THE RARE PLANT PROTECTION

AND

CONSERVATION ACT OF 1985

TENNESSEE CODE ANNOTATED

SECTION 70-8-301 to 314

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Tennessee Department of Environment and Conservation, Authorization No. 327186, 500 copies. This public document was promulgated at a cost of $.31 per copy. January 1993.

Part 3—Rare Plant Protection and Conservation

70-8-301. Short title. — This part shall be known and may be cited as "The Rare Plant Protection and Conservation Act of 1985". [Acts 1985, ch. 242, § 1; T.C.A., § 11-26-201.]

Cross-References. Ginseng harvest season, part 2 of this chapter.
Nongame and Endangered or Threatened Wildlife Species Conservation Act of 1974, part 1 of this chapter.

70-8-302. Legislative findings. — The legislature finds and declares that the human needs and enjoyment, the interests of science, and the economy of the state require that rare plants throughout this state be protected and conserved; that their numbers be maintained and enhanced; and that propagative techniques be developed for them to insure their perpetuation as viable components of their ecosystems; however, nothing in this part shall be construed to limit the rights of private property owners to take rare plants from their own lands or to manage their lands for agriculture, forestry, development or any other lawful purpose. [Acts 1985, ch. 242, § 2; T.C.A., § 11-26-202.]

70-8-303. Definitions. — As used in this part, unless the context requires otherwise:

(1) "Commissioner" means the commissioner of conservation and his authorized representatives;

(2) "Conserve" and "conservation" include the use, and the use of, all methods and procedures for the purpose of increasing the number of individuals of each resident species of plant up to levels adequate to assure their survival in their ecosystems; such methods and procedures also include all activities associated with scientific resource conservation such as research, census, law enforcement, habitat protection, acquisition and maintenance, propagation, and transplantation into unoccupied parts of historic range;

(3) "Department" means the department of conservation;

(4) "Ecosystem" means a system of living organisms and their environment, each influencing the existence of the other and both necessary for the maintenance of life;

(5) "Endangered species" means any species or subspecies of plant whose continued existence as a viable component of the state's flora is determined by the commissioner to be in jeopardy, including but not limited to all species of plants determined to be an "endangered species" pursuant to the Endangered Species Act;

(6) "Endangered Species Act" means the federal Endangered Species Act of 1973, Public Law 93-205 (87 Stat. 884), 16 USC § 1531 et seq., as subsequently amended;

(7) "Nursery farmer" means any person engaged in the practice of growing or propagating nursery stock for sale;

(8) "Nursery stock" means all trees, shrubs, or other perennial plants or parts of such trees, shrubs, or other perennial plants grown or kept for, or capable of, propagation, distribution or sale on a commercial basis;

(9) "Person" means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, agent, department or instrumentality of the federal government, any state or political subdivision thereof, or any foreign government;

(10) "Plant" means any member of the plant kingdom, including seeds, roots, cuttings, and other parts of the plant;

(11) "Public works project" means any federal, state, county or municipal or other governmental project;

(12) "Special concern species" means any species or subspecies of plant which is uncommon in Tennessee, or has unique or highly specific habitat requirements or scientific value which requires careful monitoring of its status; and

(13) "Threatened species" means any species or subspecies of plant which appears likely, within the foreseeable future, to become endangered throughout all or a significant portion of its range in Tennessee, including but not limited to all species of plants determined to be a "threatened species" pursuant to the Endangered Species Act. [Acts 1985, ch. 242, § 3; T.C.A., § 11-26-203.]

70-8-304. Powers of commissioner. — The commissioner shall have the following powers and duties:

(1) To conduct investigations on species of rare plants throughout the state of Tennessee in order to develop information relative to the biology, ecology, population status, distribution, habitat needs, and other factors and to determine conservation measures necessary for rare plants;

(2) To adopt and publish by January 1, 1986, by rule, a listing of those species of plants which are determined to be endangered within the state;

(3) To promulgate regulations under which the commissioner shall issue, without charging a fee, annual licenses for the commercial sale or export of any endangered species by nursery farmers;

(4) To provide training for nursery inspectors concerning rare plants;

(5) To conduct programs to explain the procedures and requirements of this part to nursery farmers and other persons affected by this part;

(6) In cooperation with the Tennessee department of agriculture, to conduct inspections to check compliance with the provisions of this part;

(7) To maintain a list of threatened species and special concern species; and

(8) To enter into agreements with the commissioner of agriculture by which any of the powers and duties listed in this section may be carried out by representatives or employees of the department of agriculture. [Acts 1985, ch. 242, § 4; T.C.A., § 11-26-204.]

Section to Section References. This section is referred to in §§ 70-8-305, 70-8-307 — 70-8-309.

70-8-305. List of endangered species. — The list of endangered species promulgated by the commissioner pursuant to § 70-8-304(2) shall be made on the basis of the investigations authorized by § 70-8-304(1), other available scientific and commercial data, and appropriate consultation with federal agencies, other interested state agencies, other states having a common interest in the species and other interested persons and organizations. The commissioner of agriculture shall review the listing of endangered species before it becomes final and shall concur in the listing of any endangered species before that species may be listed. This listing shall be reviewed at least once every three (3) years and may be amended as necessary. Notwithstanding the provisions of § 4-5-202, to the contrary, the public through a public hearing shall be provided an opportunity for participation in this listing of plants. [Acts 1985, ch. 242, § 5; T.C.A., § 11-26-205.]

70-8-306. Licensing and regulation of nursery farmers. — (a) A license for the commercial sale or export of any endangered species by nursery farmers issued pursuant to § 70-8-304(3) shall allow a nursery farmer to engage in the commercial sale of any endangered species, subject to the restrictions of subsection (b) of this section.

(b) Each plant of an endangered species which is sold or exported by a nursery farmer shall be:

(1) Grown horticulturally from seeds or by vegetative propagation on the nursery farmer's land;

(2) Obtained from any source outside the state of Tennessee;

(3) Acquired from any person by gift or donation;

(4) Purchased from any person, subject to the restrictions of § 70-8-309(b); or

(5) Purchased from another nursery farmer in Tennessee. [Acts 1985, ch. 242, § 6; T.C.A., § 11-26-206.]

70-8-307. Right of access for inspections. — In conducting inspections to check compliance with the provisions of this part pursuant to § 70-8-304(6), the commissioner shall have the right of access to areas where rare plants are growing in the state. [Acts 1985, ch. 242, § 7; T.C.A., § 11-26-207.]

70-8-308. Public works projects. — The list of threatened species and special concern species maintained pursuant to § 70-8-304(7) may be used by the department in commenting on proposed public works projects in the state, and the department shall encourage voluntary efforts to prevent the plants on this list from becoming endangered species. This part shall not, however, be used to interfere with, delay or impede any public works project. [Acts 1985, ch. 242, § 8; T.C.A., § 11-26-208.]

70-8-309. Violations. — (a) It is a violation of this part for any person other than the landowner, lessee, or other person entitled to possession (or the manager, in the case of publicly-owned land) or a person with the written permission of the landowner (or manager) to knowingly uproot, dig, take, remove, damage, destroy, possess, or otherwise disturb for any purpose, any endangered species. The provisions of this subsection shall not apply to any employee or contractor of the federal government or of the state of Tennessee or of any political subdivision of the state engaged in any type of planning, construction, or maintenance work upon any proposed or existing federal, state, county, or other public road or highway, or highway right-of-way, while performing such work in the course of his employment or contract work with the federal, state, or local government.

(b) It is a violation of this part for any nursery farmer to export from this state or to sell any endangered species without first obtaining a license from the commissioner as provided in § 70-8-304(3). The license shall allow any nursery farmer to purchase a maximum of ten (10) plants of any endangered species in each calendar year without being in violation of this part. [Acts 1985, ch. 242, § 9; T.C.A., § 11-26-209.]

Section to Section References. This section is referred to in §§ 70-8-306, 70-8-311.

70-8-310. Penalties. — (a) Any person who violates any of the provisions of this part or the provisions of any regulation or rule promulgated hereunder or who violates the terms of any license issued by the department under this part shall be fined not more than one thousand dollars ($1,000), or be imprisoned for not more than six (6) months, or both.

(b) The court shall in all cases impose a fine of at least one hundred dollars ($100) for a person's first conviction under this part and a fine of at least five hundred dollars ($500) for all subsequent convictions of that person under this part.

(c) The court shall not impose a jail sentence for a person's first conviction under this part. [Acts 1985, ch. 242, § 10; T.C.A., § 11-26-210.]

70-8-311. Enforcement of provisions — Injunctions. — (a) Any employee or agent of the department upon whom has been conferred law enforcement powers, including the power to serve and execute warrants and arrest offenders or issue citations throughout the state, or any police officer of the state or any police officer of any municipality or county of this state shall have the authority to enforce any of the provisions of § 70-8-309 or any regulation or rule promulgated pursuant hereto, or any license issued pursuant hereto.

(b) In addition to any other available remedy at law, the commissioner may apply to the chancery court of any county in which a violation of this part is

occurring or in which the commissioner has probable cause to believe a violation of this part is about to occur, and the court shall have jurisdiction to grant a temporary or permanent injunction restraining any person from violating any provision of this part without requiring the commissioner to post bond during the pendency of this action. [Acts 1985, ch. 242, § 11; T.C.A., § 11-26-211.]

70-8-312. Powers of commissioner. — (a) The commissioner shall establish programs as necessary and utilize and participate in existing programs and authorities, in order to conserve rare plants in Tennessee.

(b) The commissioner may enter into agreements with federal agencies, other state agencies, other states, political subdivisions of this state, or individuals or organizations with respect to programs designed to conserve rare plants including agreements for the administration and/or management of any area established under the authority of the department for conserving, managing, enhancing, or protecting rare plants. Provided, however, the commissioner shall not enter into any such agreements which would delay or impede any public works project without the explicit approval of the agency responsible for such project.

(c) The commissioner is authorized to and may receive funds, donations, grants, or other moneys, gifts, or properties by devise or purchase necessary to execute the provisions of this section.

(d) The commissioner of agriculture is also authorized to perform any of the actions listed in subsections (a)-(c) of this section. [Acts 1985, ch. 242, § 12; T.C.A., § 11-26-212.]

70-8-313. Rules and regulations. — The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this part. All such rules and regulations shall be promulgated in accordance with the provisions of title 4, chapter 5, except as otherwise provided in this part. The commissioner of agriculture shall review all rules and regulations and shall concur before they become final. [Acts 1985, ch. 242, § 14; T.C.A., § 11-26-213.]

70-8-314. Limitations on implementing provisions. — (a) No rule adopted under this part shall cause undue interference with normal agricultural and forestry practices.

(b) Nothing in this part shall be construed to permit a person to violate any provision of federal law concerning federally protected endangered or threatened species.

(c) Ginseng, *Panax quinquefolius,* is regulated under title 62, chapter 28 and is exempt from the provisions of this part.

(d) This part shall not affect rights and duties that matured, penalties that were incurred or proceedings that were begun before July 1, 1985. [Acts 1985, ch. 242, §§ 13, 15, 16; T.C.A., § 11-26-214.]