



New South Wales

Threatened Species Conservation Regulation 2010

under the

Threatened Species Conservation Act 1995

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Threatened Species Conservation Act 1995*.

FRANK SARTOR, MP
Minister for Climate Change and the Environment

Explanatory note

The object of this Regulation is to remake, with minor amendments, the provisions of the *Threatened Species Conservation Regulation 2002*, which is repealed on 1 September 2010 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following:

- (a) the prescription of criteria for the listing of critically endangered species, endangered species, vulnerable species, endangered populations, critically endangered ecological communities, endangered ecological communities and vulnerable ecological communities,
- (b) the Little Penguin critical habitat and the Wollemi Pine critical habitat,
- (c) the offences under this Regulation for which penalty notices (“on-the-spot” fines) may be issued and the amounts of the fines payable under such notices,
- (d) savings and formal matters.

In respect of the prescription of criteria, the Minister for Climate Change and the Environment has certified pursuant to section 14 of the *Threatened Species Conservation Act 1995* that:

- (a) the criteria are based on scientific principles only, and
- (b) any criteria for listing under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth were given due consideration before this Regulation was made.

This Regulation is made under the *Threatened Species Conservation Act 1995*, including sections 10–12, 51 and 150 (the general regulation-making power) and under section 160 of the *National Parks and Wildlife Act 1974*.

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Threatened Species Conservation Regulation 2010

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Clause 1 Threatened Species Conservation Regulation 2010

Part 1 Preliminary

Threatened Species Conservation Regulation 2010

under the

Threatened Species Conservation Act 1995

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Threatened Species Conservation Regulation 2010*.

2 Commencement

This Regulation commences on 1 September 2010 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Threatened Species Conservation Regulation 2002*, which is repealed on 1 September 2010 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

designated officer means:

- (a) an officer or employee of the Department of Environment, Climate Change and Water, or
- (b) a person who is authorised by the Director-General to exercise the powers conferred on a designated officer by this Regulation, or
- (c) a police officer.

the Act means the *Threatened Species Conservation Act 1995*.

(2) Notes included in this Regulation do not form part of this Regulation.

Part 2 Listing criteria

Note. This Part prescribes the criteria for a determination by the Scientific Committee of the matters required to establish eligibility for listing in accordance with Part 2 of the Act:

- (a) of a species as a critically endangered species, endangered species or vulnerable species (see *Division 2*), or
- (b) of a population as an endangered population (see *Division 3*), or
- (c) of an ecological community as a critically endangered ecological community, endangered ecological community or vulnerable ecological community (see *Division 4*).

Divisions 1 and 5 provide for the interpretation and application of the prescribed criteria.

Division 1 Preliminary

4 Definition

In this Part:

key indicators in relation to a species or population means either:

- (a) an index of abundance appropriate to the taxon, or
- (b) the geographic distribution, habitat quality or diversity, or genetic diversity of that species or population.

Division 2 Criteria for listing of species

5 Criteria for listing determinations by Scientific Committee

(1) Critically endangered species

For the purposes of section 10 (2) of the Act, a species is facing an extremely high risk of extinction in New South Wales in the immediate future if, in the opinion of the Scientific Committee, it meets the criteria specified for critically endangered species in one or more of the other clauses in this Division.

(2) Endangered species

For the purposes of section 10 (3) of the Act, a species is facing a very high risk of extinction in New South Wales in the near future if, in the opinion of the Scientific Committee, it meets the criteria specified for endangered species in one or more of the other clauses in this Division.

(3) Vulnerable species

For the purposes of section 10 (4) of the Act, a species is facing a high risk of extinction in New South Wales in the medium-term future if, in the opinion of the Scientific Committee, it meets the criteria specified for vulnerable species in one or more of the other clauses in this Division.

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Clause 6 Threatened Species Conservation Regulation 2010

Part 2 Listing criteria

6 Reduction in population size of species

The species has undergone, is observed, estimated, inferred or reasonably suspected to have undergone or is likely to undergo within a time frame appropriate to the life cycle and habitat characteristics of the taxon:

- (a) for *critically endangered species*—a very large reduction in population size, or
- (b) for *endangered species*—a large reduction in population size, or
- (c) for *vulnerable species*—a moderate reduction in population size, based on either of the key indicators.

7 Restricted geographic distribution of species and other conditions

The geographic distribution of the species is estimated or inferred to be:

- (a) for *critically endangered species*—very highly restricted, or
- (b) for *endangered species*—highly restricted, or
- (c) for *vulnerable species*—moderately restricted, and either:
 - (d) a projected or continuing decline is observed, estimated or inferred in either of the key indicators, or
 - (e) at least 2 of the following 3 conditions apply:
 - (i) the population or habitat is observed or inferred to be severely fragmented,
 - (ii) all or nearly all mature individuals are observed or inferred to occur within a small number of populations or locations,
 - (iii) extreme fluctuations are observed or inferred to occur in either of the key indicators.

8 Low numbers of mature individuals of species and other conditions

The estimated total number of mature individuals of the species is:

- (a) for *critically endangered species*—very low, or
- (b) for *endangered species*—low, or
- (c) for *vulnerable species*—moderately low (that is, not as low as for paragraph (b)), and either:
 - (d) a projected or continuing decline is observed, estimated or inferred in either of the key indicators, or

- (e) at least 2 of the following 3 conditions apply:
- (i) the population or habitat is observed or inferred to be severely fragmented,
 - (ii) all or nearly all mature individuals are observed or inferred to occur within a small number of populations or locations,
 - (iii) extreme fluctuations are observed or inferred to occur in either of the key indicators.

9 Low numbers of mature individuals of species

The total number of mature individuals of the species is observed, estimated or inferred to be:

- (a) for *critically endangered species*—extremely low, or
- (b) for *endangered species*—very low, or
- (c) for *vulnerable species*—low.

10 Very highly restricted geographic distribution of species

For *vulnerable species*, the geographic distribution of the species is observed, estimated or inferred to be very highly restricted such that it is prone to the effects of human activities or stochastic events within a very short time period.

Division 3 Criteria for listing of endangered populations

11 Criteria for listing determinations by Scientific Committee

For the purposes of section 11 (1) of the Act, a population is facing a very high risk of extinction in New South Wales in the near future if, in the opinion of the Scientific Committee, it satisfies any one or more of the following paragraphs and also meets the criteria specified in one or more of the other clauses in this Division:

- (a) it is disjunct or near the limit of its geographic range,
- (b) it is or is likely to be genetically, morphologically or ecologically distinct,
- (c) it is otherwise of significant conservation value.

12 Large reduction in population size

The size of the population has undergone, is observed, estimated, inferred or reasonably suspected to have undergone or is likely to undergo, within a time frame appropriate to the life cycle and habitat characteristics of the taxon, a large reduction based on either of the key indicators.

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Clause 13 Threatened Species Conservation Regulation 2010

Part 2 Listing criteria

13 Highly restricted geographic distribution of population and other conditions

The geographic distribution of the population is estimated or inferred to be highly restricted and either:

- (a) a projected or continuing decline is observed, estimated or inferred in either of the key indicators, or
- (b) at least 2 of the following 3 conditions apply:
 - (i) the population or habitat is observed or inferred to be severely fragmented,
 - (ii) all or nearly all mature individuals are observed or inferred to occur within a small number of locations,
 - (iii) extreme fluctuations are observed or inferred to occur in either of the key indicators.

14 Low numbers of mature individuals in population and other conditions

The estimated total number of mature individuals in the population is low and either:

- (a) a projected or continuing decline is observed, estimated or inferred in either of the key indicators, or
- (b) at least 2 of the following 3 conditions apply:
 - (i) the population or habitat is observed or inferred to be severely fragmented,
 - (ii) all or nearly all mature individuals are observed or inferred to occur within a small number of locations,
 - (iii) extreme fluctuations are observed or inferred to occur in either of the key indicators.

15 Very low numbers of mature individuals in population

The estimated total number of mature individuals of the population is observed, estimated or inferred to be very low.

Division 4 Criteria for listing of ecological communities

16 Criteria for listing determinations by Scientific Committee

(1) Critically endangered ecological communities

For the purposes of section 12 (1) of the Act, an ecological community is facing an extremely high risk of extinction in New South Wales in the immediate future if, in the opinion of the Scientific Committee, it meets the criteria specified for critically endangered ecological communities in one or more of the other clauses in this Division.

(2) **Endangered ecological communities**

For the purposes of section 12 (2) of the Act, an ecological community is facing a very high risk of extinction in New South Wales in the near future if, in the opinion of the Scientific Committee, it meets the criteria specified for endangered ecological communities in one or more of the other clauses in this Division.

(3) **Vulnerable ecological communities**

For the purposes of section 12 (3) of the Act, an ecological community is facing a high risk of extinction in New South Wales in the medium-term future if, in the opinion of the Scientific Committee, it meets the criteria specified for vulnerable ecological communities in one or more of the other clauses in this Division.

17 Reduction in geographic distribution of ecological community

The ecological community has undergone, is observed, estimated, inferred or reasonably suspected to have undergone or is likely to undergo within a time span appropriate to the life cycle and habitat characteristics of its component species:

- (a) for *critically endangered ecological communities*—a very large reduction in geographic distribution, or
- (b) for *endangered ecological communities*—a large reduction in geographic distribution, or
- (c) for *vulnerable ecological communities*—a moderate reduction in geographic distribution.

18 Restricted geographic distribution of ecological community

The ecological community's geographic distribution is estimated or inferred to be:

- (a) for *critically endangered ecological communities*—very highly restricted, or
- (b) for *endangered ecological communities*—highly restricted, or
- (c) for *vulnerable ecological communities*—moderately restricted, and the nature of its distribution makes it likely that the action of a threatening process could cause it to decline or degrade in extent or ecological function over a time span appropriate to the life cycle and habitat characteristics of the ecological community's component species.

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Clause 19 Threatened Species Conservation Regulation 2010

Part 2 Listing criteria

19 Reduction in ecological function of ecological community

The ecological community has undergone, is observed, estimated, inferred or reasonably suspected to have undergone or is likely to undergo within a time span appropriate to the life cycle and habitat characteristics of its component species:

- (a) for *critically endangered ecological communities*—a very large reduction in ecological function, or
- (b) for *endangered ecological communities*—a large reduction in ecological function, or
- (c) for *vulnerable ecological communities*—a moderate reduction in ecological function,

as indicated by any of the following:

- (d) change in community structure,
- (e) change in species composition,
- (f) disruption of ecological processes,
- (g) invasion and establishment of exotic species,
- (h) degradation of habitat,
- (i) fragmentation of habitat.

Division 5 Interpretation

20 Application of Division

- (1) This Division applies for the purposes of the interpretation and application of the criteria prescribed by this Part (with a note to each provision of this Division specifying which provisions of this Part the provision applies in respect of).
- (2) Use in a provision of this Division of the term “population” does not limit the operation of the provision to Division 3 and use of the term “species” does not limit the operation of a provision to Division 2.

21 Ecological function

- (1) Ecological function encompasses the ecological processes and interactions that occur within an ecological community.
- (2) Ecological function includes the following:
 - (a) provision of habitat for native biota,
 - (b) provision of food and other resources for native biota,
 - (c) maintenance of interactions between species (for example, pollination, dispersal, mutualism, competition, predation),

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- (d) cycling, filtering and retention of nutrients,
 - (e) carbon storage or sequestration,
 - (f) maintenance of soil processes,
 - (g) maintenance of catchment scale hydrological and geochemical processes,
 - (h) maintenance of landscape scale ecological processes.
- (3) Some of the processes and interactions within ecological communities may depend upon the presence of non-living components such as leaf litter and fallen or standing dead trees.

Note. This clause applies in respect of Division 4.

22 Mature individuals

- (1) Mature individuals are individuals in the wild known, estimated or inferred to be capable of producing viable offspring. The total number of mature individuals excludes individuals that are too young (juvenile), too old (senescent), too moribund (for example, diseased) or otherwise unable to produce viable offspring (for example, due to low population density).
- (2) In populations with biased sex ratios, it is appropriate to use a lower value for the total number of mature individuals in a way that takes this into account.
- (3) In populations that fluctuate, the number of mature individuals will refer to a minimum number of individuals that are present most of the time (in a time span appropriate to the life cycle and habitat characteristics of the species), and will thus usually be much less than the mean number present.
- (4) In clonal organisms, reproducing units may be regarded as mature individuals, so long as they survive independently of one another. However, if clonally reproduced individuals are more limited in viability or dispersal ability than sexually reproduced individuals, the total number of mature individuals may be reduced accordingly to take this into account.
- (5) For species in which individuals have synchronous dormant life stages, the number of mature individuals should be assessed during, or projected for, a time when mature individuals are available for breeding.
- (6) Re-introduced individuals must have produced viable offspring (after the individuals were re-introduced) before they are counted as mature individuals.

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Clause 23 Threatened Species Conservation Regulation 2010

Part 2 Listing criteria

- (7) Captive, cultivated, or artificially maintained individuals cannot be counted as mature individuals.

Note. This clause applies in respect of Divisions 2 and 3.

23 Geographic distribution

- (1) Geographic distribution is the area or areas in which a species or ecological community occurs, excluding cases of vagrancy in species.
- (2) This may be assessed by estimating:
- (a) the extent of occurrence (the area of the total geographic range that includes all extant populations of the species or all extant occurrences of the ecological community), or
 - (b) the area of occupancy (the area within the total range that is currently occupied by the species or ecological community, that is it excludes unsuitable and unoccupied habitat), or
 - (c) the area of suitable habitat (the area within the total range that includes occupied and unoccupied suitable habitat, but excludes unsuitable habitat).
- (3) The scale at which a geographic distribution is assessed should be appropriate to the biology of the species (or component species in ecological communities), the nature of threats and available data.

Note. This clause applies in respect of Divisions 2, 3 and 4.

24 Severely fragmented

The population or habitat of a species is severely fragmented if individuals of the species are distributed among subpopulations or patches of habitat that are small and isolated relative to the life cycle and habitat characteristics of the species.

Note. This clause applies in respect of Divisions 2 and 3.

25 Extreme fluctuations

Extreme fluctuations occur when the population or distribution of a species varies reversibly, widely and frequently, as:

- (a) indicated by changes in either of the key indicators, or
- (b) inferred from the life history or habitat biology of the species.

Note 1. The cause of fluctuations must be understood or inferred so that they may be distinguished from declines or reductions.

Note 2. This clause applies in respect of Divisions 2 and 3.

Part 3 Little Penguin critical habitat

26 Definitions

In this Part:

Little Penguin breeding season means the period from 1 July in any year until 28 February in the following year (both dates inclusive).

Little Penguin critical habitat means the area of land declared to be the critical habitat of the endangered population of Little Penguin at North Sydney Harbour, as described in the notification published in the Gazette under section 47 of the Act (as amended from time to time under section 49 of the Act).

Note. See Gazette No 263 of 20.12.2002, p 10983 for the declaration of land as critical habitat of the Little Penguin.

Little Penguin critical habitat area A means the area marked A on the Little Penguin critical habitat map.

Little Penguin critical habitat map means the map showing the location of the Little Penguin critical habitat, as published in the Gazette under section 53 of the Act.

27 Companion animals prohibited

- (1) A person must not bring a companion animal into the Little Penguin critical habitat.
Maximum penalty: 200 penalty units.
- (2) If a companion animal is found in the Little Penguin critical habitat:
 - (a) the owner of the companion animal, or
 - (b) if the owner is not present at the time of the offence and another person who is of or above the age of 16 years is in charge of the companion animal at that time, that other person,is guilty of an offence.
Maximum penalty: 200 penalty units.
- (3) In any prosecution for an offence against this clause it is a defence if the defendant establishes that the relevant companion animal is an assistance animal that was being used by a person with a disability (within the meaning of the *Disability Discrimination Act 1992* of the Commonwealth).
- (4) In any prosecution of the owner of a companion animal for an offence against this clause it is a defence if the defendant establishes that:
 - (a) another owner of the animal has been convicted of an offence arising out of the same circumstances, or

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Clause 28 Threatened Species Conservation Regulation 2010

Part 3 Little Penguin critical habitat

- (b) the commission by another owner of the animal of an offence arising out of the same circumstances has been proved but a court has made an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* in respect of the offence, or
 - (c) the offence could not have been avoided by any reasonable efforts on the defendant's part.
- (5) In this clause:
- assistance animal** means an assistance animal within the meaning of the *Disability Discrimination Act 1992* of the Commonwealth.
- companion animal** and **owner** of a companion animal have the same meanings as in the *Companion Animals Act 1998*.

28 Anchoring, mooring and access by vessels

- (1) A person must not:
- (a) anchor or moor a vessel in the Little Penguin critical habitat area A during the Little Penguin breeding season, or
 - (b) anchor or moor a vessel outside the Little Penguin critical habitat area A during the Little Penguin breeding season in such a way that the anchored or moored vessel enters the Little Penguin critical habitat area A, or
 - (c) cause a vessel (other than a non-motorised tender) to enter or remain in the Little Penguin critical habitat area A between sunset and sunrise during the Little Penguin breeding season.

Maximum penalty: 200 penalty units.

- (2) In this clause:
- moor** a vessel includes attach a vessel to a mooring by any means.
- mooring** means any post, stake, pile, float, pontoon or any other object (other than the anchor of a vessel) secured by any direct or indirect means to the waters' bed or placed on the waters' bed for the purpose of attaching a vessel to the bed.
- tender** has the same meaning as in the *Marine Safety (General) Regulation 2009*.
- vessel** includes a water craft of any description used or capable of being used as a means of transportation on water, including:
- (a) any non-displacement craft, and
 - (b) a seaplane, but only while it is on water.

29 Fishing

- (1) A person must not take or attempt to take fish from the Little Penguin critical habitat between sunset and sunrise during the Little Penguin breeding season.
Maximum penalty: 200 penalty units.
- (2) In this clause, *take* fish has the same meaning as in section 4 (1) of the *Fisheries Management Act 1994*.

30 Interference with burrows or nests

A person must not interfere with a burrow or nesting box in the Little Penguin critical habitat.
Maximum penalty: 200 penalty units.

Note. Section 118C of the *National Parks and Wildlife Act 1974* also provides that a person must not damage (or cause or permit damage) to any critical habitat. The maximum penalty for a contravention is 2,000 penalty units or imprisonment for 2 years or both.

31 Interference with Little Penguins

- (1) A person must not knowingly be within 5 metres of a Little Penguin while the Little Penguin is on land in the Little Penguin critical habitat.
Maximum penalty: 200 penalty units.
- (2) A person must not knowingly disturb a Little Penguin in the Little Penguin critical habitat if the Little Penguin is moulting.
Maximum penalty: 200 penalty units.
- (3) In this clause, *disturb* a Little Penguin includes shining a light on the penguin.

32 Directions given by a designated officer

- (1) If a designated officer is of the opinion that a person is contravening this Part or disturbing a Little Penguin's breeding or moulting activities, or is likely to do so, the officer may make one or more of the following directions:
 - (a) direct the person to cease a particular activity within the Little Penguin critical habitat,
 - (b) direct the person to leave the Little Penguin critical habitat.
- (2) A person must not, without reasonable excuse, fail to comply with a direction given under subclause (1).
Maximum penalty: 200 penalty units.

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Clause 33 Threatened Species Conservation Regulation 2010

Part 3 Little Penguin critical habitat

- (3) A person is not guilty of an offence of failing to comply with a direction given under subclause (1) unless it is established that the designated officer:
- (a) warned the person that a failure to comply with the direction is an offence, and
 - (b) identified himself or herself as a designated officer.
- (4) A designated officer may remove from the Little Penguin critical habitat, or any part of it, any person who fails to comply with a direction under this clause and any vehicle, vessel, animal or other property in the possession of the person.

33 Defences

It is a defence to a prosecution for an offence against this Part if the defendant proves that the act constituting the offence:

- (a) was authorised to be done, and was done in accordance with, a licence granted under Part 6 of the Act or under the *National Parks and Wildlife Act 1974*, or
- (b) was the subject of a certificate issued under section 95 (2) of the Act, or
- (c) was essential for the carrying out of:
 - (i) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or
 - (ii) a project approved under Part 3A of that Act, or
 - (iii) an activity, whether by a determining authority or pursuant to an approval of a determining authority within the meaning of Part 5 of that Act, if the determining authority has complied with that Part, or
- (d) was authorised to be done by or under Part 2 of the *Rural Fires Act 1997*, the *State Emergency and Rescue Management Act 1989* or the *State Emergency Service Act 1989* and was reasonably necessary in order to avoid a threat to life or property, or
- (e) was carried out:
 - (i) by an officer or employee of the Department of Environment, Climate Change and Water in the exercise of his or her functions as such an officer or employee, or
 - (ii) by a designated officer in the exercise of his or her functions as such an officer, or

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- (iii) by an officer or employee of Manly Council, the Department of Industry and Investment or the Maritime Authority of NSW in the exercise of his or her monitoring or enforcement functions as such an officer or employee, or
 - (iv) with the consent of the Director-General given (either unconditionally or subject to conditions) in the form of a licence, permit, approval or other form of written authorisation.

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Clause 34 Threatened Species Conservation Regulation 2010

Part 4 Wollemi Pine critical habitat

Part 4 Wollemi Pine critical habitat

34 Definitions

In this Part:

damage to the Wollemi Pine critical habitat includes:

- (a) picking any plant within the Wollemi Pine critical habitat, and
- (b) clearing or removing any vegetation (whether or not living) within the Wollemi Pine critical habitat, and
- (c) harming any animal within the Wollemi Pine critical habitat, and
- (d) introducing, or causing the spread of, *Phytophthora cinnamomi* within the Wollemi Pine critical habitat.

harm an animal includes hunt, shoot, poison, net, snare, spear, pursue, capture, trap, injure or kill, but does not include harm by changing the habitat of an animal.

pick a plant means gather, pluck, cut, pull up, destroy, poison, take, dig up, remove or injure the plant or any part of the plant.

Wollemi Pine critical habitat means any area of land declared by the Minister to be the critical habitat of the endangered species *Wollemia nobilis* (Wollemi Pine), by notification published in the Gazette under section 47 of the Act (as amended from time to time under section 49 of the Act).

Note. See Gazette No 33 of 23.2.2007, p 1042 for the declaration of land as critical habitat of the Wollemi Pine.

35 Operation of Part

Nothing in this Part affects the operation of Part 2 of the *National Parks and Wildlife Regulation 2009*.

Note. For example, under Divisions 1 and 3 of Part 2 of the *National Parks and Wildlife Regulation 2009*, a park authority may regulate the use and closure of a national park by means of a public notice, a written notice or an oral direction and an authorised officer may remove a person from a national park in certain circumstances.

36 Closure by public notice

- (1) The Director-General may close all or any part of the Wollemi Pine critical habitat to the public by means of a notice displayed in, or at the boundary of, the Wollemi Pine critical habitat or the part of it to which the notice relates.
- (2) Any such closure may be specified to have effect at all times or during specified times.

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- (3) A person must not enter, remain in, or leave a vehicle parked in, any part of the Wollemi Pine critical habitat that is closed to the public in accordance with this clause.

Maximum penalty: 200 penalty units.

37 Closure by order

- (1) The Director-General may close all or any part of the Wollemi Pine critical habitat to the public by order published in the Gazette.
- (2) Any such closure may be specified to have effect at all times or during specified times.

Note. The Director-General may decide not to disclose the location of critical habitat to the public under section 146 of the *Threatened Species Conservation Act 1995*. This clause gives the Director-General an alternative means of closing the critical habitat without disclosing the location of the critical habitat to the public.

38 Directions given by a designated officer

- (1) A designated officer may direct a person to leave any part of the Wollemi Pine critical habitat that is closed to the public in accordance with this Part.
- (2) If a designated officer is of the opinion that a person is contravening this Part or causing damage to the Wollemi Pine critical habitat, or is likely to do so, the officer may make one or more of the following directions:
- (a) direct the person to cease a particular activity within the Wollemi Pine critical habitat,
 - (b) direct the person to modify a particular activity within the Wollemi Pine critical habitat so as to avoid any damage or likelihood of damage to the Wollemi Pine critical habitat,
 - (c) direct the person to leave the Wollemi Pine critical habitat.
- (3) A person must not, without reasonable excuse, fail to comply with a direction given under subclause (1) or (2).
- Maximum penalty: 200 penalty units.
- (4) A person is not guilty of an offence of failing to comply with a direction given under subclause (1) or (2) unless it is established that the designated officer:
- (a) warned the person that a failure to comply with the direction is an offence, and
 - (b) identified himself or herself to the person as a designated officer.

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Clause 39 Threatened Species Conservation Regulation 2010

Part 4 Wollemi Pine critical habitat

- (5) A designated officer may remove from the Wollemi Pine critical habitat, or any part of it, any person who fails to comply with a direction under this clause and any vehicle, animal or other property in the possession of the person.

39 Defences

It is a defence to a prosecution for an offence against this Part if the defendant proves that the act constituting the offence:

- (a) was authorised to be done, and was done in accordance with, a licence granted under Part 6 of the Act or under the *National Parks and Wildlife Act 1974*, or
- (b) was the subject of a certificate issued under section 95 (2) of the Act, or
- (c) was authorised to be done by or under Part 2 of the *Rural Fires Act 1997*, the *State Emergency and Rescue Management Act 1989* or the *State Emergency Service Act 1989* and was reasonably necessary in order to avoid a threat to life or property, or
- (d) was carried out:
 - (i) by an officer or employee of the Department of Environment, Climate Change and Water in the exercise of his or her functions as such an officer or employee, or
 - (ii) by a designated officer in the exercise of his or her functions as such an officer, or
 - (iii) with the consent of the Director-General given (either unconditionally or subject to conditions) in the form of a licence, permit, approval or other form of written authorisation.

Part 5 Miscellaneous

40 Penalty notice offences

- (1) For the purposes of section 192 of the *National Parks and Wildlife Act 1974*:
 - (a) each offence created by a provision specified in Column 1 of Schedule 1 is a prescribed offence, and
 - (b) the prescribed penalty for such an offence is the amount specified in Column 2 of that Schedule, and
 - (c) each person referred to in subclause (2) is a prescribed person.
- (2) For the purposes of section 192 of the *National Parks and Wildlife Act 1974*, the following persons are prescribed persons for all offences referred to in Schedule 1:
 - (a) the Director-General,
 - (b) any officer or employee of the Department of Environment, Climate Change and Water,
 - (c) any person who is authorised by the Director-General to exercise the powers conferred on a designated officer by this Regulation,
 - (d) any police officer,
 - (e) any officer or employee of a government department in respect of which an arrangement has been made under section 11 (1) of the *National Parks and Wildlife Act 1974*,
 - (f) any officer, employee or servant of a statutory corporation or council, or of trustees of a state conservation area, in respect of whom or which an arrangement has been made under section 11 (2) or (4) of the *National Parks and Wildlife Act 1974*.

41 Savings

Any act, matter or thing that, immediately before the repeal of the *Threatened Species Conservation Regulation 2002*, had effect under that Regulation, continues to have effect under this Regulation.

42 Repeal

The *Threatened Species Conservation (Savings and Transitional) Regulation 1996* is repealed.

Note. Section 30 (2) of the *Interpretation Act 1987* provides that the repeal of a statutory rule does not affect the operation of any savings or transitional provision contained in the statutory rule.

2010 No 495

Threatened Species Conservation Regulation 2010

Schedule 1 Penalty notice offences

Schedule 1 Penalty notice offences

(Clause 40)

Column 1	Column 2
Provision	Penalty \$
Offences under this Regulation	
Clause 27 (1)	\$500
Clause 27 (2)	\$500
Clause 28 (1)	\$500
Clause 29 (1)	\$500
Clause 30	\$500
Clause 31 (1)	\$500
Clause 31 (2)	\$500
Clause 32 (2)	\$500
Clause 36 (3)	\$500
Clause 38 (3)	\$500
