



BERMUDA

ENDANGERED ANIMALS AND PLANTS ACT 2006

2006 : 25

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55 Repeal of the Endangered Animals and Plants Act 1976

WHEREAS it is expedient to enact the Endangered Animals and Plants Act 2006:

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:

### PART I PRELIMINARY

#### Short title and commencement

1 This Act may be cited as the Endangered Animals and Plants Act 2006 and shall come into operation on such date as the Minister may appoint by notice published in the Gazette.

#### Interpretation

2 (1) In this Act—

“animal” means a member of the animal kingdom other than man, whether alive or dead;

“animal reproductive material” means—

- (a) an egg, sperm, tissue culture, or embryo of an animal; or
- (b) any other part or product of an animal from which another animal can be reproduced;

“animal specimen” means—

- (a) any animal;
- (b) any animal reproductive material;
- (c) the flesh, skin, bone, blood, scales, feathers, horns or shell of any animal; or
- (d) any readily recognizable part,  
of a species or any derivative thereof listed as fauna in an Appendix;

“Appendix” means an Appendix to the Convention and Appendices shall be construed accordingly;

“approved person” means an individual declared by the Management Authority under section 8 to be approved in relation to a particular specimen or class of specimens;

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“approved scientific institution” means an institution declared by the Management Authority under section 8 to be an approved scientific institution in relation to a particular specimen or class of specimens;

“article” includes a substance or mixture of substances;

“artificial propagation” has the meaning assigned to it in section 11;

“authorized officer” means –

- (a) a police officer;
- (b) a customs officer;
- (c) a park ranger;
- (d) a conservation officer or other officer of the Ministry responsible for the environment;
- (e) a person authorized as an authorized officer in writing by the Minister; and
- (f) a person acting in aid of one of the persons mentioned in paragraphs (a) to (e), while acting in the execution of that person’s office or duty;

“bred in captivity” means born or otherwise produced in a clinical or controlled environment of an offspring of any animal or any animal reproductive material that—

- (a) mated or otherwise transferred gametes in a controlled environment where reproduction is sexual; or
- (b) was in a controlled environment when development of the offspring began, where reproduction is asexual;

“certificate of origin” means a certificate verifying the origin of a specimen granted by the Management Authority under section 19 (3) or by a relevant authority, as the circumstances may require;

“controlled environment” means—

- (a) in relation to an animal or animal reproductive material, an environment that—
  - (i) is manipulated for the purpose of producing selected species of animals or animal reproductive material;
  - (ii) has boundaries designed to prevent the entry, departure, introduction or removal of animals or animal reproductive material;
  - (iii) includes facilities such as artificial housing, waste removal, health care, protection from predators and artificial food supply; and
  - (iv) is managed in a manner designed to maintain the breeding stock indefinitely; and
- (b) in relation to plants, an environment that—

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- (i) is manipulated for the purposes of producing selected species of plants or plant reproductive material;
- (ii) includes tillage, fertilization, weed control, irrigation or nursery operations, including potting, bedding or protection from weather; and
- (iii) is managed in a manner designed to maintain the breeding stock indefinitely;

“Convention” means the Convention on International Trade in Endangered Species (C.I.T.E.S.) of Wild Fauna and Flora made at Washington, District of Columbia in the United States of America on the 3<sup>rd</sup> day of March, 1973 and any amendment thereto as adopted, from time to time, and relevant to Bermuda;

“Convention State” means a State, other than Bermuda, which is a party to the Convention;

“critical habitat” includes any land, any land covered by water, and where relevant, a controlled environment;

“endangered animal or plant” includes any animal or plant species threatened with extinction which is or is likely to be affected by trade or whose survival is unlikely if any factor which threatens its existence continues to operate;

“export” means to take or cause to be taken out of Bermuda;

“extinction” means the termination of a species by any means;

“extirpation” means the disappearance of a species or subspecies from a locality or region;

“import” means bringing, causing to be brought, or introducing from the sea, a specimen, into Bermuda by air or water, otherwise than in transit or by trans-shipment;

“in transit” includes any occasion on which a specimen remains on board an aircraft, a ship or any other form of transport while being transported to a named consignee outside of Bermuda;

“introduction from the sea” means the transportation into Bermuda of a specimen which is taken from the marine environment not under the jurisdiction of any State, including the airspace above, the sea-bed and subsoil beneath the sea;

“Management Authority” means the Management Authority designated by the Minister under section 13(1)(a);

“management programme” means a programme for the protection, conservation or management of animals or plants or both;

“mark” means any indelible imprint, seal or other suitable means of identifying a plant specimen or an animal specimen, designed in such a manner as to render its imitation by unauthorized persons difficult;

“Minister” means the Minister responsible for conservation services;

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“personal or household effects” means a specimen, or any articles or ornaments manufactured from a specimen, which are legally acquired and not intended for sale and are worn as clothing or contained in accompanying baggage or are part of a shipment of household effects belonging to a person moving into or from Bermuda;

“plant” means a member of the plant kingdom, whether alive or dead;

“plant reproductive material” means—

- (a) a seed or spore of a plant;
- (b) a cutting from a plant; or
- (c) any other part or product of a plant from which another plant can be produced;

“plant specimen” means—

- (a) a plant;
- (b) any plant reproductive material;
- (c) any article wholly produced by or from or otherwise wholly derived from a single plant or more than one plant; or
- (d) any readily recognizable part,  
of a species, or any derivative thereof listed as flora in an Appendix;

“readily recognizable part” includes a specimen which appears from its physical characteristics, label, mark, description or any package or document accompanying it, to be a part or a derivative of a specimen;

“recipient” means—

- (a) in relation to a specimen that is exported from Bermuda, the person or body in the State to which the specimen is exported who is to have the care and custody of that specimen; and
- (b) in relation to a specimen that is imported, the person or body in Bermuda who is to have the care and custody of that specimen;

“relevant authority”, in relation to a State, means—

- (a) in the case of a Convention State, a Management Authority in that State;  
or
- (b) in relation to any other State, the competent authority of that State within the meaning of Article X of the Convention;

“re-export” means the export of a specimen which has previously been imported or introduced from the sea, whether or not the specimen is in the same form as at the time of importation;

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“Scientific Authority” means the Scientific Authority established under section 13(1)(b);

“scientific institution” includes a zoo and a botanical garden;

“sender” in relation to a specimen that is imported into Bermuda, means the person in the State from which the specimen is imported who sent it from that State to Bermuda;

“species” includes any sub-species, variety, form or geographically separate population, whether wild or domesticated, of any species;

“specimen” includes a live or dead animal specimen or plant specimen, unless specifically exempt under this Act;

“take” includes—

- (a) in relation to an animal specimen, injure, disturb, harass, catch, capture, collect, trap or kill; and
- (b) in relation to a plant specimen, pick, break, cut, uproot, destroy, damage, remove, collect or cut;

“trade” includes export, re-export, import and introduction from the sea;

“trans-shipment” means the procedure whereby any specimen remains in the custody of the Collector of Customs while being transported to a named consignee outside of Bermuda.

(2) A reference in this Act to a State shall be construed as including a reference to a place that is a territory, dependency, associated state or colony (however described) of that State.

(3) For the purposes of this Act, a specimen shall be taken to have been imported by way of introduction from the sea if the specimen was taken in the marine environment not under the jurisdiction of any State and then imported without having been imported into any other State.

(4) For the purposes of this Act, the doing of any thing to or with a specimen that is a live animal or plant (including killing the animal or plant or doing or failing to do any thing in relation to the housing of the animal or plant) for the purposes of scientific research shall be undertaken in compliance with all guidelines specified by the Management Authority, after consultation with the Scientific Authority.

(5) For the purposes of this Act—

- (a) where the common name of an animal or a plant is set out in an Appendix next to or under a taxon, that common name does not affect the meaning of that taxon; and
- (b) a genus, species or sub-species referred to in a description set out in an Appendix shall be taken to be specified in that Appendix.

(6) For the purposes of this Act, a taxon is taken to be—

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- (a) vulnerable, when it faces a high risk of extinction in the medium term;
  - (b) endangered, when it faces a very high risk of extinction in the near future; and
  - (c) extinct, when there is no reasonable doubt that the last individual has died.
- (7) For the purpose of this Act, an activity may be described as commercial if—
- (a) its purpose is to obtain economic benefit, including profit, whether in cash or kind; or
  - (b) it is directed toward resale, exchange, provision of a service or other form of economic use or benefit.

*[Section 2 subsection (1) "Minister" deleted and substituted by BR 5 / 2011 para. 5 effective 25 February 2011]*

### Object of Act

3 The object of this Act is to facilitate Bermuda's compliance with the Convention by regulating—

- (a) trade in specimens that are, or are derived from, animals and plants that—
  - (i) are threatened with extinction or are or may be affected by trade;
  - (ii) may become so threatened if international trade in specimens of such species is not subject to strict regulation; or
  - (iii) require or are likely to require protection or the cooperation of other States in order to prevent or restrict exploitation; and
- (b) trade in specimens that are difficult to distinguish from specimens referred to in paragraph (a).

### Saving of other laws

4 (1) The provisions of this Act and any regulations made hereunder shall be in addition to, and not in derogation of, or in substitution for, any other Act.

(2) A person who is the holder of a permit or certificate issued under this Act to trade in an animal specimen or plant specimen is not, by reason only of being the holder of the permit or authority, exempt from compliance with any other law that applies to that specimen.

### Exemptions relating to trade

5 (1) This Act shall not apply—

- (a) to specimens in transit or to the trans-shipment of specimens through Bermuda while the specimens remain under the control of the Collector of Customs;

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- (b) subject to section 12 (2) and (3), to personal or household effects;
- (c) subject to section 9, to non-commercial loans, donations or exchanges between scientists and scientific institutions registered by a management authority of their State; or
- (d) subject to section 10(1) or 11(3) where appropriate, to animals bred in captivity or artificially propagated plants, that are accompanied by documentation, attesting to the captive-bred status or artificial propagation, issued by the relevant authority of the State of origin.

(2) Where the Management Authority is satisfied that a specimen was acquired before the relevant provisions of the Convention applied to that specimen and grants a pre-convention certificate to that effect in accordance with Part III, the provisions of this Act shall not apply to that specimen.

(3) The Management Authority may, in accordance with Part III, waive the requirements of this Act in relation to any specimen that forms part of a travelling zoo, circus, menagerie, plant exhibition or other travelling exhibition in the following circumstances—

- (a) the exporter or importer notifies the Management Authority of the full particulars of the specimen;
- (b) the specimen—
  - (i) was acquired before the Convention applied to it; or
  - (ii) was, or is a part of or derived from any specimen of any animal species which was bred in captivity or a plant species which was artificially propagated; and
- (c) the Management Authority is satisfied that, in the case of a living specimen, it will be so transported and cared for as to minimize damage to health, risk of injury, or cruel treatment.

(4) For the purposes of this Act, where a specimen is brought into Bermuda for the purposes of trans-shipment to another State or as part of an aircraft's stores or ship's stores and remains on board the aircraft or ship, the specimen shall not be taken to have been imported and when it leaves Bermuda, shall not be taken to have been exported from Bermuda.

### Amendment of Appendices

6 Whenever any Appendix is amended as a result of decisions of the Conference of the Parties to the Convention and no reservation in relation thereto has been entered for or in relation to Bermuda, the Appendix shall be amended in relation to Bermuda.

### Approved management programmes

7 (1) Subject to subsection (2), the Management Authority may, by order published in the Gazette, declare a management programme that is being, is proposed to be, or has

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been, carried out in Bermuda or in another State to be an approved management programme for the purposes of this Act.

(2) The Management Authority shall not declare a management programme to be an approved management programme unless, on the recommendation of the Scientific Authority—

- (a) it is satisfied that—
  - (i) there is sufficient information available concerning the biology of each species to which the management programme relates and that it takes into account the best available scientific information on the role of that species in the ecosystem in which it occurs, to enable the Management Authority to evaluate that management programme; and
  - (ii) the precautionary principle was applied in the development of the management programme;
- (b) for the purpose of permitting the import or export, as the case may be, of specimens taken, or specimens derived from specimens that have been taken, in accordance with the management programme—
  - (i) it has received and considered information relating to that programme; or
  - (ii) it has consulted with the relevant body or bodies having powers or duties under the law of any other State for the protection, conservation or management of animals or plants or both which are subject to that programme;
- (c) it is satisfied that the management programme contains measures to ensure that the taking in the wild, of any specimen—
  - (i) will not be detrimental to the survival of the species to which that specimen belongs; and
  - (ii) will be carried out at minimal risk to the continuing role of that species in the ecosystem in which it occurs, so as to maintain the species in a manner that is not likely to cause irreversible changes to, or long term deleterious effects on, the species or its habitat; and
- (d) it is satisfied that the management programme provides for adequate periodic monitoring and assessment of the effects of the taking of specimens on the habitats of—
  - (i) the species to which those specimens belong; or
  - (ii) any other species that, in the opinion of the Management Authority, are likely to be affected by it.

(3) In this Act the reference to the precautionary principle is a reference to the principle that where there are threats of damage, lack of scientific certainty shall not be used as a reason for postponing or failing to take conservation and management measures for the protection of any species or the environment.

Approval of scientific institutions and persons

8 (1) Subject to subsection (3), the Management Authority may, on the application of a scientific institution that is, or a person who is, in Bermuda or in any other State, engaged in activities relating to any specimen or species, by order published in the Gazette, declare that institution to be an approved scientific institution or that individual to be an approved person in relation to a specimen or species specified in the order.

(2) An order under subsection (1) shall have effect for such period as may be determined by the Management Authority after consultation with the Scientific Authority and specified in the order.

(3) The Management Authority shall not declare a scientific institution to be an approved scientific institution or an individual to be an approved person, unless it is satisfied as to the matters specified in subsection (4).

(4) The matters referred to in subsection (3) are as follows—

- (a) in the case of a scientific institution—
  - (i) it is owned, controlled or administered by the government of Bermuda or any other State; and
  - (ii) in any other case, subject to paragraph (d)(i), it does not engage in commercial transactions in the specimen or species specified in the order;
- (b) one of the institution's functions is, or the individual is engaged in –
  - (i) the breeding of animals, the artificial propagation of plants or the public exhibition of specimens; and
  - (ii) the carrying out of research or investigation into specimens or species for which approval is sought;
- (c) where the institution is situated, or the individual is located, in Bermuda, it is engaged in commercial transactions only in relation to specimens that are, or are derived from—
  - (i) animals and plants that were bred in captivity or artificially propagated; or
  - (ii) specimens that have been taken in accordance with an approved management programme;
- (d) where the institution is situated, or the individual is located, outside of Bermuda, the institution or the individual does not engage in commercial transactions in specimens—
  - (i) that are, or are derived from, native Bermudian animals or plants; or
  - (ii) that are specified in Appendix I, unless they are derived from animals or plants (other than native Bermudian animals or plants) that were bred in captivity or artificially propagated;

- (e) the institution or individual—
  - (i) possesses resources and qualifications that enable the undertaking of research or investigation;
  - (ii) publishes the results of its research or investigation or otherwise makes those results available to the Management Authority and the public or the government of the country in which it is situated; and
  - (iii) imports or exports specimens taken in the wild only if specimens that were bred in captivity or artificially propagated cannot be used for the purposes of the research or investigation, or public education; and
- (f) the institution or individual is suitably equipped to—
  - (i) manage, confine, care for, and where appropriate house, live specimens;
  - (ii) maintain adequate records relating to the management, breeding, mortality and disposal of specimens; and
  - (iii) produce those records when required to do so by the Management Authority.

Inter-scientific institution transfer

9 For the purposes of this Act, trade in any specimen shall be taken to be a transfer between scientific institutions if—

- (a) the exporter or the sender, as the case may be, is an approved scientific institution in relation to a class of specimens that includes that specimen;
- (b) in the case of a specimen that is a live animal or a live plant, it is not required by the exporter or the sender, as the case may be, for the purposes of breeding, artificial propagation or exhibition;
- (c) in the case of a specimen other than a specimen that is, or is derived from, a live animal that was bred in captivity or a plant that is artificially propagated, the specimen was not purchased or otherwise obtained for the purposes of trade; and
- (d) the recipient is an approved scientific institution in relation to a class of species that includes that specimen.

Breeding in captivity

10 (1) An animal specimen specified in Appendix I, bred in captivity for primarily commercial purposes, shall be deemed to be a specimen included in Appendix II.

(2) Where, in relation to the trade in an animal specimen of a species specified in Appendix II or III, the Management Authority is satisfied that the specimen was bred in captivity in Bermuda, the Management Authority shall issue a captive breeding certificate in accordance with Part III to that effect; and the certificate shall, in relation to the specimen, be in lieu of any permit required under this Act.

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(3) Where an indigenous animal specimen is bred in captivity for scientific research and scientific exchange, the genetic material of that specimen shall be the property of the Government of Bermuda.

(4) The Minister may, by regulations made under section 53, make such provisions as are considered necessary for regulating the operation of breeding in captivity.

### Artificial propagation

11 (1) For the purposes of this Act, the propagation of a live plant shall constitute artificial propagation in the following circumstances—

- (a) the plant was grown by humans from seeds, cuttings, callus tissue, spores or other propagules in controlled conditions; or
- (b) the seeds, cuttings, callus tissue, spores or other propagules are—
  - (i) established and maintained in a manner that is not detrimental to the survival in the wild of that kind of plant; and
  - (ii) managed in a manner designed to maintain the breeding stock indefinitely.

(2) In subsection (1) “controlled conditions” means the growing of a live plant in an environment that—

- (a) is manipulated by humans for the purpose of producing that kind of plant; and
- (b) includes characteristics such as weed control, irrigation, tillage, fertilization and nursery operations such as potting, bedding and protection from the weather.

(3) A plant specimen included in Appendix I which is artificially propagated for commercial purposes shall be deemed to be a specimen included in Appendix II.

(4) Where, in relation to trade in an indigenous specimen the Management Authority is satisfied that the specimen was artificially propagated in Bermuda, the Management Authority shall issue a certificate of artificial propagation in accordance with Part III to that effect; and the certificate shall in relation to the specimen, be in lieu of any permit granted under this Act.

(5) Where an indigenous specimen is artificially propagated for scientific research and scientific exchange, the genetic material of that specimen shall be the property of the Government of Bermuda.

### Export of personal or household effects

12 (1) Subject to subsections (2) and (3), the provisions of Part III shall not apply to specimens that are personal or household effects.

(2) Subsection (1) shall not apply in the following circumstances—

- (a) where any specimens of a species specified in Appendix I were acquired by the owner outside of Bermuda and are being imported; or
  - (b) where specimens of a species specified in Appendix II or III—
    - (i) were acquired by the owner outside Bermuda, in a State where removal from the wild occurred;
    - (ii) are being imported; and
    - (iii) the State referred to in sub-paragraph (i) requires the prior grant of an export permit before the exportation of any such specimens,  
unless the Management Authority is satisfied that the specimens were acquired before the provisions of the Convention applied to those specimens.
- (3) The Minister may, by order, declare that the exemption conferred by subsection (1) shall not apply to any article of personal or household effects made of specimens of a particular species specified in the order.

PART II  
ADMINISTRATION

Designation and establishment of authorities

13 (1) For the purposes of this Act, the Minister may, by order published in the Gazette—

- (a) designate a public body to be the Management Authority; and
  - (b) establish any body consisting of such members as he may, from time to time, appoint to be known as the Scientific Authority.
- (2) The Scientific Authority may regulate its own proceedings.

(3) In subsection (1), “public body” means a department or agency of Government or a statutory body or authority.

Policy directions

14 The Minister may, after consultation with the Chairman, give to the Management Authority such directions of a general character as to the policy to be followed by the Authority in the performance of its functions as appear to the Minister to be necessary in the public interest and the Authority shall give effect to the directions.

Functions of Management Authority

15 (1) The Management Authority shall—

- (a) facilitate Bermuda’s compliance with the Convention;

- (b) take such steps as are necessary for the protection, conservation and management of endangered species of animals and plants against over-exploitation through international trade;
  - (c) consult with the Scientific Authority on the scientific aspects of the implementation of the Convention;
  - (d) promote public awareness of endangered species of animals and plants and foster understanding of their importance to the conservation of the environment;
  - (e) advise the Minister on matters of policy relating to trade in endangered species of animals and plants;
  - (f) grant permits and certificates in respect of trade in endangered species of animals and plants;
  - (g) in consultation with the Scientific Authority, determine national quotas in relation to the exportation of any species where it considers such quotas justifiable having regard to the population of that species;
  - (h) in consultation with the Scientific Authority, formulate and implement or cause the formulation and implementation of a recovery and management plan for endangered species of wild fauna and flora specified in Appendix I, II or III and implement or cause the implementation of approved management programmes;
  - (i) in consultation with the Scientific Authority and any other body responsible for the protection and conservation of endangered species of wild fauna and flora specified in Appendix I, II or III, identify critical habitats for that fauna and flora;
  - (j) enter into agreements to secure the protection and conservation of animals and plants referred to in paragraph (i);
  - (k) monitor trade in a specimen or species specified in any of the Appendices; and
  - (l) perform such other functions pertaining to international trade in endangered animals and plants as may be assigned to it, from time to time, by the Minister.
- (2) The Management Authority shall—
- (a) determine, after consultation with the Scientific Authority and such Departments of Government or other bodies as it sees fit, the method of shipment, including container and other packaging requirement necessary for transport of a specimen specified in the Appendices;
  - (b) consult with the Scientific Authority regarding proposals for amendment of the Appendices; and
  - (c) prepare annual reports regarding trade in endangered species of animals and plants.

Functions of Scientific Authority

- 16 (1) The Scientific Authority shall—
- (a) advise the Management Authority on—
    - (i) whether any species is vulnerable, threatened, at risk, endangered, extirpated or extinct; and
    - (ii) matters in respect of which advice is sought by the Management Authority;
  - (b) advise the Minister on policy relating to trade in endangered animals and plants;
  - (c) recommend, initiate, carry out or support, research which, in its opinion, is relevant to any of its functions; and
  - (d) perform such other functions pertaining to trade in endangered animals and plants as may be assigned to it, from time to time, by the Minister or the Management Authority.
- (2) The Scientific Authority shall—
- (a) advise the Management Authority on whether—
    - (i) a proposed trade in a specimen will be detrimental to the survival of that species; and
    - (ii) it is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it;
  - (b) monitor the grant of export permits and the actual export of specimens;
  - (c) monitor the status of native species listed in the Appendices, if any, and export data, and recommend, if necessary, remedial measures to limit the export of specimens relating to them in order to maintain each species throughout its range at a level consistent with its role in the ecosystem in which it occurs;
  - (d) advise the Management Authority on suitable measures to be taken to limit the grant of export permits for a species where it determines that the limitation is necessary to maintain the species throughout its range at a level consistent with its role in the ecosystem in which it occurs and above the level at which that species might become eligible for inclusion in an Appendix;
  - (e) advise the Management Authority as to whether or not scientific institutions and individuals seeking approval under section 8(1) meet any established criteria;
  - (f) review all applications submitted for consideration under Article VII, paragraph 4 or 5 of the Convention and advise the Management Authority as to whether the facility concerned meets the criteria for producing specimens considered to be bred in captivity or artificially propagated; and

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- (g) review proposals to amend the Appendices submitted by parties to the Convention.

### Scientific reports

17 (1) The Scientific Authority shall cause to be prepared and transmitted to the Management Authority and the Minister an annual report on—

- (a) any specimen or species which is vulnerable, threatened, at risk, endangered, extirpated or extinct; and
- (b) the status of the endangered animals and plants specified in the Appendices.

(2) A report under subsection (1) may contain—

- (a) subject to subsection (3), a list of species in Bermuda and in other countries which are vulnerable, threatened, at risk, endangered, extirpated or extinct and the reason for arriving at the conclusions;
- (b) a description of any critical factor;
- (c) any recommendation for any species to be included in or removed from any of the Appendices; and
- (d) an assessment of any species in a range of other states.

(3) The list referred to in subsection (2) (a) shall be based on the best available scientific evidence or ecological principles, however, where little or no scientific evidence is available, the Scientific Authority may ground its reasons on the precautionary principle or other relevant information or facts.

(4) The Management Authority may accept or reject all or any part of the recommendations contained in the report.

(5) Where the Management Authority rejects any recommendation contained in a report, or any part thereof, it shall give reasons.

(6) The Minister shall cause a copy of the report, and any comments on the report, to be laid on the Table of the House of Assembly and the Senate.

## PART III

### RESTRICTION ON TRADE IN ENDANGERED ANIMALS AND PLANTS

#### Restriction on trade

18 Except under and in accordance with the provisions of this Act and any regulations made hereunder, no person shall trade in any plant specimen or animal specimen.

Application to trade in endangered specimen

19 (1) Every person who proposes to trade in any specimen of a species specified in the Appendices shall apply in the prescribed form to the Management Authority for the appropriate permit or certificate as follows—

- (a) an export permit;
- (b) an import permit;
- (c) a re-export certificate;
- (d) an introduction from the sea certificate;
- (e) a pre-Convention certificate;
- (f) a certificate of personal ownership;
- (g) a travelling-exhibition certificate;
- (h) a certificate of origin; or
- (i) a certificate of artificial propagation or captive breeding.

(2) An application under subsection (1) shall be accompanied by the fees prescribed under the Government Fees Act 1965 and any information or document required by the Management Authority.

(3) The Management Authority may in relation to an application made under subsection (1)—

- (a) grant the permit or certificate either unconditionally or subject to such conditions as it may specify; or
- (b) refuse to grant the permit or certificate.

(4) Where the Management Authority refuses to grant a permit or certificate under this section, it shall so inform the applicant in writing stating the reasons for refusal.

Export of Appendix I specimen

20 The Management Authority may grant an export permit in relation to a specimen of a species specified in Appendix I, if -

- (a) the Scientific Authority advises the Management Authority that it is satisfied that the exportation thereof will not be or is not likely to be detrimental to or contribute to trade which is detrimental to the survival of the species;
- (b) the application for the permit relates to—
  - (i) scientific research; or
  - (ii) a transfer from one scientific institution to another scientific institution; and
- (c) it is satisfied that—

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- (i) the specimen was not obtained in contravention of any law of Bermuda relating to the protection, conservation and management of animals and plant;
- (ii) any living specimen will be prepared and transported in such manner as to minimize damage to health, risk of injury, or cruel treatment;
- (iii) an import permit has been granted by a relevant authority of the State of import; and
- (iv) the circumstances concerning the exportation are exceptional.

### Import of Appendix I specimen

21 The Management Authority may grant an import permit in respect of a specimen of a species specified in Appendix I, if—

- (a) the Scientific Authority advises the Management Authority that it is satisfied that—
  - (i) the importation thereof is for purposes which are not detrimental to, and will not contribute to trade which is detrimental to, the survival of the species;
  - (ii) the proposed recipient of a living species is suitably equipped to house and care for it; and
- (b) it is satisfied that the specimen is not intended to be used for primarily commercial purposes.

### Re-export of Appendix I specimen

22 The Management Authority may grant a re-export certificate in respect of any specimen of a species specified in Appendix I, if —

- (a) the Scientific Authority advises the Management Authority that it is satisfied that the exportation thereof will not be or is not likely to be detrimental to or contribute to trade which is detrimental to the survival of the species;
- (b) the application for the permit relates to—
  - (i) scientific research; or
  - (ii) a transfer from one scientific institution to another scientific institution; and
- (c) it is satisfied that—
  - (i) the specimen was not obtained in contravention of any law of Bermuda or any other country, relating to the protection, conservation and management of animals and plant;
  - (ii) the specimen was not imported in contravention of any law of Bermuda or any other country;

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- (iii) any living specimen will be prepared and transported in such manner as to minimize damage to health, risk of injury, or cruel treatment;
- (iv) an import permit has been granted by a relevant authority of the State of import; and
- (v) the circumstances concerning the exportation are exceptional.

### Introduction from sea certificate of Appendix I specimen

23 The Management Authority may grant an introduction from the sea certificate in relation to any specimen specified in Appendix I, if—

- (a) the Scientific Authority advises the Management Authority that the introduction thereof will not be detrimental to the survival of the species; and
- (b) the Management Authority is satisfied that—
  - (i) in the case of a living specimen, the proposed taker and the proposed recipient each is suitably equipped to house and care for it; and
  - (ii) the specimen is not intended to be used for primarily commercial purposes.

### Export of Appendix II specimen

24 (1) The Management Authority may grant an export permit in respect of a specimen of a species specified in Appendix II, if—

- (a) the Scientific Authority advises the Management Authority that it is satisfied that such exportation will not be, or is not likely to be, detrimental to the survival of the species; and
- (b) the Management Authority is satisfied that—
  - (i) the specimen was not obtained in contravention of any other law of Bermuda relating to the conservation or management of animals and plants; and
  - (ii) any living specimen will be prepared and transported in such a manner as to minimize damage to health, risk of injury, or cruel treatment.

(2) The Scientific Authority shall advise the Management Authority on suitable measures to be taken to limit the grant of export permits, where the Scientific Authority determines that the export of a specimen of any species shall be limited in order to maintain the species—

- (a) throughout its range at a level consistent with its role in the ecosystem in which it occurs; and
- (b) above the level at which that species might become eligible for inclusion in Appendix I.

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### Import of Appendix II specimen

- 25 A specimen of a species specified in Appendix II, may be imported, if—
- (a) the Management Authority is satisfied that—
    - (i) the specimen will not be used for purposes which are detrimental to the survival of the species; and
    - (ii) in the case of a living specimen, the proposed recipient is suitably equipped to house and care for it; and
  - (b) the specimen is accompanied by an export permit or a re-export certificate, as the case may require, issued by a relevant authority in the State of export or re-export.

### Re-export of Appendix II specimen

- 26 The Management Authority may grant a re-export certificate in respect of any specimen specified in the Appendix II, if it is satisfied that—
- (a) the specimen was imported in accordance with the provisions of this Act; and
  - (b) any living specimen will be prepared and transported in such a manner as to minimize damage to health, risk of injury, or cruel treatment.

### Introduction from the sea of Appendix II specimen

- 27 The Management Authority may grant an introduction from the sea certificate in respect of any species specified in the Appendix II, if—
- (a) the Scientific Authority advises the Management Authority that the introduction from the sea of that species will not be detrimental to the survival of the species; and
  - (b) it is satisfied that—
    - (i) the proposed recipient of a living specimen is suitably equipped to house and care for it; and
    - (ii) any living specimen will be prepared and transported in such a manner as to minimize damage to health, risk of injury, or cruel treatment.

### Export of Appendix III specimen

- 28 (1) Where a specimen is of a species included in Appendix III in relation to Bermuda, the Management Authority may grant an export permit in respect of the any specimen, if—
- (a) the Scientific Authority advises the Management Authority that it is satisfied that the export of that species will not be or is not likely to be detrimental to the survival of the species; and
  - (b) it is satisfied that—

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- (i) the specimen was not obtained in contravention of any law relating to the conservation and management of animals and plants; and
- (ii) any living specimen will be prepared and transported in such a manner as to minimize damage to health, risk of injury, or cruel treatment.

(2) Where a specimen is of a species included in Appendix III, but not in relation to Bermuda, the Management Authority may grant a certificate of origin in respect of that specimen in accordance with section 19.

### Import of Appendix III specimen

29 A specimen of a species specified in Appendix III, may be imported, if -

- (a) the Management Authority is satisfied that—
  - (i) the specimen will not be used for purposes which are detrimental to the survival of the species; and
  - (ii) in the case of a living specimen, the proposed recipient is suitably equipped to house and care for it; and
- (b) the specimen is accompanied by -
  - (i) a certificate of origin issued by the relevant authority in the country of origin; and
  - (ii) where the specimen is being imported from a Convention State which has included the species to which the specimen belongs in Appendix III an export permit.

### Re-export of Appendix III specimen

30 (1) The Management Authority may grant a re-export certificate in respect of the re-export of any specimen specified in Appendix III, if it is satisfied that—

- (a) the specimen was imported in accordance with the provisions of this Act; and
- (b) any living specimen will be prepared and transported in such a manner as to minimize damage to health, risk of injury, or cruel treatment.

(2) In any proceedings relating to the re-export of a specimen to which this section applies, a certificate granted by the Management Authority that the specimen was processed in Bermuda or is being re-exported shall be conclusive evidence that the specimen was imported in accordance with this Act.

PART IV

TRANSFER, SUSPENSION AND REVOCATION OF PERMIT OR CERTIFICATE

Non-transferability and validity of permit or certificate

31 (1) A permit or certificate granted pursuant to this Act shall not be transferable and shall be valid for such period as is specified therein, being a period not exceeding—

- (a) six months, in the case of an import permit; and
- (b) three months, in the case of an export permit or a re-export certificate.

(2) Any copy of a permit or certificate issued by the Management Authority shall be clearly marked as a copy only and, except to the extent endorsed on it, no copy shall be used in place of the original.

Grounds for refusal to grant permit or certificate

32 The Management Authority may refuse to grant a permit or certificate under this Act—

- (a) in any case where the Scientific Authority recommends its refusal on the ground that the grant of the permit or certificate would not be in the public interest, having regard to such factors as the Scientific Authority considers relevant, including—
  - (i) the need for the protection of certain species of wild animals and plants from over-exploitation through international trade;
  - (ii) the preservation of the character of the environment, including the animals and plants; and
  - (iii) the availability of the natural environment for the enjoyment of the public;
- (b) where an application contains or is based on false or misleading representation or information which is false in a material particular;
- (c) to an individual who—
  - (i) is under the age of eighteen years; or
  - (ii) has been convicted of an offence under this Act during the period of ten years immediately preceding the date of the application; or
- (d) to a body corporate—
  - (i) in respect of which a resolution has been passed for voluntary winding up or an order has been made by a court of competent jurisdiction for its winding up;
  - (ii) if a receiver has been appointed to manage any of its assets;

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- (iii) if during the period of ten years immediately preceding the date of application, any of its directors has been convicted of an offence specified in section 39, 40, 41, 42, or 43; or
- (iv) which has been convicted of an offence under this Act during the period of five years immediately preceding the date of the application.

Restriction on grant of permit retrospectively

33 The Management Authority shall not issue a permit or certificate retrospectively.

Suspension of permit or certificate

34 (1) Subject to subsection (2,) the Management Authority may suspend a permit or certificate if—

- (a) the holder is in breach of—
  - (i) any provision of this Act or any regulations made hereunder or any other enactment providing for the protection, conservation and management of natural resources or the environment; or
  - (ii) any term or condition subject to which the permit or certificate is granted; or
- (b) the holder notifies the Management Authority in writing that he intends to cease the activities to which the permit or certificate relates for the period stated in the notice.

(2) Before suspending a permit or certificate under subsection (1), the Management Authority shall notify the holder in writing of the proposed suspension—

- (a) stating the reasons;
- (b) requiring the holder of the permit or certificate, in the case of a breach, to remedy the breach within the time specified in the notice; and
- (c) stating that the permit or certificate is to be returned within a specified time to the Management Authority.

(3) A holder of a permit or certificate who is served with a notice under subsection (2) shall, after remedying the breach which gave rise to the suspension, notify the Management Authority in writing that the breach has been remedied.

(4) The Management Authority shall, upon receipt of a notice referred to in subsection (3), cause an inspection to be carried out and if the Management Authority is satisfied that the breach has been remedied, it shall withdraw the notice of suspension.

Revocation of permit or certificate

35 The Management Authority may revoke a permit or certificate if it is satisfied that—

- (a) the application contained any false or misleading information in any material particular;

- (b) the holder has failed to remedy a breach which gave rise to the suspension of the permit or certificate under section 34, within the time specified in the notice under subsection (2) of that section; or
- (c) there has been a material change in the circumstances which existed at the time the permit or certificate was granted which would justify such revocation.

#### Appeal

36 (1) A person who is aggrieved by the decision of the Management Authority to refuse to grant a permit or certificate or to suspend or revoke a permit or certificate may appeal in writing to the Minister within twenty-eight days of the date of notification of the decision.

(2) The appeal shall set out the grounds of appeal and shall be accompanied by copies of any correspondence, documents or statements relevant to the appeal.

(3) Notice in writing of the appeal together with copies of the correspondence, documents or statements referred to in subsection (2) shall be served on the Management Authority at the time when the appeal is lodged.

(4) The Minister shall, within seven days of the receipt of the appeal under subsection (1), request the Management Authority to supply him, within fourteen days, with a statement in writing setting out the reasons for its decision.

(5) The Minister may order that any books, papers, correspondence, documents or statements, relating to the appeal which are in the possession of the appellant, the Management Authority, the Scientific Authority, or any other person, be produced at the hearing of the appeal.

- (6) The Minister shall cause all parties to the appeal to be informed by notice—
- (a) of the date of the hearing of the appeal, being a date not later than three months after the date of the notice;
  - (b) that they may appear themselves or by their attorneys at-law; and
  - (c) that they may summon witnesses in their cause.

- (7) On hearing an appeal under this section, the Minister may –
- (a) dismiss the appeal and confirm the decision of the Management Authority;
  - (b) allow the appeal and set aside the decision;
  - (c) vary the decision; or
  - (d) direct that the matter be determined afresh by the Management Authority.

(8) The Minister shall forward one copy of his decision under subsection (7) to the Management Authority and one copy to the appellant.

(9) Any person who is aggrieved by a decision of the Minister under subsection (7) may seek judicial review of the decision.

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### Registers

37 (1) The Management Authority shall keep registers which shall contain such particulars as may be prescribed.

(2) Every register referred to in subsection (1) shall be open for inspection by the public at the offices of the Management Authority during office hours, free of charge, and the Management Authority shall, on payment of the prescribed fee, cause to be made copies of any entry in any such register.

### Records

38 (1) Every person to whom a permit or certificate is granted pursuant to this Act shall keep such books, documents, records or things as may be prescribed relating to the activities to which the permit or certificate relates.

(2) Where the holder of a permit or certificate sells or otherwise transfers a specimen to which it relates, the original permit or certificate or a copy thereof shall be given to the buyer or transferee.

## PART V

### OFFENCES AND PENALTIES

#### Unlawful trade in specimen

39 Every person who trades in any specimen without a permit or certificate under this Act commits an offence and shall be liable—

- (a) on summary conviction to a fine not exceeding one million dollars or to imprisonment for a term not exceeding three years or to both; or
- (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding five years or to both.

#### Possession and other dealings in specimen

40 Every person who -

- (a) sells, exposes for sale, offers for sale, delivers, receives, transports or otherwise deals in a specimen that has been traded in a manner contrary to this Act, or
- (b) has in his possession or under his control, any specimen that has been traded in a manner contrary to this Act,

commits an offence and shall be liable on summary conviction to a fine not exceeding one million dollars or to imprisonment for a term not exceeding three year or to both.

#### False or misleading statements

41 (1) Every person who, being required by this Act to make or furnish any declaration, statement, representation or information or to produce any permit or certificate or who, for the purpose of obtaining any permit under this Act—

- (a) makes or furnishes any declaration, statement, representation or information, whether oral or in writing, which is false or misleading in a material particular; or
- (b) knowingly utters, produces, or makes use of any permit, certificate or written permission which he knows or has reason to believe is false in any material particular, which has not been given by the person by whom it purports to have been given, or which has been in any way altered or tampered with;
- (c) falsifies or unlawfully amends any information contained in a permit or certificate;
- (d) without lawful authority alters, forges, mutilates or defaces any permit or certificate; or
- (e) knowingly makes use of any permit or certificate which has been so falsified, unlawfully amended, altered, forged, mutilated or defaced,

commits an offence and shall be liable on summary conviction to a fine not exceeding one million dollars or to imprisonment for a term not exceeding three years or to both.

#### Threatening authorized officer

42 Any person who threatens, assaults, impedes or obstructs an authorized officer acting in the execution of his duties under this Act commits an offence and shall be liable on summary conviction to a fine not exceeding one million dollars or to imprisonment for a term not exceeding three years or to both.

#### Failure to keep records and documents

43 Every holder of a permit or certificate who—

- (a) fails to keep any records or other documents required by this Act or any regulations made hereunder;
- (b) fails, without reasonable excuse, to produce such books, records or other documents to an authorized officer upon being requested to do so; or
- (c) contravenes section 38(2),

commits an offence and shall be liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding three months or to both.

## PART VI ENFORCEMENT

#### General powers of entry, inspection and seizure

44 (1) An authorized officer may, for the purpose of the execution of this Act, enter at all reasonable times the business premises of any person trading in or suspected of trading

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in any specimen and inspect any book, document, permit, certificate, record or things relating thereto.

(2) An authorized officer may, during the course of an inspection pursuant to subsection (1)—

- (a) seize and detain—
  - (i) any specimen found therein; and
  - (ii) any equipment or other article found therein; and
- (b) take samples of any specimen found therein, which the authorized officer reasonably believes is being used in contravention of any provision of this Act..

Vehicle may be seized and detained

45 (1) Where an authorized officer has reasonable cause to suspect that any vehicle, aircraft, vessel, article, enclosure, container or other storage facility, device or apparatus (hereinafter referred to as “specified equipment”) is being used or has been used in the commission of an offence against this Act, the authorized officer may, with a warrant, search the specified equipment, and if the search reveals evidence that the specified equipment is being used or has been used for the commission of any offence as aforesaid, the authorized officer may seize and detain the specified equipment.

(2) Where any specified equipment is seized pursuant to this section and—

- (a) any person is convicted of an offence under this Act; and
- (b) the court is satisfied that—
  - (i) the person owns the specified equipment used in the commission of the offence;
  - (ii) the owner permitted it to be so used; or
  - (iii) the circumstances are otherwise such that it is just to do so,

the court shall, upon the application by the Director of Public Prosecutions, order the forfeiture of the specified equipment.

(3) On the application of the Director of Public Prosecutions before a magistrate, the court may make an order in accordance with subsection (4), notwithstanding that the conditions mentioned in subsection (2) have not been satisfied.

(4) The court may order the forfeiture of the specified equipment if the court is satisfied that—

- (a) the specified equipment has been abandoned; or
- (b) the circumstances in which the specified equipment was seized give reasonable cause to suspect that it was being used or has been used for the purpose of committing an offence against this Act, and it is otherwise just to do so.

Procedure regarding application for forfeiture

46 (1) Where the Director of Public Prosecutions intends to apply to the court for an order of forfeiture under section 45(3) he shall, subject to subsection (2) of this section, give to any person who, to his knowledge, was at the time of the seizure, the owner thereof, notice of the seizure and the intention to apply for forfeiture and the grounds thereof.

(2) Notice shall not be required under subsection (1) if the seizure under section 45(1) was made in the presence of the owner or his servant or agent.

(3) Where the Director of Public Prosecutions is unable to ascertain the owner of or any person having an interest in any specified equipment to which this section applies, he shall, not less than thirty days prior to the application, publish a notice in the Gazette regarding the intention to apply to a magistrate for an order for forfeiture.

(4) Any person having a claim to any specified equipment seized under this Act may appear at the hearing of the application for forfeiture and show cause why such an order should not be made.

(5) Where, on the hearing of an application for forfeiture pursuant to section 45(3), no person appears before the court to show cause as mentioned in subsection (4) of this section, the court shall presume that the specified equipment has been abandoned.

(6) If, upon the application of a person prejudiced by an order made under section 45(2) or (3), the court is satisfied that it is just in the circumstances of the case to revoke the order, the court may—

- (a) revoke such order upon such terms and conditions, if any, as it deems appropriate; and
- (b) without prejudice to the generality of paragraph (a), require such person to pay in respect of storage, maintenance, administrative expenses, security and insurance of the specified equipment, such amount as may be charged by the person in whose custody the specified equipment was kept.

(7) An application to the court under subsection (6) for the revocation of an order shall be made within thirty days of the date of the order or such longer period not exceeding six months after the date of the order as the court may allow.

Forfeiture of specimen

47 (1) Every specimen of a species in respect of which there is a conviction for an offence against this Act shall be forfeited to the Crown.

(2) Subject to subsection (3), where any specimen is forfeited under subsection (1) the court may, on the application by the Management Authority, order that the specimen be—

- (a) returned to the wild;
- (b) stored or kept in, placed under the control or management of, or donated to an approved scientific institution; or

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- (c) returned to its owner or country of origin at the expense of the owner or that State, as the case may be, or to such place as the Management Authority deems appropriate.

(3) The Management Authority may issue the appropriate permit or certificate to any person or body to facilitate compliance with an order under subsection (2).

Search warrant

48 Where a magistrate is satisfied by information on oath that there is reasonable ground for suspecting—

- (a) that any specimen to which this Act applies is in the possession or under the control of any person on any premises in contravention of the provisions of this Act or of any regulations made hereunder; or
- (b) that there is in the possession of or under the control of any person on any premises in Bermuda, any document directly or indirectly relating to or connected with any transaction or dealing in any such specimen which—
  - (i) if carried out would be an offence against this Act; or
  - (ii) relates to a transaction or dealing carried out or intended to be carried out in any place outside Bermuda which would be an offence against the provisions of any corresponding law in force in that place,

the magistrate may grant a search warrant authorizing the authorized officer named in the warrant, at any time or times within one month from the date of the warrant, to enter and search the premises and seize and detain any document or species or detain any person found therein.

PART VII

GENERAL

Marking of specimen

49 (1) The Management Authority may where it deems appropriate—

- (a) brand, label or mark any specimen; or
- (b) require any owner, importer, exporter or re-exporter to brand, label or mark any specimen or cause any specimen which is being traded to be branded, labelled or marked,

with such brand, label or mark as is capable of identifying a specimen and is designed in such a manner as to prevent the imitation thereof by unauthorized persons.

(2) In this section, a reference to the branding, labelling or marking of a plant specimen or animal specimen includes a reference to the following—

- (a) in the case of a plant—

- (i) the labelling or marking of a container in which the plant is kept or in which the plant is growing; or
  - (ii) the placement of a label or tag on the plant; and
- (b) in the case of an animal—
- (i) the implantation of a scannable device in the animal;
  - (ii) the placement of a band on any part of the animal;
  - (iii) the placement (whether by piercing or otherwise) of a tag, tattoo or ring on any part of the animal; or
  - (iv) the labelling or marking of a container in which the animal is kept.

Expired permit may serve as proof of lawful import

50 If in any proceedings any question arises as to whether a specimen is lawfully imported or is lawfully in the possession of, the holder thereof, an expired permit or certificate granted under this Act may serve as proof of the lawful domestic trade, lawful trade in or possession of the specimen to which it relates.

Protection of members of Management and Scientific Authority

51 No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Management Authority or the Scientific Authority in respect of any act done *bona fides* in pursuance or execution or intended execution of that Authority's functions under this Act.

Burden of proof

52 The burden of providing the burden of proof that the provisions of this Act do not apply or have been complied with in relation to any offence for which an accused is charged under this Act shall be on the accused.

Regulations

53 (1) Subject to this Act, the Minister may make regulations for administering this Act and for giving effect to its objects and intentions and without prejudice to the generality of the foregoing, may make regulations—

- (a) in relation to the carrying into effect of the Convention and any amendment thereto and international standards and recommended practices for the protection and conservation of endangered species of wild animals and plants;
- (b) the establishment of national and individual export quotas in respect of any species or specimen specified in the Appendices;
- (c) the certification and registration of nurseries which conduct artificial propagation of plants listed in the Appendices;
- (d) the certification and registration of facilities which conduct breeding in captivity of any animal listed in any of the Appendices; and

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- (e) prescribing—
- (i) the procedures for applications for the issue of permits or certificates;
  - (ii) the fees payable under the Government Fees Act 1965 in respect of the grant of any permit or certificate and such other service as the Management Authority may determine;
  - (iii) the manner of keeping registers, records and the contents and form of such registers and reports;
  - (iv) biological criteria and trade criteria for the inclusion of species in the Appendices; and
  - (v) any other matter required by this Act to be prescribed.

(2) Regulations made under this Act shall be subject to the negative resolution procedure.

Act applies to the Crown

54 This Act binds the Crown.

Repeal of the Endangered Animals and Plants Act 1976

55 The Endangered Animals and Plants 1976 is repealed.

[Assent Date: 20 July 2006]

[Operative Date: 29 September 2006]

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*[Amended by:*

BR 5 / 2011]