9(4) or (5) or section 10(4) or



(5), he may suspend the permit or licence until an investigation of the matter has been completed.

(6) It shall be a condition of every permit or licence issued by the Director that the permit or licence shall not be transferred to another person without the written permission of the Director.

#### Complying with conditions of permit or licence

12 A person who fails to comply with any condition or restriction attached to a permit or licence commits an offence.

#### Record keeping

13 (1) A person who has been issued a permit or a licence under section 11 shall retain such records in such manner and within such period as may be prescribed by Regulations.

(2) A person who fails to comply with subsection (1) commits an offence.

### *Management of Invasive Species*

#### Plans for managing invasive species

14 (1) The Director must prepare management and emergency plans for the purpose of eliminating an invasive species, or reducing or preventing the spread of an invasive species in Bermuda.

(2) Plans shall include matters relating to—

- (a) the area of land to which the plan relates;
- (b) the identity of the invasive species on that land;
- (c) threats posed by the species, including threats to the economy, public health, the environment, and to the health of agriculture, animals and plants;
- (d) objectives for eliminating, reducing or preventing the spread of the species;
- (e) measures to be taken to achieve those objectives; and
- (f) any other matter which the Director considers appropriate.

(3) A plan that has been approved by the Minister shall be published on the website, and made available at the Department for public inspection during ordinary business hours.

(4) A plan published under this section is not a statutory instrument for purposes of the Statutory Instruments Act 1977.

#### Minister may implement plan in respect of private land

15 (1) Where an area of land in a plan approved by the Minister under section 14 is privately owned, the Minister may enter into an agreement with the owner or occupier of

the land, for the purpose of implementing measures set out in the plan in respect of the land.

(2) Where no agreement is made under subsection (1), the Minister may apply to the Supreme Court for an order—

- (a) requiring the owner, or occupier as the case may be, within the time specified in the order, to carry out such measures as are necessary for eliminating, reducing or preventing the spread of an invasive species in accordance with the plan approved by the Minister; and
- (b) that the Minister may where the owner, or occupier as the case may be, fails to do so within the time specified in the order, enter the land and direct that such measures be carried out.

(3) Before making an order under subsection (2), the Court shall give the owner or the occupier, or both of them, an opportunity to be heard in relation to the application.

(4) All reasonable cost and expenses incurred by the Minister in respect of measures directed to be carried out under subsection (2)(b) may be recovered summarily as a civil debt from the owner, or the occupier as the case may be.

#### *Enforcement*

#### Powers of entry, search and seizure

16 (1) The Director may proceed under this section where he has reasonable cause to believe that an offence has been committed under this Act.

(2) The Director may, subject to section 17—

- (a) enter any premises or specified place;
- (b) stop and enter any form of transportation,

for the purposes of obtaining evidence that an offence has been committed under this Act.

(3) Where the Director makes an entry under this section he shall produce some duly authenticated document showing his authority, if requested to do so by the owner, occupier, or person in charge of the premises, specified place or transportation.

(4) The Director may search the premises, specified place, or transportation entered into under subsection (2) and—

- (a) seize any invasive species found; and
- (b) inspect and seize any file, record, written material or any other evidence found.

(5) Any person who obstructs the Director in the execution of his duties under this section commits an offence.

(6) In this section and in sections 17 and 18—

“premises” includes residential premises;

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“specified place” includes any boat, ship or aircraft, or any container, storage facility, or similar enclosure.

### Warrant to enter premises

17 (1) The Director shall not make an entry under section 16 except with the consent of the owner, occupier or person in charge of the premises, specified place or transportation, or under the authority of a warrant.

(2) A Magistrate may issue a warrant authorizing the Director to enter and search the premises, specified place or transportation at any time, subject to any conditions that may be specified in the warrant, if on ex parte application the Magistrate is satisfied by information on oath that—

- (a) entry is necessary for a purpose in relation to an offence under this Act;
- (b) there is reasonable cause to believe that there is evidence at the premises, specified place, or transportation in relation to an offence; and
- (c) entry has been refused, or there is reasonable cause to believe that entry will be refused.

(3) In the execution of a warrant, the Director may use reasonable force if necessary, but only if specified in the warrant and if accompanied by a Police Officer.

### Persons to assist Director

18 (1) The owner, occupier, or person in charge of the premises, specified place, or transportation entered into by the Director under section 16, or any other person found thereat, shall comply with all reasonable requirements for assistance made by the Director.

(2) Any person who, without reasonable excuse, fails to comply with a requirement made by the Director under subsection (1) commits an offence.

### Notice of seized items

19 Where the Director seizes any thing under this Act he shall, at that time, give the owner, occupier, or person in charge a written notice stating—

- (a) the name or description of any invasive species seized and a list of any other evidence seized;
- (b) that the invasive species or evidence has been seized pursuant to section 16 of the Invasive Alien Species Act 2021;
- (c) that the invasive species may be forfeited to the Crown and disposed of; and
- (d) that the owner may be prosecuted for an offence under this Act.

### Forfeiture of invasive species

20 (1) The Director may apply to a Magistrate, at any time whether or not any person is prosecuted for an offence connected with an invasive species, for an order for an invasive species to be forfeited to the Crown.

(2) A Magistrate to whom an application is made under subsection (1) shall order the forfeiture of anything he finds to be a prohibited invasive species.

(3) A Magistrate to whom an application is made under subsection (1)—

- (a) shall order the forfeiture of anything he finds to be a restricted “category A” or “category B” invasive species, if satisfied that it was imported, possessed or otherwise dealt with not in accordance with a permit or a licence issued under this Act;
- (b) shall give any person appearing to him to be the owner of or otherwise interested in the invasive species in question an opportunity to be heard in relation to the application for forfeiture;
- (c) may, in any event, order the forfeiture of anything in respect of which the application is made if no one appearing to him to fall within paragraph (b) opposes the application.

(4) The Magistrate may suspend, for such period as he shall direct, any order for forfeiture under subsection (2) or (3), if satisfied that there is a substantial risk that the forfeiture or disposal would seriously prejudice any criminal proceedings that have been or may be brought for an offence connected with the invasive species.

(5) Where an order is made by a Magistrate under subsection (2) or (3), the Director shall dispose of the invasive species in such manner as he sees fit.

#### *Supplemental Provisions*

#### **Exemptions**

21 (1) A Government Department may apply to the Minister for an exemption in respect of section 4(2)(a) and (b), section 6(3), or section 7(3) where the activities referred to in those sections are for the purpose of controlling pest species.

(2) The Bermuda Aquarium Museum and Zoo may apply to the Minister for an exemption in respect of section 4(2)(a) and (b), section 6(3), or section 7(3) where the activities referred to in those sections are for the purpose of scientific research, or in respect of local or international conservation efforts.

(3) A person may apply to the Minister for an exemption to import and possess an invasive species for a limited period of time, and for such limited purposes as the Minister sees fit including scientific research or public exhibition.

(4) An application shall be made on the form issued by the Department accompanied with—

- (a) such documents and information as may be prescribed by Regulations;
- (b) a bio-security risk assessment prepared by an approved agent;
- (c) any other documents or information requested by the Minister that would assist in determining the application;

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(d) the application fee, if the application is for a purpose specified in subsection (3) and is not being made on behalf of the Government.

(5) The Minister shall consult with the Director before determining an application for an exemption.

(6) When granting an application for an exemption, the Minister may attach such conditions or restrictions as he considers appropriate and issue a written exemption notice.

### Approved agents

22 (1) A person wishing to be licensed as an approved agent shall make an application to the Director.

(2) An application shall be made on the form issued by the Department accompanied with—

- (a) such documents and information as may be prescribed by Regulations;
- (b) any other documents or information requested by the Director that would assist in determining the application; and
- (c) the application fee.

(3) Where the Director grants an application he shall issue a licence; and where an application is denied he shall issue a written notice stating—

- (a) the reason for the decision; and
- (b) that the person may apply under section 26 for the decision to be reviewed by the Minister.

(4) A person's licence expires three years from the date of issue; and he may apply again for a licence under subsection (1) three months before the expiration date.

(5) A person who, in relation to an application, provides false or misleading documents or information in a material respect commits an offence.

### Authorized officer

23 (1) The duties of the Director under sections 16, 17, 18 and 19 may be performed by an authorized officer, and in such case, those provisions apply to the authorized officer as they would to the Director.

(2) An authorized officer who is an officer of the Department may also perform the duties of the Director under sections 14 and 20, and in such case, those provisions apply to the authorized officer of the Department as they would to the Director.

### Director may require information

24 (1) For the purposes of subsection (2), the Director may issue an order requiring a person who has been issued a permit or licence under this Act to provide him with such documents or information within such period of time as is specified in the order.

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(2) An order issued by the Director under subsection (1) shall be for the purpose of ascertaining a person's compliance with this Act or any condition or restriction attached to the permit or licence, or for statistical or research purposes.

(3) A person who fails to comply with an Order issued under subsection (1) commits an offence.

### Amnesties

25 (1) The Minister may from time-to-time publish a notice in the Gazette requiring persons who have in their possession a prohibited invasive species to notify the Director of that fact.

(2) A person who gives notice to the Director under subsection (1) shall comply with a direction given by the Director in writing, including a direction that the prohibited invasive species be disposed of in the manner specified in the direction within twenty-eight days of the date of the direction.

(3) A person who is aggrieved by a direction given by the Director under subsection (2) may appeal to the Supreme Court pursuant to section 27.

(4) Any information given in a notice to the Director under subsection (1) shall not be available as evidence against the person giving the information in any prosecution of an offence under this Act.

(5) Sections 6, 7 and 8 of the Statutory Instruments Act 1977 do not apply to a notice issued under this section.

### Minister may review Director's decision

26 (1) A person aggrieved by a decision of the Director to—

- (a) deny an application for a permit or licence, or to attach a condition or restriction to a permit or licence (other than a condition referred to in section 11(6));
- (b) deny an application made under section 22 to be licensed as an approved agent,

may, within twenty-eight days of the date on which written notice of the decision was given, apply to the Minister for a review of the decision.

(2) An application shall be made on the form issued by the Department and accompanied with the application fee.

(3) The question for the Minister's determination shall be whether, for the reason adduced by the applicant, the decision was unlawful or not justified by the evidence on which it was based.

(4) The Minister may confirm the Director's decision, or refer the matter back to the Director, together with his written opinion, for reconsideration.

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(5) Where the matter has been referred back under subsection (4), the Minister shall, in making his determination, take into consideration any recommendations made by the Director.

(6) The Minister shall give written notice of his determination to the applicant, and where the Minister confirms the decision of the Director, the notice shall give reasons for the Minister's determination.

(7) A person who is aggrieved by the Minister's determination may appeal to the Supreme Court pursuant to section 27.

### Appeal to Supreme Court

27 An appeal to the Supreme Court provided for under section 25, 26 or 30 may be made within twenty-eight days of the date on which the direction or determination was given in writing; and the decision of the Court is final.

### Regulations

28 (1) The Minister may make such Regulations as are necessary to give effect to the provisions of this Act, including regulations prescribing—

- (a) all matters relating to applications for permits or licences;
- (b) all matters relating to applications for licensing as an approved agent;
- (c) all matters relating to bio-security risk assessments;
- (d) the retention of information and records by persons issued with a permit or licence under this Act, in particular, the types of information and records to be kept, the manner in which they may be stored, and the period of their retention;
- (e) the qualifications required for persons to be licensed as an approved agent.

(2) The negative resolution procedure applies to Regulations made under this section.

### Penalties for offences

29 (1) A person who commits an offence under section 4, 6 or 7 is liable on summary conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

(2) A person who commits an offence under section 12 is liable on summary conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment.

(3) A person who commits an offence under section 9, 10, 13, 16, 18, 22 or 24 is liable on summary conviction to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

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(4) Where a person is convicted of an offence under this Act, any prohibited or restricted invasive species connected with the offence shall by order of the Court be forfeited to the Crown, and the Director shall dispose of the species in such manner as he sees fit.

### Transitional

30 (1) A person who, on the day this Act comes into operation, is in possession of a prohibited invasive species or a restricted “category A” invasive species, shall within six months of the date on which this Act comes into operation notify the Director of that fact.

(2) A person who gives notice to the Director under subsection (1) shall comply with a direction given by the Director in writing, including a direction that a prohibited invasive species be disposed of in the manner specified in the direction, or that the person apply for a licence under section 9 in respect of a restricted “category A” invasive species, within twenty-eight days of the date of the notice.

(3) A person who is aggrieved by a direction given by the Director under subsection (2) may appeal to the Supreme Court pursuant to section 27.

(4) This section applies, with the necessary modifications, when an order is made or a notice is published under section 5 or section 8.

### Consequential amendment

31 The Government Fees Regulations 1976 are amended in accordance with Schedule 4.

### Commencement

32 This Act comes into operation on such day as the Minister appoints by notice published in the Gazette.



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SCHEDULE 1

(section 4(1))

PROHIBITED INVASIVE SPECIES

REPTILES		
	<u>Name</u>	<u>Commonly Known As</u>
1	Agamidae (Family)	Dragon lizards
2	Chamaeleonidae (Family)	Chameleons
3	Crocodylia (Order)	Crocodiles, alligators, caimans, and gharials
4	Dactyloidea (Family)	All anoles except those listed in Schedule 2 or Schedule 3
5	Gekkota (Infraorder)	All geckos except those listed in Schedule 2 or Schedule 3
6	Iguanidae (Family)	Iguanas
7	Scincidae (Family)	All skinks except <i>Plestiodon longirostris</i>
8	Serpentes (Sub-order)	Snakes
9	Teiidae (Family)	Tegus and whiptails
AMPHIBIANS		
10	Anura (Order)	All frogs and toads except <i>Eleutherodactylus johnstonei</i> and <i>Rhinella marina</i>
FISHES		
11	<i>Belonesox belizanus</i>	Pike killifish
12	<i>Catopryon spp.</i> , <i>Pristobrycon spp.</i> , <i>Pygocentrus spp.</i> , <i>Pygopristis spp.</i> , and <i>Serrasalmus spp.</i>	Piranha, Carnivorous piranhas
13	<i>Channa spp.</i> and <i>Parachanna spp.</i>	Snakeheads
14	<i>Clarias batrachus</i>	Walking catfish
15	<i>Fundulus grandis</i>	Gulf killifish
16	<i>Fundulus heteroclitus</i>	Saltmarsh killifish
17	<i>Lates niloticus</i>	Nile Perch
18	<i>Micropterus salmoides</i>	Bass
19	<i>Oreochromis mossambicus</i>	Mozambique tilapia
20	Petromyzontiformes (Order)	Lamprey
TERRESTRIAL INVERTEBRATES		
21	<i>Achatina fulica</i> syn. <i>Lissachatina fulica</i>	Giant African Snail
22	Blaberidae (Family)	Giant cockroaches

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23	Bombycidae (Family)	Silk worm moths
24	<i>Dinoponera spp.</i>	Giant ants
25	Fulgoridae (Family)	Lanternflies
26	Mantodea (Order)	Mantids
27	Passalidae (Family)	Bess beetles
28	Phasmatodea (Order)	Stick insects, Walking sticks, Leaf insects
29	Scarabaeidae (Family)	Rhinoceros Atlas, Hercules, Satanas, and Elephant beetles except those listed in Schedule 2 or Schedule 3
30	Schizomida (Order)	Short-tailed whipscorpions
31	Scolopendridae (Family)	All Giant centipedes except for those listed in Schedule 2 or Schedule 3
32	Scorpiones (Order)	Scorpions
33	Spirostreptidae (Family)	Giant millipedes
34	Theraphosidae (Family)	Tarantulas
35	Tettigoniidae (Family)	Katydids
36	Uropygi (Order)	Whip scorpions
AQUATIC INVERTEBRATES		
37	Belostomatidae (Family)	Giant water bugs
38	<i>Marisa cornuarietis</i>	Giant rams horn snail
39	Nepidae (Family)	Water scorpions
40	<i>Orconectes rusticus</i>	Rusty crayfish
41	<i>Procambarus clarkii</i>	Red swamp crayfish
MAMMALS		
42	Cingulata (Order)	Armadillos
43	Cricetidae (Family)	Muskrat
44	Echimyidae (Family)	Nutria
45	Erinaceidae (Family)	Hedgehogs
46	Hemigalinae (Sub-family)	Civet
47	Herpestidae (Family)	Mongoose
48	Hydrochoerinae (Sub-family)	Capybara
49	Hyracoidea (Order)	Hyrax
50	Mephitidae (Family)	Skunks
51	Mustelidae (Family)	Badgers, Weasels, Ferrets, Prairie dogs
52	Procyonidae (Family)	Raccoons, Coati
53	Sciuridea (Family)	Squirrels, Flying squirrels, Sugar gliders

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54	<i>Vulpes spp.</i>	Fox
55	Felidae (Family) Felines of all types, except <i>Felis silvestris catus</i> (the domestic cat) outside the purview of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)	
56	Canidae (Family) Canines of all types except <i>Canis lupus familiaris</i> (the domestic dog) outside the purview of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and as listed in paragraph 2 of Schedule 2 to the Dogs Act 2008	
TERRESTRIAL PLANTS		
57	<i>Abrus precatorius</i>	Rosary pea
58	<i>Acacia auriculiformis</i>	Earleaf acacia
59	<i>Actinidia arguta</i>	Hardy Kiwi or Taravine
60	<i>Ailanthus altissima</i>	Tree of life
61	<i>Alternanthera philoxeroides</i>	Alligator weed
62	<i>Artabotrys hexapetalus syn. Artabotrys uncinatus</i>	Ylang ylang vine
63	<i>Cissus antarctica</i>	Kangaroo vine
64	<i>Clarkia amoena</i>	Farewell to spring
65	<i>Cobaea scandens</i>	Cup-and-saucer vine
66	<i>Colubrina asiatica</i>	Lather leaf
67	<i>Eragrostis tef</i>	Tef, Indian lovegrass
68	<i>Eucalyptus spp.</i>	All eucalyptus
69	<i>Parmentiera aculeata</i>	Cucumber tree
70	<i>Physalis alkekengi</i>	Chinese lantern
71	<i>Triadica sebifera syn. Sapium sebiferum</i>	Chinese tallow
72	<i>Ugni molinae</i>	Chilean guava, Strawberry myrtle
73	<i>Vernicia fordii</i>	Tung oil tree
AQUATIC PLANTS		
74	<i>Bacopa australis</i>	Australian bacopa
75	<i>Cryptocoryne beckettii</i>	Beckett's water trumpet
76	<i>Cryptocoryne lutea</i>	
77	<i>Cryptocoryne pygmaea</i>	
78	<i>Cryptocoryne wendtii</i>	Wendt's water trumpet
79	<i>Eleocharis acicularis</i>	Needle spikerush
80	<i>Eleocharis parvula</i>	Dwarf spikerush
81	<i>Glossostigma elatinoides</i>	

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82	<i>Hemianthus callitrichoides</i> syn. <i>Micranthemum callitrichoides</i>	Dwarf baby's tears
83	<i>Hygrophila corymbosa</i>	Temple plant
84	<i>Ipomoea aquatic</i>	Water spinach
85	<i>Lilaeopsis brasiliensis</i>	Brazilian micro sword
86	<i>Lilaeopsis mauritiana</i>	Narrow leaf micro sword
87	<i>Lilaeopsis novae-zelandiae</i>	Micro sword
88	<i>Ludwigia inclinata</i>	
89	<i>Ludwigia palustris</i>	Water purslane
90	<i>Lythrum salicaria</i>	Purple loosestrife
91	<i>Marsilea angustifolia</i>	Nardoo
92	<i>Micranthemum tweediei</i>	Monte Carlo, Pearl grass
93	<i>Myriophyllum mattogrossense</i>	Matogrosso milfoil
94	<i>Myriophyllum spicatum</i>	Eurasian milfoil
95	<i>Nymphoides hydrophylla</i>	Crested floating heart
96	<i>Phyllanthus fluitans</i>	Red root floater
97	<i>Rotala macrandra</i>	Giant red rotala
98	<i>Rotala rotundifolia</i> 'Vietnam'	Rotala Vietnam
99	<i>Vesicularia dubyana</i> syn. <i>Taxiphyllum barbieri</i>	Java moss

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SCHEDULE 2

(section 6(1))

RESTRICTED "CATEGORY A" INVASIVE SPECIES

REPTILES		
	<u>Name</u>	<u>Commonly Known As</u>
1	<i>Anolis extremus</i>	Barbados anole
2	<i>Anolis grahami</i>	Jamaican anole
3	<i>Anolis leachii</i>	Antiguan anole
4	<i>Anolis sagrei</i>	Brown anole
5	<i>Hemidactylus turcicus</i>	Turkish gecko
6	<i>Hemidactylus mabouia</i>	Tropical house gecko
7	<i>Trachemys spp. and Pseudemys spp.</i>	Aquatic turtles (sliders and river cooters)
AMPHIBIANS		
8	Salamandridae (Order)	All newts and salamanders
FISHES		
9	<i>Oreochromis aureus</i>	Blue tilapia
10	<i>Oreochromis niloticus</i>	Nile tilapia
11	<i>Pterois spp.</i>	Lionfish
TERRESTRIAL PLANTS		
12	<i>Abutilon theophrasti</i>	Indian mallow, Velvetleaf
13	<i>Anredera baselloides</i>	Madeira vine
14	<i>Ardisia spp.</i>	All Ardisia species
15	<i>Arundo donax</i>	Cow cane
16	<i>Asparagus spp.</i>	All Asparagus species except <i>Asparagus officinalis</i>
17	<i>Austrocyllindropuntia spp.</i>	All <i>austrocyllindropuntia</i> species
18	<i>Buddleja madagascariensis</i>	Madagascar buddleia
19	<i>Calophyllum inophyllum</i>	Kamani
20	<i>Cardiospermum halicacabum</i>	Large Fruited Balloon Vine
21	<i>Casuarina spp.</i>	All casuarina species
22	<i>Cenchrus setaceus</i>	Fountain grass
23	<i>Cylindropuntia spp.</i>	All <i>cylindropuntia</i> species
24	<i>Cyrtomium falcatum</i>	Holly fern, Japanese holly fern
25	<i>Elaeagnus pungens</i>	Thorny olive

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26	<i>Epipremnum pinnatum</i>	Pothos vine
27	<i>Euphorbia myrsini</i>	Myrtle spurge, Donkeytail
28	<i>Ficus microcarpa</i> syn. <i>Ficus retusa</i>	Laurel fig, Indian laurel
29	<i>Furcraea foetida</i>	Mauritius hemp
30	<i>Heptapleurum arboricola</i> syn. <i>Schefflera arboricola</i>	Dwarf umbrella plant
31	<i>Ipomoea</i> spp.	Morning glory species except for <i>Ipomoea batatas</i>
32	<i>Lablab purpureus</i>	Lablab, Hyacinth bean, Black bean
33	<i>Leucaena leucocephala</i>	Jumbie Bean, Wild mimosa
34	<i>Livistona chinensis</i>	Chinese fan palm
35	<i>Pennisetum macrostachyum</i>	Purple Fountain grass
36	<i>Phymatosorus scolopendria</i>	Creeping fern, Wart fern
37	<i>Pueraria montana</i> syn. <i>P. lobata</i>	Kudzu vine
38	<i>Rhynchelytrum repens</i> syn. <i>Melinis repens</i>	Natal grass
39	<i>Ricinus communis</i>	Castor bean
40	<i>Sansevieria trifasciata</i>	Mother-in-law's tongue
41	<i>Scaevola taccada</i>	Beach naupaka
42	<i>Schefflera actinophylla</i>	Queensland umbrella tree
43	<i>Schinus terebinthifolia</i>	Brazilian pepper
44	<i>Sphagneticola trilobata</i>	Wedelia
45	<i>Trichostigma octandrum</i>	Hoop vine
46	<i>Volkameria glabra</i> syn. <i>Clerodendrum glabrum</i>	Natal glorybower
AQUATIC PLANTS		
47	<i>Eichhornia crassipes</i>	Water hyacinth
48	<i>Pistia stratiotes</i>	Water lettuce

INVASIVE ALIEN SPECIES ACT 2021

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SCHEDULE 3

(section 7(1))

RESTRICTED "CATEGORY B" INVASIVE SPECIES

TERRESTRIAL INVERTEBRATES		
1	All terrestrial invertebrates in Phylum arthropoda except those listed in Schedule 1 or Schedule 2	
TERRESTRIAL PLANTS		
	<u>Name</u>	<u>Commonly Known As</u>
2	<i>Agave americana</i>	Agave
3	<i>Agave sisalana</i>	Agave
4	<i>Cenchrus purpureus</i>	Napier grass
5	<i>Opuntia spp.</i>	All <i>Opuntia</i> except native species
6	<i>Pereskia aculeata</i>	Barbados gooseberry
7	<i>Urochloa mutica</i>	Para grass, Buffalo grass

INVASIVE ALIEN SPECIES ACT 2021

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SCHEDULE 4

(section 31)

CONSEQUENTIAL AMENDMENT

The Government Fees Regulations 1976 are amended by inserting the following after Head 36A—

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Head 36B

Invasive Alien Species Act 2021

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(1)	Applying under section 9—	
	(a) for a permit to conduct an activity referred to in section 6(3)(a) in relation to a restricted “category A” invasive species	\$200 (per species)
	(b) for a licence to conduct an activity referred to in section 6(3)(b) in relation to a restricted “category A” invasive species	\$200
	(c) for a permit to conduct an activity referred to in section 7(3)(a) in relation to a restricted “category B” invasive species	\$200 (per species)
	(d) for a licence to conduct an activity referred to in section 7(3)(b) in relation to a restricted “category B” invasive species	\$50
(2)	Applying under section 10 for the Director’s determination of a non-native species	\$100
(3)	Applying under section 21(3) for an exemption	\$200
(4)	Applying under section 22 to be licensed as an approved agent	\$150
(5)	Applying under section 26 for the Minister’s review of a decision	\$200



## INVASIVE ALIEN SPECIES BILL 2021

### EXPLANATORY MEMORANDUM

This Bill seeks, in the interest of the economy, human and animal health, for the prevention and restoration of environmental damage caused by invasive alien species, and to facilitate international cooperation in respect of invasive alien species, to create a regulatory framework to prohibit or control the importation, possession, reproduction, cultivation, growing and supplying of invasive alien species; and to manage invasive alien species in Bermuda including eradicating, reducing and preventing the spread of invasive alien species that have established in Bermuda.

Clause 1 is self-explanatory.

Clause 2 provides definitions for key terms used in the Bill, including definitions for “precautionary principle”, “prohibited invasive species”, “restricted “Category A” invasive species”, and “restricted “category B” invasive species”.

Clause 3 requires the Director to consult with relevant sections of the Department before making certain decisions, including advising the Minister with respect to modifications to be made to Schedule 1, Schedule 2 and Schedule 3.

Clause 4 defines a prohibited invasive species as a species listed in Schedule 1, and provides for offences in relation to such species.

Clause 5 provides for the Minister to modify the list of prohibited invasive species set out in Schedule 1 by order subject to the negative resolution procedure. As a matter of urgency, the Minister may by notice published in the Gazette, declare a species to be a prohibited invasive species.

Clause 6 defines a restricted “category A” invasive species as a species listed in Schedule 2, and provides for offences in relation to such species.

Clause 7 defines a restricted “category B” invasive species as a species listed in Schedule 3, and provides for offences in relation to such species.

Clause 8 provides for the Minister to modify the list of restricted invasive species set out in Schedules 2 and 3 by order subject to the negative resolution procedure. As a matter of urgency, the Minister may by notice published in the Gazette, declare a species to be a restricted invasive species.

Clause 9 relates to a restricted invasive species, and allows persons to apply to the Director for a permit to import a species or to apply for a licence to reproduce or otherwise deal with an invasive species. An application must be accompanied with, among other things, a bio-security risk assessment prepared by an approved agent and the application fee. A person or an approved agent who provides false or misleading information or documentation in a material respect on an application or in an assessment commits an offence.

Clause 10 relates to a non-native species that is not listed in Schedule 1, 2 or 3, and allows persons to apply to the Director for a determination as to whether the non-native species is an invasive species. The applicant must provide a bio-security risk assessment if requested to do so by the Director. A person or an approved agent who provides false or misleading information or documentation in a material respect on an application or in an assessment commits an offence.

Clause 11 provides that where an application is made under section 9 in respect of a non-native species that is not listed in Schedule 2 or Schedule 3, the Director shall deny the application based on the precautionary principle. The Director may attach conditions and restrictions to the permit or licence as he sees fit, and it shall be a condition of every permit or licence that it shall not be transferred to another person without the written permission of the Director. The Director shall not issue permits or licences retroactively. Where an application is denied, the Director must state the reason for doing so. The Director may suspend a permit or licence for the purpose of completing an investigation where he has reason to believe that an offence was committed in respect of either the application or the bio-security risk assessment.

Clause 12 makes it an offence for a permit or licence holder to fail to comply with a condition or restriction attached to the permit or licence.

Clause 13 requires permit and licence holders to retain records, in such manner and for such period, as may be prescribed by Regulations.

Clause 14 provides for the Director to prepare for the Minister's approval, management and emergency plans in respect of prohibited and restricted invasive species. The plans must include, among other things, the threats posed by the species to human and animal health, the economy, and the environment, and measures to be taken to eliminate, reduce, or prevent the spread of such species in Bermuda. The plans shall be published on the Government website, and made available for public inspection at the offices of the Department.

Clause 15 provides that where a plan approved by the Minister relates to privately owned land, the Minister may enter into an agreement with the owner or occupier of the land, or apply to the Supreme Court for an order, for the purpose of managing the invasive species on that land. The owner or occupier may be heard before an order is made, and costs and expenses incurred by the Minister for implementing a plan may be recovered from the owner or occupier as a civil debt.

Clauses 16 and 17 provide for the Director, with consent or under a warrant, to enter and search any specified place, transportation or premises (both business and residential) where he has reasonable cause to believe that evidence of an offence is at the place and to seize any evidence found. The term "specified place" includes a boat, ship, aircraft or any container, storage facility or similar enclosure. A person who obstructs the Director in the performance of his duties commits an offence. The Director may use reasonable force to make entry, but only if specified in the warrant and if accompanied by a police officer.

Clause 18 requires an owner, occupier or person in charge of premises, a specified place, or transportation to assist the Director in the performance of his duties, and for it to be an offence to fail, without reasonable excuse, to comply with a request.

## INVASIVE ALIEN SPECIES BILL 2021

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Clause 19 requires the Director to provide a written notice of any invasive species or evidence seized during a search.

Clause 20 provides for the Director to apply to a Magistrate for an order for forfeiture of a prohibited or restricted invasive species, whether or not any person has been prosecuted for an offence; and for any person appearing to be the owner of a restricted invasive species to be heard by the Magistrate before an order is made. An invasive species forfeited to the Crown shall be disposed of as the Director sees fit.

Clause 21 provides for applications to be made for an exemption in relation to the importation and possession of prohibited and restricted invasive species. Applications may be made, for limited purposes, by the Bermuda Government, the Bermuda Aquarium Museum and Zoo, and other persons. The Minister must consult with the Director before making a decision, and may attach such conditions or restrictions to an exemption as he sees fit.

Clause 22 provides for a person to apply to the Director to be licensed as an approved agent. It is an offence for a person to provide false or misleading information or documents in a material respect in an application.

Clause 23 provides for an authorized officer to perform the duties of the Director set out in sections 14, 16, 17, 18, 19 and 20.

Clause 24 provides for the Director to require information or documents by order from permit and licence holders for compliance, statistical or research purposes, and for it to be an offence to fail to comply with an order.

Clause 25 allows the Minister to publish notices in the Gazette, from time-to-time, requiring persons who possess a prohibited invasive species to notify the Director, and to comply with a direction given by the Director in relation to the species. A person aggrieved by a direction may appeal to the Supreme Court. Information given by a person shall not be available as evidence against that person in court proceedings.

Clause 26 provides for an applicant, who is aggrieved by a decision of the Director, to apply to the Minister for the decision to be reviewed where the Director has denied a permit or a licence or attached conditions or restrictions to a permit or a licence, or denied an application for a licence as an approved agent. Where the Minister confirms the Director's decision, he must notify the applicant of the reason for his determination. A person aggrieved by the Minister's determination may appeal to the Supreme Court.

Clause 27 provides for appeals to the Supreme Court within twenty-eight days of a written direction or determination, and for the decision of the Court to be final.

Clause 28 provides for the Minister to make Regulations, including regulations relating to applications for permits and licences, matters relating to bio-security risk assessments, and the qualifications required for a person to be licensed as an approved agent.

Clause 29 provides penalties for offences committed under the Bill.

Clause 30 is a transitional provision applying to persons who have a prohibited or restricted invasive species on the day this Act comes into operation. Such persons must notify the Director and comply with directions given by the Director in writing, including a

## INVASIVE ALIEN SPECIES BILL 2021

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direction that the species be disposed of. A person aggrieved by a direction given by the Director may appeal to the Supreme Court. Clause 30 also applies where an order is made or a notice is published under section 5 or 8 deleting or adding an invasive species to Schedule 1, Schedule 2 or Schedule 3.

Clause 31 makes a consequential amendment to the Government Fees Regulations 1976 to provide for fees in respect of applications made under this Bill.

Clause 32 provides for the Act to come into operation by notice published in the Gazette.

DRAFT