

REVISED DRAFT (2021)

MODEL LAW
On
International Trade in Wild Fauna and Flora

CITES SECRETARIAT



Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

Introduction

For the United Nations (UN) system, the rule of law is a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires measures to ensure adherence to the principles of supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency.

In a country based on the rule of law, it is law that empowers government officials to act, places limits on human actions and articulates policy in relation to international wildlife trade. International agreements like CITES are generally not self-executing, so legislation is needed to give effect to them at the national level.

Creating and adopting effective and enforceable legislation is not an easy task. Effective legislation is not just a piece of paper but the practical solution to a problem. Enforceable legislation is legislation that is realistic in terms of what can be achieved within a country's particular context and its human and financial resources.

The Parties have some guidance in the text of the Convention on what to include in their legislation. Articles I and II contain certain definitions and fundamental principles that are important to consider in national legislation. Articles III to VII of the Convention set forth the conditions under which international trade should take place as well as the exemptions and special procedures. Article VIII requires that Parties prohibit trade in specimens in violation of the Convention, penalize such trade and provide for the confiscation of specimens illegally traded or possessed; and Article IX requires that Parties designate one or more Management Authorities and one or more Scientific Authorities. Resolution Conf. 8.4 (Rev. CoP15) on *National laws for the implementation of the Convention* urges all Parties that have not adopted the appropriate measures to fully implement the Convention to do so. The Resolution further directs the Secretariat to identify Parties that do not have the necessary measures in place, and to provide technical assistance where required. The National Legislation Project (NLP) initiated through this Resolution has been the Convention's primary mechanism for encouraging and assisting Parties' legislative efforts and for monitoring progress.

The legislative provisions for implementing CITES in each Party are similar, though Parties may have different legal systems and institutional structures, national policies, culture, species in trade, or types of trade. All Parties, however, should have a solid legal foundation for regulating international trade in wild fauna and flora. It is only through legislation that is adequate, up to date and effectively enforced that CITES can really work.

Nature of the Model Law

As its name suggests, the Model Law is only a template. It provides for examples of provisions that Parties may use as inspiration for developing their own legislation. In accordance with Article XIV, Parties have the right to adopt stricter domestic measures than provided for in the Convention, e.g. by requiring permits for import of specimens of species in Appendix II, by further restricting or prohibiting export of specimens of species included in Appendix II or by restricting the application of certain exemptions provided in the Convention. Parties opting for stricter domestic measures should inform the Secretariat accordingly as recommended in Resolution Conf. 4.22 on *Proof of foreign law*. Such measures can be notified to other Parties and included in the country profile of the Party concerned (<https://cites.org/eng/parties/country-profiles>).

It is the prerogative of each Party to decide how it incorporates CITES obligations into national legislation, taking into account its needs and legal practice. In very general terms, the National Legislation Project has identified three main options:

- a) enact CITES-specific legislation (law or regulation);
- b) include a CITES chapter or CITES provisions in comprehensive wildlife, biodiversity or environment legislation; and/or
- c) amend existing provisions in various legislative texts related to wildlife, natural resources, Customs, import/export and environment;

Of these, option (a) is generally the preferred option because the scope of CITES legislation goes beyond regulating trade in native species to include all species in the Appendices, including non-native species. All of

these options involve one or more legally-binding and enforceable instruments: Constitution, parliamentary laws and subsidiary legislation in the form of implementing regulations, decrees, orders, norms or codes through which governments internalize or domesticate the requirements of the Convention at the national level.

The form or type of national legislation and the terminology used will vary according to legal traditions, administrative and governmental structures and other factors. Nevertheless, as far as possible, efforts have been made to propose model provisions that can be incorporated into national legislation with little adjustment.

The Model Law is one document in a set of legislative guidance materials prepared by the Secretariat to assist Parties in the development of effective and enforceable legislation, see in particular the [presentation on the CITES minimum requirements for national legislation](#). Such materials constitute tools which have not been formally adopted or made mandatory by the Parties. The first draft version of the Model Law was written in the 1990s in the early days of the NLP and experience gained in its application has been used to update and refine various provisions in the present draft. Various Resolutions have been amended since the previous draft of the Model Law was produced in 2015. The present draft is aimed at reflecting these amendments. Recent years have also seen an increasing focus on combatting illegal trade in wildlife *inter alia* through the adoption of several important Resolutions by the United Nations General Assembly.¹ Through a partnership with the United Nations Office for Drugs and Crime (UNODC), a Guide on drafting legislation to combat wildlife crime² was developed in 2018 as a complement to the present model law. This material as well as examples of existing legislation are available on the [webpage on National laws for the implementation of the Convention](#) on the CITES website. The increasing number of commercially exploited and managed aquatic species included in Appendix II of CITES has led to the development of a Study and a Guide in partnership with the United Nations Food and Agriculture Organization (FAO). This was published in 2020, providing several legislative options for implementing CITES through national fisheries legislation, hereafter referred to as 'FAO-CITES Legal Study and Guide'.³

Compared to the previous version, the main changes in present draft Model Law include the following:

- The definitions have been organized in two lists: The first [contains those terms that all national CITES Laws as a minimum should contain. These are from the Convention and a few key Resolutions. The second contains those terms that a Party may find useful to define depending on the types of trade involving the Party;
- A new provision on a mechanism for coordination and collaboration between authorities involved in implementation and enforcement of CITES-related provisions has been included in section 11;
- Part 4 on Conditions for international trade has been restructured to follow more closely the structure of the Convention (which is what most Parties have done in their national legislation);
- Recommendations on Introduction from the sea contained in Res. Conf. 14.6 (Rev. CoP16) have been reflected in definitions and in Part 4;
- Part 7 on offences and penalties has been expanded and a new section on confiscation and disposal of illegally traded and confiscated specimens of CITES-listed species has been included.

Legislative analysis process

It is hoped that the following explanatory paragraphs will assist Parties in analysing their own legislation and in working with the Secretariat to ensure that they have adequate and enforceable legal authority for implementing the Convention.

The four minimum requirements for adequate CITES-implementing legislation are stated in a general way in Resolution Conf. 8.4 (Rev. CoP15), but the practical implementation of each requirement involves considering and addressing several components. These components clarify what is meant by each requirement and serve as a set of criteria for determining whether the requirement is met by particular legislation.

a) Designation of national CITES authorities

In analysing the first requirement, the NLP looks at the legislative designation of both a Management Authority and a Scientific Authority responsible for the implementation of CITES in accordance with Article

¹ <https://undocs.org/en/A/RES/69/314>, <https://undocs.org/pdf?symbol=en/A/RES/71/326>, <https://undocs.org/pdf?symbol=en/A/RES/73/343>; <https://www.undocs.org/en/A/75/L.116>

² [Guide on drafting legislation to combat wildlife crime](#)

³ [Study and Guide on implementing CITES through national fisheries legislation](#)

IX, paragraph 1 of the Convention. This is different from the administrative decision communicated by the Parties when they deposit their instruments of ratification, acceptance, approval or accession in pursuance of Article IX, paragraph 2. The analysis considers the legal instrument (law, regulation, decree) that authorizes designation of both CITES authorities or expressly designates those authorities. The analysis further considers whether legislation clearly and precisely gives CITES authorities the necessary powers to carry out their responsibilities (power to grant permits and certificates or not to grant such permits and certificates, power to establish export quotas, etc.), separates the functions of each authority and provides mechanisms for coordination and communication between these bodies as well as with other government agencies with relevant competence (e.g. Customs, police, ministry responsible for foreign trade, etc.). The analysis takes into account recommendations made in Resolution Conf. 10.3 *Designation and role of the Scientific Authorities* and Resolution Conf. 18.6 *Designation and role of Management Authorities*.

b) Prohibition of trade in violation of the Convention

The second requirement encompasses a set of components laid down in Articles II, III, IV, V, VI and VII of the Convention and constitutes the core of the CITES trade regime. The analysis considers whether the legislation covers all specimens of all species (animals and plants, live and dead, and parts and derivatives) included in the three Appendices of the Convention and whether it provides for any annexes or schedules to be amended following the amendments of the Appendices adopted at each meeting of the Conference of the Parties. It further considers whether all types of transactions covered by the Convention are covered by the scope of the legislation, including exports, imports, re-exports, introduction from the sea, and transit and transshipment between Parties. The analysis determines whether there are conditions relating to: the granting of permits and certificates for all types of transactions in all CITES-listed species, or at least an express provision that subordinates the issuance of permits and certificates to the provisions of the Convention; the standardized form and validity of permits and certificates; and exemptions or special procedures allowed by the Convention. The analysis further determines whether there is a general clause prohibiting any transactions without a valid permit. The analysis considers the recommendations made in relevant Resolutions, in particular Resolution Conf. 12.3 (Rev. CoP18) *CITES permits and certificates*. A number of other Resolutions⁴ also provide important interpretations of the Convention that guide the implementation and application of various provisions of the Convention.

c) Penalization of illegal trade

The legal basis for the third requirement is stated in Article VIII, paragraph 1 (a), which also includes the possession of CITES specimens acquired in violation of the Convention. The analysis verifies that domestic legislation clearly lists the activities that are prohibited and specifies that the breach of any prohibition constitutes an offence. These include at a minimum the import, export, re-export or introduction from the sea of CITES specimens without a permit, the use of invalid or forged permits and the possession of and trade in specimens that were illegally imported or otherwise illegally acquired. It also considers the nature and level of penalties which may be imposed for violation of CITES provisions and the procedures that must be followed, including whether the penalties for serious offences are set at a level to make such offences a serious crime, i.e. conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.⁵

The analysis also verifies that the departments and agents responsible for enforcing the Convention are clearly designated by the legislation; that enforcement agents are appointed and given the necessary powers to carry out their tasks. Such powers typically include powers to search persons, baggage and other property and vehicles; powers to search premises or, where the law requires the prior grant of a search warrant by a magistrate, to apply for such a warrant; powers to request information, to inspect documents and to take samples of specimens for identification purposes; powers of arrest; and powers to seize specimens when there are grounds to believe that they are being or have been illegally imported or otherwise obtained.

Finally, given that illegal trade in CITES specimens may be sanctioned by different laws, in particular the penal code, Customs legislation or foreign trade laws, it is important to specify which specific legal

⁴ See the list of Resolutions adopted by the Conference of the Parties here: <https://cites.org/eng/res/index.php>

⁵ See UN Convention against Transnational Organized Crime, Art. 2, paragraph b, UNGA Resolution 69/314, and Resolution Conf. 11.3 Compliance and enforcement

provisions apply to CITES-related offences and penalties. The analysis also considers the recommendations made in Resolution Conf. 11.3 (Rev. CoP18) *Compliance and Enforcement*.

d) Authorization to confiscate specimens illegally traded or possessed

The legal basis for the fourth requirement is given in Article VIII, paragraph 1(b). The analysis verifies that domestic legislation provides for the confiscation or return of specimens illegally traded or illegally possessed. Other aspects taken into consideration include: which authorities may confiscate; the extent of their confiscation powers (e.g. specimens, containers, equipment and vehicles involved in an offence); the procedures that must be followed; and the decision on the storage and final disposal of confiscated specimens. These matters are closely connected with constitutional or general criminal law requirements, which vary from one country to another. Again, it is important to specify which specific legal provisions apply to the confiscation of specimens of CITES-listed species. The analysis considers the recommendations in Resolution Conf. 17.8 *Disposal of illegally traded and confiscated specimens of CITES-listed species*.

Legal drafting

The drafting of CITES-implementing legislation calls for special skills to convert the basic obligations under the Convention into practicable, effective and clear legal provisions that use appropriate CITES concepts and terminology, and follow the prevailing drafting standards as to legislative structure, form and style. This is properly the task of legal drafters.

Without early and regular input from legal drafters, efforts to develop adequate legislation may result in drafts that are incompatible with the provisions of the Convention or other legislation; may be using inappropriate language; and draw too heavily upon legislative precedents from other countries, with little consideration for their suitability under local conditions. It may often only be after the draft has been made into law that such shortcomings become evident. The Secretariat encourages Parties to involve legal drafters throughout the legislative development process and to consult with the Secretariat before the enactment of CITES-implementing legislation. Parties are also encouraged to adopt plain-language legislative texts that are easily understandable to the regulated community and the public.

Linking wildlife trade policy development and legislation

CITES-implementing legislation should not be considered as a burdensome and stand-alone obligation but rather as the necessary framework for defining and implementing national wildlife trade policies for the conservation of and sustainable trade in CITES-listed species. Legislation sets forth what citizens and enterprises are allowed to do in relation to the international trade in such species, that is, what behaviour is legal or illegal in the context of CITES.

Wildlife policy development may be an essential precursor to drafting adequate legislation. A clear policy basis facilitates the introduction of procedures and practices to ensure:

- a) coherence and predictability of the legislation;
- b) transparency of legal rights and obligations;
- c) consistency, fairness and due process in legislative application; and
- d) efficiency of management and ease of implementation.

The choice of a wildlife policy, of course, is the prerogative of each Party. What is important is for this policy choice to be made thoughtfully, in consultation with stakeholders, and to be reflected fully and accurately in legislation. Policies that discourage trade in all wild-taken specimens of animals and plants or that encourage trade in captive-bred animals or artificially propagated plants may not necessarily benefit the conservation of biodiversity.

Parties' experience in the development of strengthened CITES-implementing legislation has shown the importance of: simultaneous preparation of enabling and implementing legislation; complementary legislation governing the legal acquisition of and domestic trade in CITES specimens; policy coherence in relation to national wildlife trade policy, other biodiversity-related conventions, natural resource management, fisheries management and development policy; timely updating of legislation to incorporate amendments to the CITES

Appendices, and provision for offences related to the violation of permit or certificate conditions as well as the absence of a valid permit or certificate.

National legislation as a whole should regulate all aspects of international wildlife trade, including harvesting or production, keeping, modification, sale, transport, use and disposal.

The format for the implementation reports provides Parties with a means to report more regularly, easily and consistently on legislative development as well as the results of any assessments undertaken on the effectiveness of legislation.

National legislation provides CITES authorities with the authority they need to ensure adequate implementation of the Convention within their jurisdiction. Accordingly, they should be fully familiar with its provisions; assess its effectiveness on a regular basis; and assist in identifying and correcting any gaps or weaknesses.

Sources: Text of the Convention, relevant Resolutions of the Conference of the Parties, CoP12 Doc. 28

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- SCHEDULES

International Trade in Wild Fauna and Flora Act

An Act to implement the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) with a view to ensure that no species of wild fauna and flora becomes or remains subject to unsustainable exploitation because of international trade.

PART 1

Preliminary

1. This Act may be cited as the International Trade in Wild Fauna and Flora Act.

Note: Two sets of definitions are proposed in the following. The first [List 1] contains those terms that all national CITES Laws as a minimum should contain. These are from the Convention and a few key Resolutions. The second [List 2] contains those terms that a Party may find useful to define depending on the types of trade involving the Party.

2. (1) Definitions. In this Act:

[List 1]

"Appendices": The species covered by the Convention are listed in three Appendices, according to the degree of protection they need. Appendix I includes species threatened with extinction. Trade in specimens of these species is permitted only in exceptional circumstances. Appendix II includes species not necessarily threatened with extinction, but in which trade must be controlled in order to avoid utilization incompatible with their survival. Appendix III contains species that are protected in at least one country, which has asked other CITES Parties for assistance in controlling the trade.

"Artificially propagated": plants grown under controlled conditions from seeds, cuttings, divisions, callus tissues or other plant tissues, spores or other propagules that either are exempt from the control of the Convention or have been derived from cultivated parental stock;

"Bred in captivity": offspring, including eggs, born or otherwise produced in a controlled environment of parents that mated or otherwise transmitted their gametes in a controlled environment, as defined in Resolutions of the Conference of the Parties;

"Certificate of origin": a document that authorizes the export of specimens of species listed in Appendix III when the specimens originated in a non-listing Party.

"CITES" or "the Convention": the Convention on International Trade in Endangered Species of Wild Fauna and Flora, concluded in Washington, D.C. on 3 March 1973, as amended in Bonn on 22 June 1979 and in Gaborone on 30 April 1983.

"CITES Secretariat": the Secretariat of the Convention as referred to in Article XII of CITES;

"Conference of the Parties": the Conference of the Parties to the Convention as referred to in Article XI of CITES;

"Country of origin": the country in which a specimen has been taken in the wild or born or bred in captivity or artificially propagated, or introduced to from the sea;

"Derivative": in relation to an animal, plant or other organism, means any part, tissue or extract, of an animal, plant or other organism, whether fresh, preserved or processed, and includes any chemical compound derived from such part, tissue or extract;

"Export": the act of taking any specimen out of any place under the jurisdiction of [name of the country];

"Import": to land on or attempt to land on, bring into or introduce into, any place subject to the jurisdiction of [name of the country] other than transit and transshipment any specimen covered by this law;

"Introduction from the sea": transportation into [name of the country] by a vessel registered in [name of the country] of specimens of any species which were taken from the marine environment not under the jurisdiction of any State, including the air space above the sea and the sea-bed and subsoil beneath the sea;

Note: *If the vessel is registered in another State, the transaction is considered to be an export from the State of the vessel and not introduction from the sea. See Res. Conf. 14.6 (Rev. CoP16) on Introduction from the sea*

"International trade": any export, re-export, or import covered by the Customs regulations and introduction from the sea;

"Legal acquisition finding": a verification by the Management Authority of the State of export to determine whether specimens were acquired consistent with national laws. The applicant is responsible for providing necessary information for the Management Authority to determine that the species was legally acquired.

Note: *Additional guidance on the verification of legal acquisition and the documentation to be provided by the applicant should be prepared by the Management Authority in accordance with Res. Conf. 18.7 on Legal acquisition findings*

"Management Authority": a national administrative body designated in accordance with Article IX of CITES and section 8 below;

"Non-detriment finding" and "NDF": a finding by the Scientific Authority advising that a proposed export or introduction from the sea of Appendix I or II specimens will not be detrimental to the survival of the species and that a proposed import of an Appendix I specimen is not for purposes that would be detrimental to the survival of the species;

"Re-export": the export of any specimen that has previously been imported;

"Scientific Authority": the national scientific body designated in accordance with Article IX of CITES and section 9 below;

"Species": any species, subspecies, or geographically separate population thereof;

"Specimen":

- (i) any animal or plant, whether alive or dead or specimens of a species included in Appendices I, II and III of CITES.
- (ii) Any part or derivative which appears from an accompanying document, the packaging or a mark or label or from any other circumstances to be a part or derivative of an animal or plant of species included in Appendices I, II or III, unless such part or derivative is specifically exempted from the provisions of CITES.

“Specimens in transit or transshipment” refers to specimens that remain in Customs control and are in the process of shipment to a named consignee when any interruption in the movement arises only from the arrangements necessitated by this form of traffic;

[List 2]

“Controlled environment”: environment that is manipulated for the purpose of producing animals of a particular species, that has boundaries designed to prevent animals, eggs or gametes of the species from entering or leaving the controlled environment, and the general characteristics of which may include but are not limited to: artificial housing; waste removal; health care; protection from predators; and artificially supplied food;

“Court”: means the Magistrate Court or Summary Jurisdiction;

“Cultivated parental stock”: means the ensemble of plants grown under controlled conditions that are used for reproduction, and which must have been, to the satisfaction of the designated CITES authorities of the exporting country established in accordance with the provisions of CITES and relevant national laws and in a manner not detrimental to the survival of the species in the wild and maintained in sufficient quantities for propagation so as to minimize or eliminate the need for augmentation from the wild, with such augmentation occurring only as an exception and limited to the amount necessary to maintain the vigour and productivity of the cultivated parental stock;

“Domestic trade”: any commercial activity, including, but not limited to, offer for sale, sale, purchase and manufacture, within territory under the jurisdiction of [name of the country];

“Enforcement Officer”: a police officer, or Customs officer or any person appointed by the Minister or other competent authority;

“Export quota” and “export quota system”: a management tool set by the Management Authority, as advised by the Scientific Authority, to ensure that exports of specimens of a certain species are maintained at a level that has no detrimental effect on the population of the species;

Note: *A well-established export quota system eliminates the need for a non-detriment finding for each individual shipment of CITES specimens, provides a basis for monitoring and trade and may facilitate the issuance of export permits. See Res. Conf. 14.7 on Management of nationally established export quotas*

“Hunting trophy”: means a whole animal, or a readily recognizable part or derivative of an animal, specified on any accompanying CITES permit or certificate that i) is raw, processed or manufactured; ii) was legally obtained by the hunter for the hunter’s personal use and iii) is being traded by or on behalf of the hunter as part of the transfer from its country of origin, ultimately to the hunter’s usual State of residence;

“IATA Live Animal Regulations” means the regulations for the transport of live animals established by the International Air Transport Association;

Note: *Additional guidance is provided by IATA Perishable Cargo Regulations (for plants) and the CITES guidelines for the non-air transport of live wild animals and plants in accordance with Res. Conf. 10.21 on Transport of live specimens*

“Label”: piece of paper, card, or other material bearing the acronym ‘CITES’ and issued or approved by a Management Authority for the identification of contents as herbarium specimens, preserved, dried or embedded museum specimens or live plant material for scientific study. They shall include the name and address of the sending institution and the codes of the exporting and importing institutions over the signature of a responsible officer of that registered scientific institution;

“Minister”: the Minister responsible for matters relating to wild fauna and flora;

“Offering for sale”: offering for sale or any action that may reasonably be interpreted as such, including advertising or causing to be advertised for sale and invitation to negotiate;

“Organized criminal group”: means a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences in order to obtain, directly or indirectly, a financial or other material benefit;

“Permit or Certificate”: the official document used to authorize import, export, re-export, or introduction from the sea of specimens of species listed in any of the Appendices of CITES. It shall conform to the requirements of CITES and Resolutions of the Conference of the Parties or otherwise shall be considered invalid;

“Person”: means natural or legal person;

“Personal or household effects”: dead specimens, parts and derivatives that are the belongings of a private individual and that form or are intended to form part of his normal possessions;

“Pre-convention Certificate”: a document that confirms that a specimen was removed from the wild or born in captivity or artificially propagated before the species concerned was first included in the Appendices;

“Primarily commercial purposes”: means all purposes whose non-commercial aspects do not clearly predominate;

“Quota”: prescribed number or quantity of specimens that can be harvested, exported or otherwise used over a specific period of time;

“Readily recognizable part or derivative”: any specimen which appears from an accompanying document, the packaging or a mark or label, or from any other circumstances, to be a part or derivative of an animal or plant of a species included in the Appendices, unless such part or derivative is specifically exempted from the provisions of the Convention;

“Regional fishery body”: an organization or arrangement responsible for providing advice to its members and/or adopt international conservation and management measures for migratory fisheries within their area of competence;

“Rescue centre”: an institution designated by the Management Authority to look after the welfare of living specimens that have been seized or confiscated;

“Sale”: any form of sale, including through the Internet. For the purposes of this Act, hire, barter, leasing or exchange shall be regarded as sale; related expressions shall be similarly interpreted;

“Serious crime”: means conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty;

“Tags”: Piece of material for the identification of raw, tanned, and/or finished crocodilian skins entering international trade from the countries of origin;

“Under controlled conditions”: means in a non-natural environment that is intensively manipulated by human intervention for the purpose of plant production. General characteristics of controlled conditions may include but are not limited to tillage, fertilization, weed and pest control, irrigation, or nursery operations such as potting, bedding or protection from weather.

3. The export, re-export, import, introduction from the sea, transit and transshipment of specimens of species listed in the Schedules of this Act, other than in accordance with the provisions of CITES and this Act is prohibited.
4. Recommendations included in Resolutions and Decisions of the Conference of the Parties to CITES shall serve as source of interpretation of the provisions of the Convention and this Act.

5. The burden of proof of the legal possession of any specimen of a species included in the CITES Appendices attached to this Act lies with the possessor of that specimen.

Note: Parties might find it useful to include a part dedicated to objectives and principles of the Act. This could include but not be limited to the following:

Objective: The purpose of the present Act is to regulate international trade in species covered by the Act to ensure that no species become further threatened, endangered or extinct because of international trade;

Principles: The Act should be interpreted and applied in accordance with CITES and relevant Resolutions and other applicable national [and provincial] legislation.

PART 2

Field of Application

6. This Act applies to all animal and plant species listed in the Appendices of CITES.
7. (1) Option A: The following Schedules are attached to this Act:
- a) Schedule 1, which lists all species included in Appendix I of CITES;
 - b) Schedule 2, which lists all species included in Appendix II of CITES;
 - c) Schedule 3, which lists all species included in Appendix III of CITES;
 - d) Schedule 4: Sample permit format and instructions;
 - e) Schedule 5: Fee schedule for permits/certificates, registration and other administrative tasks.

Alternatives

Option B: The following Schedule are attached to this Act:

- a) Schedule 1, which lists all species included in Appendices I, II and III of CITES;
- b) Schedule 2: Sample permit format and instructions;
- c) Schedule 3: Fee schedule for permits/certificates, registration and other administrative tasks.

Option C: The Minister shall by [order][decree] publish the Schedules to this Act.

Option D: The official website of the Convention is the official reference for the Appendices.

- (2) Schedules to this Act shall be amended by decree of the Minister when amendments to the Appendices I, II and III are notified by the CITES Secretariat. These amendments shall be published in the official Gazette. The website of the Convention (www.cites.org) is the official reference for the Appendices and shall prevail if they are different from the Schedules to this Act.

Note: In order to be legally binding, the lists of species covered by CITES must usually be published in the Government Gazette or equivalent official publication of the Party concerned. Because the CITES Appendices are regularly amended, Parties must develop a procedure to ensure that subsequent amendments are formally published. Parties may add other schedules with native species to the Act at the condition they make the difference with the CITES documents.

- (3) The Management Authority may submit to the Secretariat for inclusion in Appendix III any species which are subject to regulation within the national jurisdiction of the country for the purpose of preventing or restricting exploitation. The Management Authority may also by notification to the Secretariat withdraw a species previously included in Appendix III.

PART 3

Authorities

Management Authority

Note: More than one Management Authority may be designated, in which case their respective responsibilities and competences should be clearly defined, and a lead Management Authority should be identified to communicate with the CITES Secretariat and other Parties.

The list below provides for the minimum duties of the Management Authority. Resolution Conf. 18.6 on Designation and role of the Management Authorities provides for detailed guidance on the functions of the Management Authority.

8.(1) *Option A.1:* The [name of the agency] is designated as the CITES Management Authority.

Option A.2: The designated CITES Management Authorities are the following: [list the agencies and the taxa for which they are responsible].

Option B: The Minister shall by [order][decree] designate the CITES Management Authority.

(2) The specific duties of the Management Authority shall include, but are not limited to the following:

- a) grant permits and certificates in accordance with the provisions of CITES and to attach to any permit or certificate any condition that it may deem necessary;
- b) communicate with the CITES Secretariat and other Parties on scientific, administrative, enforcement and other issues related to implementation of the Convention;
- c) maintain records of international trade in specimens and prepare an annual report concerning such trade, and submit this report to the CITES Secretariat by 31 October of the year following the year to which the report refers;
- d) coordinate the preparation of an annual illegal trade report, and submit it to the CITES Secretariat by 31 October of the year following the year to which the report refers;
- e) coordinate the preparation of an implementation report on legislative, regulatory and administrative measures taken to enforce the Convention, and submit this report to the CITES Secretariat the year before each meeting of the Conference of the Parties;
- f) coordinate national implementation and enforcement of the Convention and this Act and cooperate with other relevant authorities in this regard;
- g) cooperate with the authority in charge of fisheries matters [if not designated as the Management Authority] and coordinate in the execution of activities concerning international trade in commercially exploited CITES-listed aquatic species;
- h) consult with the Scientific Authority on the issuance and acceptance of CITES documents, the nature and level of trade in CITES-listed species, the setting and management of quotas, the registration of traders and production operations, the establishment of rescue centres and the preparation of proposals to amend the CITES Appendices;
- i) approve and monitor captive-breeding operations in consultation with the Scientific Authority and provide information to the CITES Secretariat for the registration of each captive-breeding operation that breeds Appendix-I animal species in captivity for commercial purposes;
- j) register with the CITES Secretariat, after consultation with the Scientific Authority, nurseries that artificially propagate specimens of Appendix I plant species for export purposes upon advice from the Scientific Authority;
- k) register with the CITES Secretariat, after consultation with the Scientific Authority scientists and scientific institutions to facilitate the scientific exchange of specimens in accordance with section 27, paragraph 5 below; assign a unique number for each registered scientific institution or scientist and update the information every five years;
- l) manage and dispose of illegally traded and confiscated specimens of CITES-listed species;
- m) designate one or more rescue centres to look after the welfare of seized and confiscated living specimens;
- n) represent [name of the country] at regional and international meetings related to CITES;
- o) provide awareness-raising, training, education and information related to the Convention;
- p) advise the Minister on action to be taken for the implementation and enforcement of CITES;
- q) intervene in litigation before a court in any matter under this Act.

Scientific Authority

Note: More than one Scientific Authority may be designated in which case their respective responsibilities and competences should be clearly defined and a lead Scientific Authority should be identified. A committee may be established as the Scientific Authority in which case the composition, secretariat and chair should be identified. Resolution Conf. 10.3 on Designation and role of the Scientific Authorities recommends that Parties designate Scientific Authorities independent from Management Authorities.

9. (1) *Option A1:* The [name of the agency] is designated as the CITES Scientific Authority.

Option A2: The designated CITES Scientific Authorities are the following: [list the agencies and the taxa for which they act as the scientific authority].

Option B: The Minister shall by [order][decree] designate a CITES Scientific Authority.

Option C: (1) A Scientific Committee is hereby established to perform the duties of the Scientific Authority under this Act. (2) The Scientific Committee shall comprise the following agencies who shall each appoint one member for the Committee [list the relevant scientific institutions] (3) The CITES Management Authority shall act as the contact point and the Secretariat for the Committee. (4) [Agency] shall serve as the chair of the Scientific Committee. (5) The Minister may by order establish the details of the Scientific Committee.

(2) The specific duties of the Scientific Authority shall include, but are not limited to the following:

- a) advise the Management Authority on whether or not a proposed export of a specimen of species listed in Appendix I or II will be detrimental to the survival of the species involved;
- b) in the case of a proposed import of a specimen of a species in Appendix I, advise the Management Authority on whether or not the purposes of the import are detrimental to the survival of the species involved;
- c) in the case of a proposed import of a live specimen of a species listed in Appendix I, advise the Management Authority whether or not it is satisfied that the proposed recipient of the specimen is suitably equipped to house and care for it;
- d) monitor the export permits granted for specimens of species listed in Appendix II, as well as the actual exports of such specimens, and advise the Management Authority of suitable measures to be taken to limit the issue of export permits when the population status of a species so requires;
- e) advise the Management Authority on whether scientists and scientific institutions seeking registration for scientific non-commercial exchange under section 27, paragraph 5, meet the standards for registration;
- f) advise the Management Authority on the disposal of confiscated or forfeited specimens;
- g) advise the Management Authority on any matter the Scientific Authority considers relevant in the sphere of species protection;
- h) perform any tasks foreseen in the Resolutions of the Conference of the Parties to CITES.

Enforcement agencies

10. (1) *Option A:* The [name of the agency or agencies] is designated as the agency(ies) with authorization to enforce this Act.

Option B: The Minister shall by order designate the agency authorized to enforce this act.

Note: More than one Enforcement Agency may be designated, in which case it is recommended that a lead Enforcement Agency should be identified. The functions and powers of the Enforcement Agencies are stipulated in the Part 7 related to Offenses and Penalties.

(2) It shall be the duty of all public authorities to cooperate fully with the Management Authority in enforcing the provisions of this Act.

Coordination Committee

11. (1) A Coordination Committee is hereby established to ensure regular coordination, collaboration and communication on matters related to the national implementation and enforcement of this Act and CITES.
- (2) The Coordination Committee is chaired by a representative of the [CITES Management Authority].
- (3) The CITES Management and Scientific Authorities and enforcement agencies designated under section 10, are permanent members of the Coordination Committee. Other agencies, such as fisheries, forestry, foreign trade, health, veterinary services and tourism, may be included as members or invited to meetings on an ad hoc basis.
- (4) The Committee meets [three] times per year or as needed and determines its own work plan and rules of procedure.

Note: A coordination committee is a mechanism to organize communication, coordination and collaboration around the implementation of the Act. See Res. Conf. 18.6, paragraph 11 encouraging the Management Authorities to establish such mechanisms.

PART 4

Conditions for international trade

Note: As far as possible, the Management Authority and enforcement authorities shall ensure that specimens of CITES-listed species pass through any formalities required for trade with a minimum of delay. To facilitate such passage, the Management Authority may designate **ports of entry and ports of exit** at which specimens must be presented for clearance. The Management Authority shall ensure that all living specimens, during any period of **transit**, holding or shipment, are properly cared for so as to minimize the risk of injury, damage to health or cruel treatment.

The IATA Live Animal Regulations and the CITES Guidelines for non-air transport of live animals and plants must be complied with in trade involving live animals.

The provisions in this section are based on Option A in section 7 above.

Trade in specimen of species included in Schedule 1

12. The export of any specimen of species included in Schedule 1 shall require the prior grant and presentation of an export permit. An export permit shall only be granted when the following conditions have been met:
 - (1) the Scientific Authority has advised that such export will not be detrimental to the survival of that species through an NDF;
 - (2) the Management Authority is satisfied that:
 - a) the specimen was not obtained in contravention of the laws for the protection of fauna and flora through a legal acquisition finding;
 - b) any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment; and
 - c) an import permit has been granted for the specimen by the Management Authority of the country of import.

13. The import of any specimen of species included in Schedule 1 shall require the prior grant and presentation of an import permit and either an export permit or a re-export certificate. An import permit shall only be granted when the following conditions have been met:
- (1) the Scientific Authority has advised that the import will be for purposes which are not detrimental to the survival of the species involved;
 - (2) the Scientific or Management Authority is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it; and
 - (3) the Management Authority is satisfied that the specimen is not to be used for primarily commercial purposes.
14. The re-export of any specimen of species included in Schedule 1 shall require the prior grant and presentation of a re-export certificate. A re-export certificate shall only be granted when the following conditions have been met:
- (1) The Management Authority is satisfied that:
 - a) the specimen was imported in accordance with the provisions of the present Act and the Convention;
 - b) any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment; and
 - c) an import permit has been granted for any living specimen.
15. The introduction from the sea of any specimen of a species included in Schedule 1 by a vessel registered in [name of the country] shall require the prior grant of a certificate from a Management Authority of the State of introduction. A certificate shall only be granted when the following conditions have been met:
- (1) The Scientific Authority has advised that the introduction will not be detrimental to the survival of the species involved through an NDF;
 - (2) The Management Authority is satisfied that:
 - a) the proposed recipient of a living specimen is suitably equipped to house and care for it; and
 - b) the specimen is not to be used for primarily commercial purposes.

Trade in specimen of species included in Schedule 2

16. The export of any specimen of species included in Schedule 2 shall require the prior grant and presentation of an export permit. An export permit shall only be granted when the following conditions have been met:
- (1) The Scientific Authority has advised that such export will not be detrimental to the survival of that species through an NDF;
 - (2) The Management Authority is satisfied that:
 - a) the specimen was not obtained in contravention of the laws for the protection of fauna and flora through a legal acquisition finding; and
 - b) any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.
17. The Scientific Authority shall monitor both the export permits granted for specimens of species included in Schedule 2 and the actual exports of such specimens. Whenever a Scientific Authority determines that the export of specimens of any such species should be limited in order to maintain that species throughout its range at a level consistent with its role in the ecosystems in which it occurs and well above the level at which that species might become eligible for inclusion in Appendix I, the Scientific Authority shall advise the appropriate Management Authority of suitable measures, including export quotas, to be taken to limit the grant of export permits for specimens of that species.

18. The import of any specimen of a species included in Schedule 2 shall require the prior presentation of either an export permit or a re-export certificate.
19. The re-export of any specimen of a species included in Schedule 2 shall require the prior grant and presentation of a re-export certificate. A re-export certificate shall only be granted when the following conditions have been met:
- (1) The Management Authority is satisfied that:
 - a) the specimen was imported in accordance with the provisions of the present Act and the Convention; and
 - b) any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.
20. The introduction from the sea of any specimen of a species included in Schedule 2 by a vessel registered in [name of the country] shall require the prior grant of a certificate from the Management Authority of the State of introduction. A certificate shall only be granted when the following conditions have been met:
- (1) the Scientific Authority of the State of introduction advises that the introduction will not be detrimental to the survival of the species involved through an NDF; and
 - (2) the Management Authority of the State of introduction is satisfied that any living specimen will be so handled as to minimize the risk of injury, damage to health or cruel treatment.

Note: *when issuing an introduction from the sea certificate or an import or export permit authorizing trade in specimens of species included in Schedule 1 or 2 taken in the marine environment not under the jurisdiction of any State, the Management Authority shall take into account whether the specimens were acquired or will be landed in a manner consistent with applicable measures under international law for the conservation and management of living marine species; or through any illegal, unreported or unregulated fishing activity, in accordance with Resolution Conf. 14.6 (Rev. CoP16) on Introduction from the sea.*

Trade in specimen of a species included in Schedule 3

21. The export of any specimen of a species included in Schedule 3 by another country shall require a certificate of origin. If the species is included in Schedule 3 by [name of country], the export shall require the prior grant and presentation of an export permit.
- (1) An export permit shall only be granted if the Management Authority is satisfied that
 - a) the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora; and
 - b) any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.
22. The import of any specimen of a species included in Schedule 3 shall require the prior presentation of a certificate of origin and, where the import is from a State which has included that species in Schedule 3, an export permit.

Permits and certificates

23. (1) To be valid, all permits and certificates must be in a form prescribed by the Management Authority and which is in conformity with the provisions of CITES and Resolutions of the Conference of the Parties to CITES. A sample permit/certificate form is attached to the present Act as Schedule 4.

- (2) To be valid, the document must comply with the following:
- a) Export permits and re-export certificates are valid for a period of maximum six months from their date of issue;
 - b) Import permits for specimens of species included in Schedule 1 are valid for a period of maximum twelve months from their date of issue;
 - c) A separate permit or certificate is required for each consignment of specimens;
 - d) The Management Authority shall cancel and retain used export permits and re-export certificates issued by authorities of foreign States and any corresponding import permits;
 - e) Permits and certificates may not be transferred to a person other than the one named on the document;
 - f) The Management Authority may require applicants for permits or certificates to provide any additional information that it may need to decide whether to issue a permit or certificate;
 - g) The Management Authority may, at its discretion, grant or refuse to grant a permit or certificate, or grant a permit or certificate subject to certain conditions;
 - h) The Management Authority may at any time revoke or modify any permit or certificate it has issued if it deems it necessary to do so, and shall do so when the permit or certificate has been issued as the result of false or misleading statements by the applicant.
- (3) Only valid export permits or certificates from exporting countries shall be accepted to authorize the import of specimens of species included in Schedules 1, 2 and 3.
24. (1) A permit or a certificate issued in violation of the law of a foreign country or in violation of the Convention or contrary to the Resolutions of the Conference of the Parties to CITES shall be considered invalid.
- (2) If any condition attached to a permit or certificate has not been complied with, it shall be considered as invalid.

PART 5

Registration and Marking

Note: Countries should register traders in specimens of species listed in Schedules 1 and 2 if it is recommended under a Resolution (e.g. sturgeon specimens). Otherwise, countries may choose whether or not to require such registration. If deemed necessary, legislation may also require the registration of traders and production operations dealing in specimens of species included in Schedules 1 and 2. The potential administrative burden of such registration, however, should be carefully considered.

Note: The Management Authority shall provide the Secretariat with appropriate information to obtain, and to maintain, the registration of each captive-breeding operation that breed Appendix-I animal species in captivity for commercial purposes.

25. (1) All persons wishing to trade in specimens of any species listed in Schedule 1 must be registered with the Management Authority.
- (2) All persons wishing to produce captive-bred animals and artificially propagated plants for commercial purposes of any species listed in Schedule 1 must be registered with the Management Authority.
- (3) All persons registered with the Management Authority for captive breeding of animals or artificial propagation of plants must keep records of their stocks and of any transactions. The Management Authority may inspect the premises and records of persons registered with the Management Authority at any time.

- 26.(1) The Minister shall determine by order:
- a) the species that are subject to special registration [e.g. sturgeon];
 - b) the format of the application for registration foreseen in section 24;
 - c) the conditions that shall be met in order to be registered;
 - d) the format and contents of the registers that contain the records foreseen in section 24.
- (2) If the conditions for registration are not complied with, the registration must be withdrawn.
- (3) Specimens of animal species listed in Appendix I that have been bred in captivity may not be traded unless they originate from a breeding operation registered by the Management Authority, and have been individually and permanently marked in a manner so as to render alteration or modification by unauthorized persons as difficult as possible. The conditions for registration are determined by the Management Authority.

Note: Additional text on marking (e.g. crocodile tagging and universal sturgeon label) should be added here. Registration may be required for the possession, trade, production and/or processing of species that are commercially valuable and may be subject to illegal trade (e.g. ivory, caviar and other sturgeon products, queen conch, etc.). Management plans may also be required. Some countries require the possession of all specimens of Appendix I-listed species, or all pre-Convention specimens, to be registered.

PART 6

Exemptions and Special Procedures

27. (1) *Transit and transshipment.* Where a specimen is in transit or transshipment through the territory of [name of the country], no additional CITES permits and certificates shall be required if the specimen remains in Customs control. The transit or transshipment must be in accordance with the conditions of transport established in this Act and the Custom Laws of [name of the country]. Enforcement authorities shall have the power to inspect a specimen in transit or transshipment to ensure that it is accompanied by the appropriate CITES documents and to seize such a specimen if that is not the case.
- (2) *Pre-Convention specimens.* Where the Management Authority is satisfied that a specimen of a CITES-listed species was acquired before the provisions of the Convention applied to that species, it may issue a pre-Convention certificate upon request. No other CITES document is required to trade in the specimen.
- (3) *Personal and household effects.* Provisions foreseen in Part 4 shall not apply to dead specimens, parts and derivatives of species listed in Schedules 1, 2 or 3 which are personal or household effects being introduced into the country, or exported or re-exported therefrom, in compliance with rules specified by the Management Authority in accordance with the text of the Convention and the Resolutions of the Conference of the Parties. This exemption shall not apply to specimens of species in Schedule 1 that were acquired by the owner abroad and brought back to [name of country] if this is his usual State of residence.

Note: The application of this exemption should comply with Article VII, paragraph 3 of the Convention and take into account Resolution Conf. 13.7 on Control of trade in personal and household effects. Resolution Conf. 10.20 on Frequent cross-border movements of personally owned live animals and Resolution Conf. 16.8 on Frequent cross-border non-commercial movements of musical instruments contain further recommendations on the application of this exemption.

- (4) *Specimens bred in captivity or artificially propagated.*

- a) Specimens of species listed in Schedule 1 that have been bred in captivity or artificially propagated for commercial purposes shall be treated in accordance with the provisions applicable to specimens of species listed in Schedule 2.
- b) If the Management Authority is satisfied that a specimen of species, included in Schedule 1, 2 or 3 has been bred in captivity or artificially propagated, the Management Authority may issue a certificate to that effect. Part 4 of the present Act does not apply for trade in specimens for which such a certificate has been lawfully issued.

Note: *This provision should mention ranching and other production systems.*

Res. Conf. 12.10 recommends that import for primarily commercial purposes of captive-bred specimens of Appendix I-species be limited to those produced by operations included in the CITES Register.

- (5) *Scientific exchange.* The documents referred in Part 4 of this Act, shall not be required in the case of non-commercial loans, donations and exchanges between scientific institutions, registered by the Management Authority in the hosting State, of herbarium specimens, other preserved or dried or embedded museum specimens, and live plant material which carry a label issued or approved by the Management Authority.

Note: *Scientists or scientific institutions seeking registration for the purpose of being issued labels for scientific exchange should meet the criteria established in Resolution Conf. 11.15 Non-commercial loan, donation or exchange of museum, herbarium, diagnostic and forensic research specimens, and other national standards or any stricter national requirements.*

- (6) *Travelling exhibitions.* The Management Authority may waive the requirement of an import or export permit or re-export certificate and allow the movement of specimens which form part of a travelling zoo, circus, menagerie, plant exhibition or other traveling exhibition, provided that
 - a) the exporter or importer registers full details of such specimens with the Management Authority;
 - b) the specimens are covered by a pre-Convention certificate or a certificate showing that they were bred in captivity or artificially propagated; and
 - c) the Management Authority is satisfied that any living specimen will be so transported and cared for as to minimize the risk of injury, damage to health or cruel treatment.

Note: *Parties may choose to provide for more detailed regulations of the conditions for the use of the exemptions and special provisions in secondary legislation (ministerial order or decree) as these are simpler to amend when relevant resolutions are amended by the CITES Conference of the Parties.*

Countries may provide for simplified procedures to issue permits and certificates pursuant to Part XIII of Resolution Conf. 12.3 (Rev. CoP18) and Annex 4. There are also more flexible procedures for trading coral and timber and certain plants covered by a phytosanitary certificate.

PART 7

Offences and Penalties

Note: *Penalties should reflect the seriousness of the offence and be adequate to act as an effective deterrent. Parties can introduce different offences in the context of species included in each Schedule or for different types of conduct with varying penalties according to the seriousness of the offence. The offences in section 28 below do not contain any intent/mental state requirements, but this may need further consideration in some jurisdictions when criminal penalties are involved. In general, such offences can result in administrative, civil and/or criminal liability and punishment. 'Person' could be defined to include*

both natural and legal persons – see the section of definitions. Some of the provisions below may be included in the penal code or similar law.

*Resolution Conf. 11.3 (Rev. CoP18) on Compliance and enforcement recommends **that illicit trafficking in protected species of wild fauna and flora involving organized criminal groups** be defined as a 'serious crime' in national legislation – see the section of definitions.*

- 28.(1) Any person who undertakes any of the following actions commits an offence:
- a) import, export, re-export, or introduce from the sea, or attempt to import, export, re-export or introduce from the sea, any specimen of a species listed in Schedule 1, 2 or 3 of this Act without a valid permit or certificate as required under this Act, or in contravention of the conditions set out in the permit or certificate;
 - b) fails to take reasonable steps to prevent a service, platform or social media to be used directly or indirectly for electronic or distance trafficking in wildlife, knowing that the service is being used in such a manner;
 - c) have in their possession or under their control, receive, transport, produce, offer, expose for sale or display to the public, purchase, buy or use any specimen of a species listed in in Schedule 1, 2 or 3 of this Act which has not been lawfully acquired;
 - d) submit a fraudulent document or make or attempt to make either oral or written false or misleading statements in, or in connection with, an application for a permit or certificate or registration;
 - e) obstruct or otherwise hinder an Enforcement Officer in the performance of their duties;
 - f) use false labelling and marking of specimens, or alter, deface or erase a mark used by the Management Authority to individually and permanently identify specimens;
 - g) accept any unauthorized personal payment or other form of personal compensation in order to see to the furtherance of any provisions under this Act;
- (2) A person who is found guilty of an offence under subsection (1) above shall be liable to a fine not exceeding [amount] and/or to imprisonment for a term not exceeding [months/years].
29. (1) Any person who intentionally takes an active part in criminal activities of an organized criminal group or who aids, abets, facilitates or counsels the commission, knowing either the aim and general activity of the organized criminal group, or its intention to commit one or more offences against this Act, commits a serious crime.
- (2) A person who is found guilty of the offence under subsection (1) above shall be liable on conviction to a fine not exceeding [amount] and to imprisonment for a term not exceeding [4] years.

Note: *In accordance with Article 5(1)(b) of the UN Transnational Organized Crime Convention, legislation combating wildlife crime should criminalize the conduct of the secondary offenders involved in wildlife crime who organize, direct, facilitate, counsel, aid and abet the commission of offences.*

30. Offences contained in this Act punishable by a maximum penalty of [x] years of imprisonment or greater are to be considered predicate offences for money laundering.
31. (1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, they, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (2) In this section “director”, in relation to a body corporate established by or under any enactment for the purpose of carrying on under public ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate.

Note: *Fine levels for corporate offenders should generally be higher than for physical persons to make the penalty proportional to the severity of the offence.*

32. A person convicted of an offence under this Act, or any regulations promulgated under this Act, for which no penalty is expressly provided is liable to a fine not exceeding [amount] or to imprisonment for a term not exceeding [months/years].
33. *Aggravating circumstances.* (1) The maximum fine and duration of imprisonment may be doubled in the following circumstances:
- a) in the case of offence involving species included in Schedule 1;
 - b) for subsequent offences specified in this Act.
- (2) Other aggravating circumstances that may be considered and warrant a higher penalty include
- a) where the offence involved the use of a prohibited or restricted weapon, device or method;
 - b) where the offence took place, in whole or in part, in a protected area;
 - c) whether any animal involved in the offence was pregnant, gravid, incubating or caring for dependent offspring at the time of the offence;
 - d) the size of any financial or other material benefit to the offender or any other person as a result of the offence;
 - e) the size of any financial or other material loss to another person caused by the offence;
 - f) where the offence was committed as part of an activity of an organized criminal group;
 - g) the leadership or managerial role of the offender in the organized criminal group;
 - h) whether the offence was part of a pattern of ongoing criminal activity;
 - i) the resources spent by enforcement agencies to investigate and bring the offender to trial;
 - j) whether the offender attempted to obstruct the administration of justice during the investigation, prosecution or sentencing of the offence;
 - k) where the offence was committed by a government official

Note: *Legislation may also take into consideration **alternatives to custodial sentences** in certain circumstances. It is not recommended to provide for alternatives to custodial sentences for offenses involving species included in Appendix I. With regard to offences involving legal persons the following alternative sentences may be considered in the legislation: legal person ordered dissolved or excluded from public bidding or entitlement to public benefits or aid disqualified or prohibited from participating in public procurement, offender disqualified from creating another legal person.*

In determining the appropriate fine in a given case, courts should consider, if possible, the value of the specimens involved in the offence the financial or material benefit obtained by the offender and the damage to or loss of any specimen or ecosystem. In cases of trafficking of live animals, the cost of rehabilitating any specimens involved should also be taken into consideration. It is recommended to establish sentencing guidelines for crimes involving wildlife.

Additional general crimes that could be considered in prosecution include fraud, conspiracy, smuggling, money laundering and racketeering or organized crime.

*Additional specific **lists of aggravating circumstances** can be added for particular offences including where the offence caused a serious impact on a species or the environment where the offence involves a large number of specimens or in case of particular cruelty during transportation to an animal involved in the offence. **Mitigating circumstances** may include low quantity and/or value of the specimens involved in the offence, no prior criminal record, the age of the offender as well their willingness to cooperate with the authorities in the investigation.*

*In addition to any penalty imposed, a court may require **compensation** from a convicted offender or prohibit a convicted offender from possessing certain species or trading in or producing such species for a certain period of time.*

Enforcement Powers

Note: Given the potentially large number of government agencies and other bodies that may be involved in the investigation of CITES-related offences, Parties should ensure that the respective mandates of each agency involved in preventing, detecting and investigating this kind of offences are clearly set out in the legislation, and should establish **procedures and responsibilities for inter-agency cooperation**. This section should provide for entry, evidence collection, interview/interrogation, search, sampling, seizure, arrest and confiscation – generally in that order.

34. (1) If an Enforcement Officer is satisfied that there is reasonable evidence of an offence, they may detain the person suspected and seize any items related to the suspected offence.
- (2) An Enforcement Officer may:
- a) stop, search and arrest a person without warrant, if they have reasonable grounds to suspect that a person committed an offence under this Act;
 - b) enter upon/search/open any premises, container, baggage, parcel, package, vehicles or vessels if they reasonably suspect that a person detains a specimen in violation of the provisions of this Act;
 - c) seize and retain any specimens that are not accompanied by the permit or certificate required by this Act;
 - d) seize any item used for, or in relation to, the commission of any offence under this Act including vehicle, container, cage, equipment, book, record, document or other article which they reasonably suspect are the object of or evidence of an offence under this Law;
 - e) question witnesses, suspected offenders and other persons of interest;
 - f) examine what they reasonably suspect to be a specimen transported, acquired or traded in violation of the provisions of this Act;
 - g) examine any book, records, document or computer system held apparently relating to specimens referred to in paragraphs (b) and (c) of this subsection;
 - h) access bank, financial and telecommunication records;
 - i) instruct any person to afford such assistance as is reasonably required to interpret or extract relevant information from such book, record, document or computer system; and
 - j) manage crime scenes, including taking photographs, samples or making audio-visual recordings of a thing or place suspected of being involved in the commission of an offence.
- (3) Where the enforcement agency is investigating an offence under Section 29 of this Act, the Enforcement Officer has additional powers to:
- a) access telecommunications records;
 - b) use special investigative techniques, such as wiretapping, controlled delivery and under-cover investigations;
 - c) coordinate joint investigations and exchange information with foreign law enforcement agencies
35. Provisions on mutual legal assistance contained in [insert national legislation on mutual legal assistance] and in any bilateral or multilateral treaty to which [name of the country] is a party shall apply to investigations, prosecutions and judicial proceedings in relation to the offences established under this Act.

Note: It is recommended that domestic legal systems include special investigative techniques used for gathering information for the purpose of detecting and investigating crimes and suspects in a discrete way (e.g. controlled deliveries, electronic surveillance).

Confiscation and disposal of confiscated specimens

36. (1) In all cases, the specimens that are the subject of an offence shall be confiscated.

- (2) When a person is convicted of an offence against this Act, any specimen, cage, container, boat, aeroplane, vehicle, or other article and equipment in respect of or by means of which the offence was committed is seized and forfeited to the State. Such forfeiture may be in addition to any other penalty to which such contravention applies.
 - (3) When a specimen is seized without identification of its owner, that specimen and any equipment in respect of or by means of which the offence was committed is seized and forfeited to the State.
 - (4) The Officer notifies as soon as possible the Management Authority of the seized or confiscated specimens and communicates all relevant information, documents and data on the case. The Management Authority notifies the Management of the State from which the specimens were consigned of the violation and of any enforcement actions taken concerning these specimens.
37. Expenses incurred as a result of seizure, including custody costs, the costs of transporting and disposing of specimens or of maintaining live animals and plants during the time of seizure shall be recoverable from the offender if known.

Note: *This section should clearly specify the authority responsible for the disposal of confiscated live or dead specimens, as well as disposal options such as, the maintain in captivity, the return in the wild, or euthanasia/destruction, or sale, according to Article VIII, paragraph 4 of the Convention and Resolution Conf. 17.8 on Disposal of illegally traded and confiscated specimens of CITES-listed species. The Resolution recommends that when specimens are exported or re-exported in violation of the Convention, importing Parties consider that the seizure and confiscation of such specimens are generally preferable to the definitive refusal of the import of the specimen.*

38. The specimens confiscated according to the provisions of this Act, shall be disposed of in accordance with the following provisions. If the Court ordering the confiscation has not decided on the disposal of the specimen, the Management Authority shall, in consultation with the Scientific Authority, decide upon the final disposal.
39. Where a living specimen is confiscated the specimen shall be entrusted to the Management Authority, the Management Authority shall, after consultation with the State of export and the Scientific Authority;
- a) return the specimen to that State, if possible, for release into the wild;
 - b) place the specimen in a rescue centre, sanctuary or such other place as the Management Authority deems appropriate; or
 - c) dispose of the animal in another appropriate way.
40. (1) Where a dead specimen (including parts or derivatives) is confiscated, the specimen shall be entrusted to a Management Authority.
- (2) The Management Authority shall take all appropriate measures to dispose of confiscated and accumulated dead specimens of species in Schedule 1, including parts and derivatives, only for scientific, educational, enforcement or identification purposes, and save in storage or destroy specimens whose disposal for these purposes is not practicable.
 - (3) Confiscated dead specimens, including parts and derivatives, of species other than Schedule 1 may be destroyed, sold at public auction or disposed of in another manner that achieves the purposes of this Act. Steps must be taken to ensure that the offender does not receive any gain from the disposal.
 - (4) The Management Authority must maintain records on the seizure and confiscation of specimens including the decision on their final disposal and include this information in the annual illegal trade reports to be prepared and submitted to the Secretariat.

Note: *Resolution Conf. 17.8 confirms that Parties have the right to allow - or not to allow - the sale of confiscated dead specimens, including parts and derivatives, of **Appendix-II and -III species**, taking into*

account the need for measures necessary to ensure such specimens are not re-entered into illegal trade.

PART 8

Incentives and Financial Provisions

41. (1) Any expenses incurred by any Government department in connection with this Act shall be defrayed out of money provided by Parliament.
- (2) There shall be paid out of money provided by Parliament any increase attributable to this Act in the sums so payable under any other Act.
42. The Management Authority may charge a fee, at a rate set by the Government and set out in Schedule 5 of the present Act, for the processing of applications for permits and certificates and for the issue of permits and certificates.
43. The Minister shall establish a special fund to be used only for the conservation of wildlife and the implementation and enforcement of CITES and of this Act, including the establishment and management of rescue centres referred to in section 8. Any fee charged under Part 4, as well as any voluntary contribution by individuals or organizations, shall be paid to the fund.

PART 9

General

Note: *The effect of the Act on other legislation (e.g. amendment or repeal) should be indicated in this section.*

44. Nothing in the present Act shall restrict the provisions of [Act XX and XX].
45. (1) This Act is applicable within the claimed jurisdiction of the courts of [name of the country].
- (2) Anyone and any representative of the Ministry may take appropriate action in the courts to enforce the provisions of this Act.
46. The Minister may by Statutory Instrument make additional orders or regulations to provide for the application or improved application of the provisions of this Act.

SCHEDULES

SCHEDULE 1

Schedule 1 shall list all animal and plant species included in Appendix I of CITES.

SCHEDULE 2

Schedule 2 shall list all animal and plant species included in Appendix II of CITES.

SCHEDULE 3

Schedule 3 shall list all animal and plant species included in Appendix III of CITES.

SCHEDULE 4

Sample permit format and instructions

SCHEDULE 5

Fee schedule for permits/certificates, registration and other administrative tasks

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