

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

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 that which is realistic in terms of what can be achieved within a country's particular context and its human or financial resources.

The Parties have some guidance on what to include in their legislation. Articles III to VII of the Convention set forth the conditions under which trade should take place. Article IX requires that Parties designate a Management Authority and a Scientific Authority. Article VIII requires that Parties prohibit trade in specimens in violation of the Convention, and penalize such trade and allow for confiscation of specimens illegally traded or possessed. Resolution Conf. 8.4 urges all Parties that have not adopted the appropriate measures to fully implement the Convention to do so, and the Resolution 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 initiated through this Resolution has been the Convention's primary mechanism for maintaining attention on this important subject, and for encouraging Parties' legislative efforts.

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

Nature of the Model Law

As its name suggests, the Model Law is only a template.

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 broad terms, the National Legislation Project has identified three main options:

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

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 comply with the requirements of the Convention.

The form 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 minimal 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 also legislative checklist, annotated legislative checklist, drafters' questionnaire, legislative analysis format, etc.). Such materials constitute informal tools which have not been formally adopted or made mandatory by the Parties. A draft version of the Model Law was written in 1990s and experience gained in its application has now been used to update and refine various provisions. The resulting text is reproduced below.

Legislative analysis process

It is hoped that the following explanatory paragraphs will assist Parties in analysing their own legislation and 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, but the practical implementation of each requirement actually 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 IX, paragraph 1 of the Convention. This is different from the simple 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. For example, the legislation of some Parties makes no provision for the designation of a Scientific Authority. 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, 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.).

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 as necessary. It further considers whether all types of transactions are covered, including exports, imports, re-exports, introduction from the sea, and transit and transhipment between Parties and non 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.

c) Penalization of illegal trade

The legal basis for the third requirement is stated in Article VIII, paragraph 1 (a), which includes also 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 or export 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 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.

The analysis verifies also that the departments and agents responsible for enforcing the Convention are clearly designated by the legislation and 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 provisions apply to CITES-related offences and penalties.

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 possessed. Other aspects taken into consideration are: 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 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.

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; use inappropriate language; and draw heavily upon legislative precedents from other countries, with little consideration for their suitability under local conditions. It is only after the draft has been made law that the 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 also are 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 seen 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 non-detrimental trade in all 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 is 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. The CITES Secretariat is gathering information on different wildlife trade policies with a view to providing assistance in the development and implementation of policies that support conservation efforts effectively.

[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, 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 biennial 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.]

Act Number XX of 200X**International Trade in Wild Fauna and Flora Act**

An Act to implement the detailed 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**.

2. (1) *Definitions*. In this Act:

"Appendices": The species covered by CITES 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. Changes to Appendix III follow a distinct procedure from changes to Appendices I and II, as each Party's is entitled to make unilateral amendments to it.

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

"Bred in captivity": refers only to 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": These documents allow the export of specimens of species listed in Appendix III when the specimens originated in a non-listing country.

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

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

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

"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;

"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 from the sea;

"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;

"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;

"Domestic trade": any commercial activity, including, but not limited to, sale, purchase and manufacture, within territory under the jurisdiction of (name of the country)

"Enforcement Officer": means a police officer, or customs officer or any person appointed by the Minister with authorization to enforce this Act;

"Export": means the act of taking any specimen out of any place under the jurisdiction of (name of the country);

"Hunting trophy": means any horn, ivory, tooth, tusk, claw, hoof, hide, skin, hair, feather, egg or other durable portion whatsoever of any animal, whether processed or not, which is recognizable as a durable portion of such animal;

"Import": means 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 transhipment any specimen of species included in the Appendices of CITES;

"Introduction from the sea" means transportation into (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;

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

"Invasive alien species": species introduced deliberately or unintentionally outside their natural habitats where they have the ability to establish themselves, invade, outcompete natives and take over the new environments;

"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;

"Legal acquisition finding": A finding by the Management Authority of the State of export determining whether specimens were acquired consistent with national laws. The applicant is

responsible for providing sufficient information to show that specimen was legally acquired.

"Management Authority": a national administrative body designated in accordance with Article IX, paragraph 1(a), of CITES;

"Non-detriment finding": 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;

"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;

"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;

"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": The pre-convention date for a specimen may vary depending on when a Party joined CITES or on a country's stricter national legislation.

"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" include 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;

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

"Rescue Centre": a centre as defined in Article VIII, paragraph 5, of CITES;

"Sale": any form of sale. For the purposes of this Act, hire, barter or exchange shall be regarded as sale; related expressions shall be similarly interpreted;

"Scientific Authority": a national scientific body designated in accordance with Article IX of CITES;

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

"Specimen":

(i) any animal or plant, whether alive or dead of 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 the in Appendices I, II and III, unless such part or derivative is specifically exempted from

the provisions of CITES.

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

“Transit”: the transit procedures as defined by the customs regulations of (name of the country);

“Transhipment”: the transhipment procedures as defined by the customs regulations of (name of the country);

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

“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; and

3. The export, re-export, import, introduction from the sea, transit and transhipment 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.

PART 2 **Field of Application**

6. This Act applies to all animal and plant species listed in the Appendices of CITES.

7. (1) Option 1: 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;

7. (1) Option 2: The following Schedule is attached to this Act:

- (a) Schedule 1, which lists all species included in Appendices I, II and III of CITES;

Option 3: The Minister shall by order publish the Schedules to this Act.

(2) Schedule (s) to this Act are automatically amended when amendments to Appendices I,II or III of CITES enter into force. These amendments shall be published in the Gazette as soon as possible after their adoption by the Conference of the Parties. The official website of the Convention is the official reference for the Appendices.

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, however, Parties should develop a procedure to ensure that subsequent amendments are formally published. Countries might add other schedules with native species at the condition they make the difference with the CITES documents.

(3) The Management Authority has the right to add or delete any species from Appendix III when the species occurs within the national jurisdiction of the country.

PART 3 Authorities

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

Option B: The Minister shall by order designate a CITES Management Authority.

Note: *More than one Management Authority may be designated, in which case a lead Management Authority should be identified.*

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

- a) to grant permits and certificates in accordance with the provisions of CITES and to attach to any permit or certificate any condition that it may judge necessary;
- b) to communicate with the Secretariat and other countries on scientific, administrative, enforcement and other issues related to implementation of the Convention;
- c) to 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) to prepare a biennial report on legislative, regulatory and administrative measures taken to enforce the Convention, and to submit this report to the CITES Secretariat by 31 October of the year following the two-year period to which the report refers;
- e) to coordinate national implementation and enforcement of the Convention and this Act and to co-operate with other relevant authorities in this regard;
- f) to 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;
- g) to represent [name of the country] at national and international meetings related to CITES;
- h) to provide awareness-raising, training, education and information related to the Convention;
- i) to advise the Minister on action to be taken for the implementation and enforcement of CITES;
- j) to designate one or more Rescue Centres for seized and confiscated living specimens
- k) to intervene in litigation before a court in any matter under this Act.

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

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

Note: *More than one Scientific Authority may be designated, in which case a lead Scientific Authority should be identified.*

(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 the disposal of confiscated or forfeited specimens;
- f) advise the Management Authority on any matter the Scientific Authority considers relevant in the sphere of species protection;
- g) perform any tasks foreseen in the Resolutions of the Conference of the Parties to CITES.

10. (1) Option A: The [name of the agency] is designated as the agency 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 a lead Enforcement Agency should be identified. The functions and powers of the Enforcement Agencies are stipulated in the Part regarding Infractions and Penalties.*

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

PART 4

Conditions for international trade

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.

Export

11. The export of any specimen of species included in Appendices I and II requires the prior grant and presentation of an export permit.

The export of any specimen of species included in Appendix III requires the prior grant and presentation of an export permit, if [name of country or dependent territory] listed the species in Appendix III, or a certificate of origin.

An export permit shall only be granted if the following conditions are met:

- (a) the Management Authority must be satisfied that the specimen concerned has been legally acquired;
- (b) the Management Authority is satisfied that any living specimen will be prepared and shipped in accordance with the most recent edition of the Live Animals Regulations of the International Air Transport Association, regardless of the mode of transport, so as to minimize the risk of injury, damage to health or cruel treatment;
- (c) in the case of a specimen of a species listed in Appendices I and II, the Scientific Authority has made a non-detiment finding and advised the Management Authority accordingly.

Note: *Non-detiment findings should generally be made on a shipment-by-shipment basis, unless the Scientific Authority has set an annual export quota for a particular species which is based on a broader non-detiment finding.*

- (d) in the case of specimens of species listed in Appendix I, an import permit has been granted by the competent authority of the country of destination

Import

12. The import of any specimen of species included in Appendix I requires the prior grant and presentation of an import permit and either an export permit or a re-export certificate.

An import permit should only be granted if the following conditions are met:

- (a) the Scientific Authority has advised that the import will be for purposes which are not detrimental to the survival of the species and is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it;
- (b) the Management Authority is satisfied that the specimen concerned is not to be used primarily

for commercial purposes;

(c) the import of any specimen of species included in Appendix II requires the prior presentation of either an export permit or a re-export certificate.

(d) the import of any specimen of species included in Appendix III requires the prior presentation of a certificate of origin or an export permit, where the import is from a State which has included the species in Appendix III or a certificate granted by the State of re-export that the specimen was processed or is being re-exported to.

Re-export

13. The re-export of any specimen of species included in Appendices I and II requires the prior grant and presentation of a re-export certificate.

A re-export certificate shall only be granted when the following conditions are met:

(a) the Management Authority is satisfied that any specimen to be re-exported was imported in accordance with the provisions of this Act and of CITES;

(b) the Management Authority is satisfied that any living specimen will be prepared and shipped in conformity with the most recent edition of the Live Animals Regulations of the International Air Transport Association, regardless of the mode of transport, so as to minimize the risk of injury, damage to health or cruel treatment;

(c) in the case of any living specimen of species listed in Appendix I, the Management Authority is satisfied that an import permit has been granted

Introduction from the sea

14. The introduction from the sea of a specimen of a species included in Appendices I and II requires the prior grant and presentation of a certificate of introduction from the sea.

A certificate of introduction from the sea shall only be granted when the following conditions have been met:

(a) the Scientific Authority advises that the introduction of any specimen will not be detrimental to the survival of the species;

(b) the Management Authority is satisfied that any specimen of a species listed in Appendix I is not to be used for primarily commercial purposes and that the proposed recipient of any living specimen is suitably equipped to house and care for it;

(c) the Management Authority is satisfied that any living specimen of a species listed in Appendix II will be so handled as to minimize the risk of injury, damage to health or cruel treatment.

Permits and certificates

15. 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 format is attached as Schedule 4.

(a) Export permits and re-export certificates are valid for a period of six months from their date of

issue.

(b) Import permits for specimens of species included in Appendix I are valid for a period of 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.

(i) Only valid export permits, re-export certificates and certificates of origin from exporting countries shall be accepted to authorize the import of specimens of species included in Appendices I, II and III.

16. (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

17. (1) All persons wishing to trade in specimens of any species listed in Appendix I must be registered with the Management Authority. [Countries should register traders in specimens of species listed in Appendix II and III if it is recommended under a Resolution (e.g. sturgeon specimens). Otherwise, countries may choose whether to require such registration.]

Note: If deemed necessary, legislation may also require the registration of traders and production operations dealing in specimens of Appendix II and III listed species. The potential administrative burden of such registration, however, should be carefully considered.

(2) All persons wishing to produce captive bred animals and artificially propagated plants for commercial trade purposes of any species listed in Appendix I must be registered with the Management Authority. [Countries should require the registration of producers of species listed in Appendices II and III if it is recommended under a Resolution. Otherwise, countries may choose whether to require such registration.]

(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.

[addressed in enforcement section]

18. (1) The Minister shall determine by Order:

- a. the Appendix II or III-listed species that are subject to special registration [e.g. sturgeon]
 - a. the format of the application for registration foreseen in section 17;
 - b. the conditions that shall be met in order to be registered;
 - c. the format and contents of the registers that contain the records foreseen in section 17.

(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.

[Additional text on marking (e.g. crocodile tagging and universal sturgeon label) should be added here.]

Note: Registration may be required for the possession, trade, production and/or processing of species that are commercially valuable and 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

19. (1) *Transit and transhipment.* Where a specimen is in transit or transhipment through (name of the country), no additional CITES permits and certificates shall be required. In all cases, the transit or transhipment must be in accordance with the conditions of transport lay down 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 transhipment 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.* Where the Management Authority is satisfied that a specimen of a CITES-listed species was acquired before the provisions of the Convention became applicable to that species, it shall 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 to 2 which are personal or household effects being introduced into the (name of 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. [need to align this

with Resolution Conf. 13.7 and to explain some more about tourist specimens, hunting trophies and personal pets.]

(4) *Specimens born and bred in captivity or artificially propagated.* Specimens of species listed in schedule 1 that have been born and bred in captivity or artificially propagated shall be treated in accordance with the provisions applicable to specimens of species listed in Schedule 2. [need to mention ranching and other production systems]

(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, 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.

(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 traveling zoo, circus, menagerie, plant exhibition or other traveling exhibition, provided that the exporter or importer registers full details of such specimens with the Management Authority, the specimens are covered by a pre-Convention certificate or a certificate showing that they were bred in captivity or artificially propagated and 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. [check this against Resolution Conf. 12.3 (Rev. CoP13)]

Note: Countries may provide for simplified procedures to issue permits and certificates pursuant to Part XII of Resolution Conf. 12.3 (Rev. CoP13) 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

The offences below do not contain any intent requirement, but this may need further consideration in some jurisdictions if criminal penalties are involved. In general, such offences can result in administrative, civil or criminal liability and punishment. 'Person' could be defined somewhere in the Act to include both natural and legal persons.]

20. (1) It is an offence under this Act to 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 the Schedules without a valid permit or certificate.

Note: This should cover circumstances involving a forged or invalid document or one that has been modified by anyone other than the Management Authority. Separate offences could be provided for misuse of a document or failure to comply with the conditions of a permit or certificate. There could also be offences for shipments in violation of IATA live animal regulations.

(2) A person who is found guilty of the offence under subsection (1) above shall be liable on summary conviction to a fine not exceeding [a multiple of the value of the specimens or a monthly or daily salary level] and to imprisonment for a term not exceeding five years?... months (years).

21. (1) It is an offence under this Act for any person to have in his or her possession or under his or her control, or to offer or expose for sale or display to the public, any specimen of a species listed in the Appendices which was not legally acquired.

(2) A person who without reasonable excuse fails to comply with the requirements of subsection (1) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding.... and to imprisonment for a term not exceeding.... months (years).

22. (1) It is an offence under this Act to 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. [Note: There may also be a general criminal offence for false statement. Additional general crimes that could be considered in prosecution include fraud, conspiracy, smuggling, money laundering and racketeering or organized crime,]

(2) A person who is found guilty of an offence under subsection (1) above shall be liable on summary conviction to a fine not exceeding.... and to imprisonment for a term not exceeding.... months (years).

23. (1) It is an offence under this Act to obstruct or otherwise hinder an Officer in the performance of his or her duties.

(2) A person who is found guilty of the offence under subsection (1) above shall be liable on summary conviction to a fine not exceeding.... and to imprisonment for a term not exceeding.... months (years).

[It is an offence under this Act for an enforcement officer to accept any unauthorized personal payment or other form of personal compensation in order to see to the furtherance of any provisions under this Act.]

24. (1) It is an offence under this Act for any unauthorised person to alter, deface or erase a mark used by the Management Authority to individually and permanently identify specimens.

(2) A person who is found guilty of the offence under subsection (1) above shall be liable on summary conviction to a fine not exceeding.... and to imprisonment for a term not exceeding.... months (years).

25. The maximum fine and duration of imprisonment are doubled in the case of offence involving species included in Appendix I .

26. The maximum fine and duration of imprisonment are doubled for subsequent offences specified in sections 24,25,26,27,28

27. (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, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly. [fine levels for corporate offenders should generally be higher]

(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.

28. 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 \$ ____ or to imprisonment for a term not exceeding ____ months.

29. 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.

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

[A provision could be added on calculating the value of certain species or the amount of environmental harm done.]

Enforcement Powers

[This section should provide for entry, evidence collection, interview/interrogation, search, sampling, seizure, arrest and confiscation – generally in that order.]

30. (1) If an Officer is satisfied that there is reasonable evidence of an offence, he or she may detain the person suspected and seize any items related to the suspected offence.

(2) An Officer may:

- (a) Seize anything which he or she reasonably suspects is the object of or evidence of an offence.
- (b) Enter premises or a vehicle he or she reasonably suspects detain a specimen in violation of the provisions of this Act [includes seaports, airports and free ports – should be possible at any time and not just during daylight hours];
- (c) Examine what he reasonably suspects to be a specimen transported, acquired or traded in violation of the provisions of this Act;
- (d) Examine any records held apparently relating to specimens referred to in paragraphs (a) and (b) of this subsection.
- (e) Take photos or samples

31. (1) In all cases, the specimens that are the subject of an offence shall be confiscated. [Note: Some countries provide for administrative as well as judicial confiscation. Not all countries allow mandatory confiscation. Some countries provide a process under which an individual may seek the return of a specimen or item.]

(2) When a person is convicted of an offence against this Act, any cage, container, boat, aeroplane, vehicle, or other article and equipment in respect of or by means of which the offence was committed is forfeited to the State. Such forfeiture may be in addition to any other penalty to which such contravention applies.

(3) If a person prosecuted for an offence is acquitted, the court may nonetheless order the specimens concerned to be confiscated.

32. The specimens confiscated according to the provisions of this Act, remain the property of the Management Authority, which in consultation with the Scientific Authority, will decide upon their final disposal.

[Note: The term 'seizure' generally refers to the temporary taking of a specimen by a law enforcement officer whereas the terms 'confiscation' and 'forfeiture' generally refer to the permanent taking of a specimen pursuant to a court order.]

Disposal of confiscated specimens

[This section needs elaboration. Rescue centers could be mentioned here.]

**PART 8
Incentives and Financial Provisions**

33. (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.

34. The Management Authority may charge a fee, at a rate set by the Government, for the processing of applications for permits and certificates and for the issue of permits and certificates.

35. 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 (e). 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**

36. Nothing in the present Act shall restrict the provisions of any other Act. [but its effect on other legislation (e.g. amendment or repeal) should be indicated.]

37. (1) This Act is applicable within the claimed jurisdiction of the courts of (name of the country)

(2) Anyone may take appropriate action in the courts to enforce the provisions of this Act. [is this a citizen suit provision?]

38. The Minister may by Statutory Instrument make additional orders or regulations to provide for improved application of the provisions of this Act.

SCHEDULE 1

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

SCHEDULE 2

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

SCHEDULE 3

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

SCHEDULE 4

Sample permit format and instructions

SCHEDULE 5

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