



## FALKLAND ISLANDS

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### Endangered Species Protection Ordinance 2015

(ORDINANCE No. 13 OF 2015)

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## FALKLAND ISLANDS

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### Endangered Species Protection Ordinance 2015

AN ORDINANCE To repeal and re-enact the Endangered Species Protection Ordinance 2003; to incorporate into the written law of the Falkland Islands the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and for connected purposes.

*[DATE OF COMMENCEMENT: 24 DECEMBER 2015]*

#### PART 1 PRELIMINARY

##### 1 Title and commencement

This Ordinance is the Endangered Species Protection Ordinance 2015 and comes into force on publication in the Gazette.

##### 2 Interpretation

(1) In this Ordinance, unless the context otherwise requires-

**"Appendix I, Appendix II, Appendix III or Appendix IV"** means the appendices to CITES as amended from time to time;

**"CITES"** means the Convention on International Trade in Endangered Species of Wild Fauna and Flora that was concluded at Washington D.C. on 3 March 1973, and references to any particular provision of CITES are references to that provision as it appears in the version of CITES, as in force at the relevant time, that is published in the Treaty Series issued by Her Majesty's Stationery Office in the United Kingdom);

**"competent authority"** means, as may be appropriate in accordance with CITES, the Management Authority or the Scientific Authority of a Party to which the Falkland Islands is importing or exporting from other than the Falkland Islands;

**"export"** means to take, or cause to be taken, out of the Falkland Islands or out of Falkland Islands waters;

**"import"** means to bring, or cause to be brought, into the Falkland Islands or into Falkland Islands waters, including for the purpose of export;

**"introduction from the sea"** means transportation into the Falkland Islands waters or to any port in the Falkland Islands of specimens of any species which were taken in the marine environment not under the jurisdiction of any State, including the seabed and subsoil;

**"Management Authority"** means the Management Authority for the Falkland Islands appointed by the Governor under section 3; (designated for the purposes of Article IX of CITES);

**"Party"** means a State in which CITES is in force;

**"protected goods"** means any specimen of a species that is for the time being included in Appendix I, Appendix II or Appendix III of the Convention;

**"re-export"** means export of any specimen of a species that has previously been imported;

**"rescue centre"** means an institution designated by the Management Authority under section 4;

**"Scientific Authority"** means the scientific authority of the Falkland Islands appointed by the Governor under section 7 (so designated in accordance with Article IX of CITES);

**"Secretariat"** means the Secretariat provided by the Executive Director of the United Nations Environment Programme upon the entry into force of CITES, in accordance with Article XII of CITES;

**"species"** means any species, subspecies, or geographically separate population of a species;

**"specimen"** means-

- (a) any animal or plant, whether alive or dead;
- (b) in the case of an animal—
  - (i) for species included in Appendices I and II to CITES, any readily recognizable part or derivative of that species, and
  - (ii) for species included in Appendix III of CITES, any readily recognizable part or derivative of that species (specified in Appendix III in relation to the species); and
- (c) in the case of a plant,
  - (i) for species included in Appendix I to CITES, any readily recognizable part or derivative of that species; and
  - (ii) for species included in Appendices II and III of CITES, any readily recognizable part or derivative of that species (specified in Appendices II and III of CITES in relation to the species);

**"State of export"** means a State from which specimen are taken out from;

**"State of import"** means a State to which specimen are sent to or received;

**"State of re-export"** means a State which exports (sends out) imported specimen;

**"trade"** means export, re-export, import and introduction from the sea.

(2) For the purposes of this Ordinance "State" includes the Falkland Islands.

(3) Every reference in this Ordinance to an Appendix is a reference to an Appendix to CITES.

(4) The full text of all the Articles of CITES is set out in the Schedule as it appears in the version of CITES, as in force at the relevant time, that is published in the Treaty Series issued by Her Majesty's Stationery Office in the United Kingdom and may be updated by the Governor under section 33(2).

## **PART 2 THE MANAGEMENT AUTHORITY**

### **3 Management Authority**

(1) The Management Authority for the Falkland Islands is the Chief Executive or such other public officer as the Governor may from time to time appoint.

(2) Subject to subsection (3), the Management Authority must obtain the advice of the Scientific Authority before exercising any of its functions under this Ordinance.

(3) Despite subsection (2), the exercise of any power by the Management Authority will not be invalidated by reason only of the Management Authority's failure to obtain the advice of the Scientific Authority.

### **4 Functions of the Management Authority**

(1) The general function of the Management Authority is to monitor the activities of Falkland Islands importers, exporters and re-exporters to ensure their compliance with CITES and with this Ordinance.

(2) The Management Authority must, in accordance with sections 9 to 22-

(a) consider applications for permits or certificates relating to-

(i) import;

(ii) export; or

(iii) re-export,

of any specimen of a species included in Appendix I, Appendix II or Appendix III to CITES; and

(b) approve or deny applications and, where it approves an application, issue a control number in respect of each permit or certificate it approves, in compliance with section 9(4).

- (c) designate a rescue centre for purposes of any confiscated living specimens and may designate one or more rescue centres as necessary.

(3) The Management Authority must satisfy itself—

- (a) where the Falkland Islands is the State of export-
  - (i) that the specimen was not obtained in contravention of the law relating to the protection of fauna and flora;
  - (ii) that any living specimen will be prepared and shipped to minimise the risk of injury, damage to health or cruel treatment to the specimen;
  - (iii) that an import permit has been granted for the specimen by the competent authority in the State of import;
- (b) where the Falkland Islands is the State of import, that any protected goods that are being imported into the Falkland Islands are not to be used for primarily commercial purposes;
- (c) where the Falkland Islands is the State of re-export-
  - (i) that the specimen was imported into the Falkland Islands in accordance with the provisions of CITES;
  - (ii) that any living specimen will be prepared and shipped to minimise the risk of injury, damage to health or cruel treatment to the specimen;
  - (iii) that an import permit for any living specimen has been obtained from the competent authority in the State to which the protected goods are to be re-exported; and
  - (iv) that the specimen was not obtained in contravention of the law relating to the protection of fauna and flora;
- (d) where the Falkland Islands is the State of introduction-
  - (i) that the proposed recipient of a living specimen is suitably equipped to house and care for it; and
  - (ii) that the specimen is not to be used for primarily commercial purposes; and
  - (iii) that any living specimen will be handled to minimise the risk of injury, damage to health or cruel treatment.

(4) The Management Authority must take appropriate measures to enforce the provisions of CITES and to prohibit trade in specimens in violation of CITES, and this duty includes-

- (a) to penalise trade in, or possession of, such specimens, or both; and
- (b) the confiscation or return to the State of export of such specimens
- (c) taking such supplementary measures as may be set out in regulations made by the Governor.

(5) The Governor may, in regulations made under subsection (4), also prescribe a method by which the Management Authority may reimburse all persons who incurred expenses as a result of lawfully participating in the confiscation of a specimen traded in violation of the measures taken pursuant to provisions in the regulations that comply with paragraphs (a) and (b) of subsection (4).

(6) As far as possible, the Management Authority must ensure that specimens pass through any formalities required for trade with a minimum of delay and, in this connection-

- (a) to facilitate such passage, may designate ports of exit and ports of entry at which specimens must be presented for clearance; and
- (b) must ensure that all living specimens, during any period of transit, holding or shipment, are properly cared for so as to minimise the risk of injury, damage to health or cruel treatment.

## **5 Confiscation of specimens**

Where a living specimen is confiscated under subsections (4), the Management Authority-

- (a) has custody of the specimen and is responsible for the care of it;
- (b) must, after consultation with the State of export, return the specimen to that State at the expense of that State, or to a rescue centre or such other place as the Management Authority deems appropriate and consistent with the purposes of CITES; and
- (c) may obtain the advice of the Scientific Authority, or may, whenever it considers it desirable, consult the Secretariat in order to facilitate the decision under paragraph (b), including the choice of a rescue centre or other place.

## **6 Records and reports**

(1) The Management Authority must maintain records of trade in specimens of species included in Appendices I, II and III to CITES, which must cover-

- (a) the names and addresses of exporters and importers; and
- (b) each of the following-
  - (i) the number and type of permits and certificates granted;
  - (ii) the States with which such trade occurred;
  - (iii) the numbers or quantities and types of specimens;
  - (iv) names of species as included in Appendices I, II and III to CITES; and
  - (v) where applicable, the size and gender of the specimens in question.

(2) The Management Authority must prepare periodic reports on its implementation of the CITES and must transmit to the Secretariat-

- (a) an annual report containing a summary of the information specified in paragraph (b) of subsection (1); and

- (b) a biennial report on legislative, regulatory and administrative measures taken to enforce the provisions of CITES.

(3) The information referred to in subsection (2) must be made available to the public, subject to the contrary provisions of any other written law of the Falkland Islands.

### **PART 3 THE SCIENTIFIC AUTHORITY**

#### **7 Scientific Authority**

The Scientific Authority for the Falkland Islands for the purpose of CITES is such person or persons or body of persons as the Governor from time to time appoints.

#### **8 Functions of the Scientific Authority**

The functions of the Scientific Authority are-

- (a) to advise the Management Authority or, as appropriate, the Governor-
  - (i) on the exercise of the Management Authority's functions under sections 4 and 5;
  - (ii) on any matter relating to the administration of this Ordinance on which its advice is sought or on which it wishes to tender advice; and
  - (iii) on whether the export or import of a specimen of a species will be detrimental to the survival of that species;
  - (iv) on whether the proposed recipient of a living specimen is suitably equipped to house and care for it;
  - (v) of suitable measures to be taken to limit the grant of export permits for specimens of species referred to in paragraphs (b) and (c); and
  - (vi) generally, on matters falling within the scope of CITES on which its advice is sought or on which it wishes to tender advice;
- (b) to monitor both the export permits granted by the Management Authority for specimens of species included in Appendix II and the actual exports of those specimens;
- (c) to determine whether 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; and
- (d) in accordance with paragraph 7 of Article IV of CITES, to consult with other national scientific authorities or, when appropriate, international scientific authorities, in respect of periods not exceeding one year for total numbers of specimens to be introduced in specified periods.



**PART 4**  
**PERMITS AND CERTIFICATES**

*General provisions*

**9 Permits and certificates (Article VI of CITES)**

(1) Permits and certificates granted under the provisions of section 4(2) must be in accordance with the provisions of this section.

(2) An export permit must contain the information specified in the model set out in Appendix IV to CITES, and may only be used for export within a period of six months from the date on which it was granted.

(3) Each permit or certificate must contain the title of CITES, the name and any identifying stamp of the Management Authority and a control number assigned by the Management Authority.

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

(5) A separate permit or certificate is required for each consignment of specimens.

(6) Where the Falkland Islands is the State of import of any specimen, the Management Authority (in order to ensure that any permit or certificate is not used in relation to more than one consignment of specimens) must cancel and retain-

- (a) the export permit or re-import certificate issued, respectively, by the State of export or the State of re-import; and
- (b) any corresponding import permit presented in respect of the import of that specimen.

(7) Where appropriate and feasible, the Management Authority may affix a mark upon any specimen to assist in identifying the specimen.

(8) For the purposes of subsection (7), "mark" means any indelible imprint, lead seal or other suitable means of identifying a specimen, designed in such a way as to render its imitation by unauthorised persons as difficult as possible.

(9) For the purposes of this Part, any reference to a person being requested or required to present or produce a permit or certificate is to be construed as a reference to the person being so requested or required, as the case may be, by a customs officer, a police officer or an officer of the Management Authority.

## *Species under Appendix I*

### **10 Regulation of trade in specimens of species included in Appendix I (Article III of CITES)**

All trade in specimens of species included in Appendix I must be in accordance with sections 11 to 14.

### **11 Export permits - Appendix I**

(1) Before a person exports from the Falkland Islands any specimen of a species included in Appendix I, the person must first obtain an export permit from the Management Authority, which the person must present when required to do so.

(2) In order to obtain an export permit, a person referred to in subsection (1) must submit an application to the Management Authority in the prescribed form and must pay the prescribed fee.

(3) The Management Authority must not grant the export permit unless the following conditions have been met-

- (a) the Scientific Authority has advised that such export will not be detrimental to the survival of that species; and
- (b) the Management Authority is satisfied that-
  - (i) the specimen was not obtained in contravention of any law for the protection of fauna and flora;
  - (ii) any living specimen will be prepared and shipped to minimise the risk of injury, damage to health or cruel treatment of the specimen; and
  - (iii) an import permit has been granted for the specimen.

(4) A person who-

- (a) exports from the Falkland Islands any specimen of a species included in Appendix I without having obtained an export permit as required by subsection (1); or
- (b) having obtained an export permit, fails to produce it in accordance with subsection (1),

commits an offence and is liable on conviction to a fine not exceeding level 12 on the standard scale.

### **12 Import permits - Appendix I**

(1) Before a person imports into the Falkland Islands any specimen of a species included in Appendix I, the person must first obtain-

- (a) an import permit from the Management Authority; and
- (b) either, as the case may be,-
  - (i) an export permit from the competent authority of the State of export; or

- (ii) a re-export certificate from the State of re-export,

and must, when requested, present both permits or the import permit and the re-export certificate, as the case may be.

(2) In order to obtain an import permit a person referred to in subsection (1) must submit an application to the Management Authority in the prescribed form and pay the prescribed fee.

(3) The Management Authority must not grant an import permit unless the following conditions have been met-

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

(4) A person who-

- (a) imports into the Falkland Islands any specimen of a species included in Appendix I without having obtained an import permit and either an export permit or a re-export certificate as required by subsection (1); or
- (b) having obtained an import permit and either an export permit or a re-export certificate, fails to produce any or both of them in accordance with subsection (1),

commits a separate offence in respect of each item that the person has not obtained or, as the case may be, that the person fails to produce, and is liable in respect of a conviction for each offence to a fine not exceeding level 12 on the standard scale.

### **13 Re-export certificates - Appendix I**

(1) Before a person re-exports from the Falkland Islands any specimen of a species included in Appendix I, the person must first obtain a re-export certificate from the Management Authority, which the person must present upon request.

(2) In order to obtain a re-export certificate, a person referred to in subsection (1) must submit an application to the Management Authority in the prescribed form and pay the prescribed fee.

(3) The Management Authority must not grant a re-export certificate unless a Management Authority is satisfied that-

- (a) the specimen was imported into the Falkland Islands in accordance with the provisions of CITES;
- (b) any living specimen will be so prepared and shipped as to minimise the risk of injury, damage to health or cruel treatment; and

- (c) an import permit for any living specimen has been granted by the competent authority in the State of import.

(4) A person who-

- (a) re-exports from the Falkland Islands any specimen of a species included in Appendix I without having obtained a re-export certificate as required by subsection (1); or
- (b) having obtained a re-export certificate, fails to produce it in accordance with subsection (1),

commits an offence and is liable on summary conviction to a fine not exceeding level 12 on the standard scale.

#### **14 Certificates authorising introduction from the sea - Appendix I**

(1) Before a person introduces from the sea into the Falkland Islands any specimen of a species included in Appendix I, the person must first obtain from the Management Authority a certificate for that purpose, which the person must present when requested to do so.

(2) In order to obtain a certificate under this section, a person referred to in subsection (1) must submit an application to the Management Authority in the prescribed form and pay the prescribed fee.

(3) The Management Authority must not grant a certificate under this section unless the following conditions have been met-

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

(4) A person who-

- (a) introduces from the sea into the Falkland Islands any specimen of a species included in Appendix I without having obtained a certificate as required by subsection (1); or
- (b) having obtained a certificate, fails to present it in accordance with subsection (1),

commits an offence and is liable on conviction to a fine not exceeding level 12 on the standard scale.

## *Species under Appendix II*

### **15 Regulation of trade in specimens of species included in Appendix II (Article IV of CITES)**

All trade in specimens of species included in Appendix II must be in accordance with sections 16 to 19.

### **16 Export permits - Appendix II**

(1) Before a person exports from the Falkland Islands any specimen of a species included in Appendix II, the person must first obtain an export permit from the Management Authority, which the person must present when required to do so.

(2) In order to obtain an export permit, a person referred to in subsection (1) must submit an application to the Management Authority in the prescribed form and must pay the prescribed fee.

(3) The Management Authority must not grant the export permit unless the following conditions have been met-

- (a) the Scientific Authority has advised that such export will not be detrimental to the survival of that species;
- (b) the Management Authority is satisfied that-
  - (i) the specimen was not obtained in contravention of the law for the protection of fauna and flora; and
  - (ii) any living specimen will be so prepared and shipped as to minimise the risk of injury, damage to health or cruel treatment.

(4) When complying with this section, the Management Authority and the Scientific Authority must have regard to paragraphs (a)(v), (b) and (c) of section 8.

(5) A person who-

- (a) exports from the Falkland Islands any specimen of a species included in Appendix II without having obtained an export permit as required by subsection (1); or
- (b) having obtained an export permit, fails to present it in accordance with subsection (1),

commits an offence and on conviction is liable to a fine not exceeding level 12 on the standard scale.

### **17 Import permits - Appendix II**

(1) Before a person imports into the Falkland Islands any specimen of a species included in Appendix II, the person must first obtain from the competent authority of the State of export or re-export either an export permit or a re-export certificate, which the person must present when required to do so.

(2) A person referred to in subsection (1) must comply with-

- (a) section 16(2) in order to obtain an export permit;
- (b) section 18(2) in order to obtain a re-export certificate.

(3) A person who-

- (a) imports into the Falkland Islands any specimen of a species included in Appendix II without having obtained an export permit or a re-export certificate as required by subsection (1); or
- (b) having obtained an export permit or a re-export certificate, fails to present it in accordance with subsection (1),

commits an offence and is liable on conviction to a fine not exceeding level 12 on the standard scale.

### **18 Re-export certificates - Appendix II**

(1) Before a person re-exports from the Falkland Islands any specimen of a species included in Appendix II, the person must first obtain from the Management Authority a re-export certificate, which the person must present when required to do so.

(2) In order to obtain a re-export certificate, a person referred to in subsection (1) must submit an application to the Management Authority in the prescribed form and must pay the prescribed fee.

(3) The Management Authority must not grant a re-export certificate unless it is satisfied that-

- (a) the specimen was imported into the Falkland Islands in accordance with the provisions of CITES; and
- (b) any living specimen will be so prepared and shipped as to minimise the risk of injury, damage to health or cruel treatment.

(4) A person who-

- (a) re-exports from the Falkland Islands any specimen of a species included in Appendix II without having obtained a re-export certificate as required by subsection (1); or
- (b) having obtained a re-export certificate, fails to present it in accordance with subsection (1),

commits an offence and is liable on conviction to a fine not exceeding level 12 on the standard scale.

### **19 Certificates authorising introduction from the sea - Appendix II**

(1) Before a person introduces from the sea into the Falkland Islands any specimen of a species included in Appendix II, the person must first obtain from the Management Authority a certificate for that purpose, which the person must present when requested to do so.

(2) In order to obtain a certificate under this section, a person referred to in subsection (1) must submit an application to the Management Authority in the prescribed form and pay the prescribed fee.

(3) The Management Authority must not grant a certificate under this section unless the following conditions have been met-

- (a) the Scientific Authority advises that the introduction will not be detrimental to the survival of the species involved;
- (b) the Management Authority is satisfied that any living specimen will be so handled as to minimise the risk of injury, damage to health or cruel treatment.

(4) The Management Authority may grant certificates referred to in subsection (3) on the advice of the Scientific Authority, in consultation with other national scientific authorities or, when appropriate, international scientific authorities, in respect of periods not exceeding one year for total numbers of specimens to be introduced during such periods.

(5) A person who-

- (a) introduces from the sea into the Falkland Islands any specimen of a species included in Appendix II without having obtained a certificate as required by subsection (1);
- (b) having obtained a certificate, fails to present it in accordance with subsection (1),

commits an offence and is liable on conviction to a fine not exceeding level 12 on the standard scale.

### *Species under Appendix III*

## **20 Regulation of trade in specimens of species included in Appendix III (Article V of CITES)**

All trade in specimens of species included in Appendix III must be in accordance with sections 21 and 22.

## **21 Export permits - Appendix III**

(1) Subject to subsection (2), before a person exports from the Falkland Islands any specimen of a species included in Appendix III, the person must first obtain an export permit from the Management Authority, which the person must present when required to do so.

(2) This section only applies if the United Kingdom has included any species to which subsection (1) refers in Appendix III in respect of the Falkland Islands.

(3) Where this section applies a person referred to in subsection (1) must, in order to obtain an export permit, submit an application to the Management Authority in the prescribed form and must pay the prescribed fee.

(4) The Management Authority must not grant the export permit unless it is satisfied that-

- (a) the specimen was not obtained in contravention of the law for the protection of fauna and flora; and

- (b) any living specimen will be so prepared and shipped as to minimise the risk of injury, damage to health or cruel treatment.

(5) A person who-

- (a) exports from the Falkland Islands any specimen of a species included in Appendix III without having obtained an export permit as required by subsection (1); or
- (b) having been granted an export permit, fails to present it in accordance with subsection (1),

commits an offence and is liable on conviction to a fine not exceeding level 12 on the standard scale.

## **22 Import permits - Appendix III**

(1) Before a person imports into the Falkland Islands any specimen of a species included in Appendix III, the person must, except in circumstances to which subsection (2) applies, first-

- (a) present to the Management Authority a certificate of origin; and
- (b) where the import is from a State which has included that species in Appendix III, an export permit,

granted by the competent authority of that State.

(2) Where a specimen of a species included in subsection (1) is being imported into the Falkland Islands by way of re-export, a certificate granted by the competent authority of the State of re-export that the specimen was processed in that State or is being re-exported must be accepted by the Management Authority as evidence that the provisions of CITES have been complied with in respect of the specimen concerned, and the submission to the Management Authority of the aforementioned certificate obviates the requirement to comply with paragraphs (a) and (b) of subsection (1).

(3) In the case of re-export from the Falkland Islands, the Management Authority must (in accordance with and in reliance on paragraph 4 of Article V of CITES) grant to the prospective re-exporter a certificate that the specimen was processed in the Falkland Islands or is being re-exported from the Falkland.

(4) A person who imports into the Falkland Islands any specimen of a species included in Appendix III without having complied with-

- (a) paragraph (a) of subsection (1); or
- (b) where appropriate, both paragraphs (a) and (b) of subsection (1),

commits an offence and is liable on conviction to a fine not exceeding level 12 on the standard scale.



**PART 5**  
**MISCELLANEOUS**

**23 Exemptions and other special provisions relating to trade (Article VII of CITES)**

(1) The provisions of sections 10 to 22 do not apply to the following-

- (a) the transit or transshipment of specimens through Falkland Islands waters or in the territory of the Falkland Islands while the specimens remain in Customs control;
- (b) the export or re-export of a specimen by the Falkland Islands where the Management Authority is satisfied that the specimen was acquired before the provisions of CITES applied to that specimen, and where the Management Authority issues a certificate to that effect; or
- (c) where the following circumstance exist-
  - (i) the competent authority of a State of export or re-export is satisfied that a specimen was acquired before the provisions of CITES applied to that specimen; and
  - (ii) issues a certificate to that effect by virtue of which the provisions of Articles III, IV and V of CITES (or, as the case may be, provisions of the Party's domestic legislation giving effect to those Articles of CITES) have been rendered inapplicable to that specimen,

the Management Authority must recognise such a certificate.

(2) The provisions of sections 10 to 22 do not apply to specimens that are personal or household effects.

(3) Subsection (2) does not apply where-

- (a) in the case of specimens of a species included in Appendix I, they were acquired by the owner outside the owner's State of usual residence, and are being imported into the Falkland Islands; or
- (b) in the case of specimens of species included in Appendix II-
  - (i) they were acquired by the owner outside the owner's State of usual residence and in a State where removal from the wild occurred;
  - (ii) they are being imported into the owner's State of usual residence; and
  - (iii) the State where removal from the wild occurred requires the prior grant of export permits before any export of such specimens,

unless the Management Authority is satisfied that the specimens were acquired before the provisions of CITES applied to such specimens.

(4) Specimens of an animal species included in Appendix I bred in captivity for commercial purposes, or of a plant species included in Appendix I artificially propagated for commercial purposes, must be deemed to be specimens of species included in Appendix II.

(5) Where-

(a) the following circumstances exist, namely-

(i) the Falkland Islands is the State of export; and

(ii) the Management Authority is satisfied that-

(aa) any specimen of an animal species was bred in captivity;

(bb) any specimen of a plant species was artificially propagated; or

(cc) any specimen of an animal or plant species is a part of an illegally propagated specimen or was derived therefrom,

a certificate by the Management Authority to that effect must, in reliance on Article VII of CITES, be presented in lieu of any permits or certificates required under the provisions of sections 10 to 22; or

(b) the following circumstances exist-

(i) the Falkland Islands is not the State of export; and

(ii) the Falkland Islands is the State of import,

the Management Authority must accept, in lieu of a permit or certificate required by Article III, IV, or V of CITES (or, as the case may be, provisions of the Party's domestic legislation giving effect to those Articles of CITES), a certificate that the competent authority of the State of export issued upon being satisfied of the facts set out in paragraph (a).

(6) The provisions of sections 10 to 22 do not apply to the non-commercial loan, donation or exchange between scientists or scientific institutions registered by the Management Authority and scientists or scientific institutions registered by the competent authorities of other Parties, of herbarium specimens, other preserved, dried or embedded museum specimens, and live plant material, which carry a label issued or approved by the Management Authority or by the competent authority of another Party.

(7) The Management Authority may waive the requirements of sections 10 to 22 and allow the movement without permits or certificates of specimens which form part of a travelling zoo, circus, menagerie, plant exhibition or other travelling exhibition provided that-

(a) the exporter or importer registers full details of such specimens with the Management Authority;

(b) the specimens are either of the categories specified in subsection (3) or subsection (6); and

(c) the Management Authority is satisfied that any living specimen will be so transported and cared for as to minimise the risk of injury, damage to health or cruel treatment.

(8) The Management Authority must recognise and allow movement based on waivers of the requirements of Article III, IV or V of CITES (or, as the case may be, provisions of the Party's domestic legislation giving effect to those Articles of CITES) granted by the competent authorities of other Parties in circumstances identical to those set out in subsection (7).

## **24 Resolution of disputes (Article XVIII of CITES)**

(1) Any dispute which may arise between the Falkland Islands and any one or more of the other Parties with respect to the interpretation or application of the provisions of CITES must be made the subject of negotiation between the Parties involved in the dispute.

(2) If the dispute cannot be resolved in accordance with subsection (2), the Management Authority must, subject to securing the consent of the other Parties, submit the dispute to arbitration, in particular that of the Permanent Court of Arbitration at The Hague, and the Management Authority will, on behalf of the Falkland Islands, be bound by the arbitral decision.

## **25 Offences by company, etc**

(1) If an offence under this Ordinance is committed by a company, firm or other association of individuals whether incorporated or not, each-

- (a) director and officer of the company;
- (b) partner and officer of the firm; or
- (c) member and person concerned in the management of the affairs of the association,

as the case may be, is severally liable to be prosecuted and punished for the offence, unless the act or omission constituting the offence took place without his knowledge, consent or connivance.

(2) A person may be prosecuted by virtue of subsection (1) whether or not the company, firm or other association of individuals is prosecuted.

## **26 Stop and search powers**

(1) The powers conferred by this section have effect without prejudice to any powers conferred, in any particular case, by any other written law.

(2) For the purposes of this Ordinance, any customs officer and any police officer may-

- (a) stop, board and search any ship, aircraft or vehicle if he has reason to suspect that there is therein anything liable to seizure;
- (b) stop and search the property of any person if he has reason to suspect that that person has in his possession anything liable to seizure; and
- (c) enter and search any premises, being premises on which he has reason to suspect that an imported living specimen is being held, for the purpose of ascertaining whether any condition to which the relevant importation licence is subject and which relates to the housing or care of that specimen is being complied with.

(3) Where it appears to a justice of the peace upon the oath of any person that there is reasonable cause to believe that there is in any place or premises anything liable to seizure he may, by warrant directed to a customs officer or a police officer, empower him to enter, by force if necessary, and search the place or premise named in the warrant and to seize anything therein which is liable to seizure.

(4) For the purposes of this section, any protected goods imported in contravention of this Ordinance are liable to seizure.

## **27 Duty to show proof of lawful importation or exportation**

(1) Where any protected goods are being exported or imported or have been imported, a customs officer or police officer may require any person having possession or control of those goods to furnish proof that its exportation or importation is or was lawful.

(2) Any person who fails or refuses to submit proof as required under subsection (1) commits an offence and is liable to imprisonment for a term not exceeding five years or to a fine not exceeding the maximum of level 12 on the standard scale.

(3) Where any person is convicted of an offence under subsection (2) the goods in respect of which the offence was committed will, without further order, be forfeited to the Crown and will be disposed of in such manner as the Governor may direct.

## **28 Obstruction**

A person who obstructs a customs officer or any police officer-

- (a) in the exercise of the powers under this Ordinance; or
- (b) in the execution of a warrant granted under section 26(3),

commits an offence and is liable on conviction to a fine not exceeding the maximum of level 12 on the standard scale.

## **29 Administration and enforcement**

The provisions in this Ordinance relating to the functions of the Management Authority and the Scientific Authority are to be administered by the officers provided for in Part II of the Customs Ordinance 2003, and such officers have in respect of this Ordinance all the powers and duties that they have in relation to the Customs Ordinance 2003, in so far as those powers and duties are relevant to this Ordinance.

*[Revision w.e.f. 31/07/2017]*

## **30 Confiscation of specimens**

(1) Subject to section 5, the Prohibited Goods Ordinance 1992 applies to this Ordinance subject to the following qualifications-

*[Revision w.e.f. 31/07/2017]*

- (a) every mention in that Ordinance of the term "prohibited goods" must for the purposes of this Ordinance be construed as a reference to "protected goods";
- (b) the provisions in that Ordinance relating to destruction of prohibited goods or forfeited goods, as the case may be, do not automatically apply to confiscated specimens of species that are living; rather-
  - (i) all such confiscated specimens are to be brought to the attention of the Scientific Authority;

- (ii) the Scientific Authority must advise on how the specimens are to be dealt with and on who is to be made to pay for any manner in which it determines that the specimens are to be dealt with;
- (iii) compliance with the Scientific Authority's advice is mandatory; and
- (iv) the directive by the Scientific Authority as to who is required to pay for the manner in which the specimens are to be dealt with-
  - (aa) must be accompanied by reasons; and
  - (bb) may be enforced by legal process and is judicially reviewable.

(2) This Ordinance must be construed in conjunction with the Customs Ordinance generally, and particular regard must be had to the following provisions of the Customs Ordinance-

- (a) section 44(e), which must be construed with respect to this Ordinance as referring specifically to protected goods;
- (b) section 134(1);
- (c) section 139; and
- (d) section 143.

### **31 Offences relating to false statements**

Any person who, for the purpose of obtaining, whether for himself or for another, the issue of a permit or a certificate under Part 4-

- (a) makes any statement which the person knows to be false in a material particular; or
- (b) furnishes a document or information which the person knows to be false in a material particular; or
- (c) recklessly makes a statement or furnishes a document or information which is false in a material particular,

commits an offence and is liable, on conviction, to a fine not exceeding level 9 on the standard scale or to imprisonment for a period not exceeding 18 months or to both such fine and imprisonment.

### **32 Appeals**

Any person aggrieved by the Management Authority's refusal to grant the person a permit or a certificate under any section of this Ordinance may appeal to the Governor in Council in such manner and within such time as is prescribed in regulations made by the Governor in Council.

### **33 Subsidiary legislation**

(1) In addition to the powers to make regulations that are conferred on the Governor by preceding provisions of this Ordinance, the Governor may make regulations generally for giving effect to the purposes or provisions of this Ordinance, and may prescribe forms and fees referred to under this Ordinance.

(2) The Governor may by order publish an amended Schedule.

(3) If no primary legislation is enacted to amend any section of this Ordinance so as to complement any amendments made to CITES or the Appendices every effort must be made, to the fullest extent permitted by the rules of statutory interpretation, to interpret the sections of this Ordinance in a manner that is consistent with all the Articles of CITES taken together in the light of the amendments made to any such Article.

### **34 Repeal**

(1) The Endangered Species Protection Ordinance 2003 is repealed.

(2) Any appointment made or licence issued under the repealed Ordinance remains in force.

**SCHEDULE**  
**Text of the Articles of CITES**

section 2(4)

**Convention on International Trade in Endangered Species of Wild Fauna and Flora**

**Signed at Washington, D.C., on 3 March 1973**

**Amended at Bonn, on 22 June 1979**

**Amended at Gaborone, on 30 April 1983**

The Contracting States,

*Recognizing* that wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for this and the generations to come;

*Conscious* of the ever-growing value of wild fauna and flora from aesthetic, scientific, cultural, recreational and economic points of view;

*Recognizing* that peoples and States are and should be the best protectors of their own wild fauna and flora;

*Recognizing*, in addition, that international co-operation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade;

*Convinced* of the urgency of taking appropriate measures to this end;

*Have agreed as follows:*

**Article I: Definitions**

For the purpose of the present Convention, unless the context otherwise requires:

- (a) **"Species"** means any species, subspecies, or geographically separate population thereof;
- (b) **"Specimen"** means:
  - (i) any animal or plant, whether alive or dead;
  - (ii) in the case of an animal: for species included in Appendices I and II, any readily recognizable part or derivative thereof; and for species included in Appendix III, any readily recognizable part or derivative thereof specified in Appendix III in relation to the species; and
  - (iii) in the case of a plant: for species included in Appendix I, any readily recognizable part or derivative thereof; and for species included in Appendices II and III, any readily recognizable part or derivative thereof specified in Appendices II and III in relation to the species;
- (c) **"Trade"** means export, re-export, import and introduction from the sea;

- (d) **"Re-export"** means export of any specimen that has previously been imported;
- (e) **"Introduction from the sea"** means transportation into a State of specimens of any species which were taken in the marine environment not under the jurisdiction of any State;
- (f) **"Scientific Authority"** means a national scientific authority designated in accordance with Article IX;
- (g) **"Management Authority"** means a national management authority designated in accordance with Article IX;
- (h) **"Party"** means a State for which the present Convention has entered into force.

## **Article II: Fundamental principles**

1. Appendix I shall include all species threatened with extinction which are or may be affected by trade. Trade in specimens of these species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances.

2. Appendix II shall include:

- (a) all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival; and
- (b) other species which must be subject to regulation in order that trade in specimens of certain species referred to in sub-paragraph (a) of this paragraph may be brought under effective control.

3. Appendix III shall include all species which any Party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the co-operation of other Parties in the control of trade.

4. The Parties shall not allow trade in specimens of species included in Appendices I, II and III except in accordance with the provisions of the present Convention.

## **Article III: Regulation of trade in specimens of species included in Appendix I**

1. All trade in specimens of species included in Appendix I shall be in accordance with the provisions of this Article.

2. The export of any specimen of a species included in Appendix I 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:

- (a) a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species;
- (b) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora;



- (c) a Management Authority of the State of export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment; and
- (d) a Management Authority of the State of export is satisfied that an import permit has been granted for the specimen.

3. The import of any specimen of a species included in Appendix I 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:

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

4. The re-export of any specimen of a species included in Appendix I 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:

- (a) a Management Authority of the State of re-export is satisfied that the specimen was imported into that State in accordance with the provisions of the present Convention;
- (b) a Management Authority of the State of re-export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment; and
- (c) a Management Authority of the State of re-export is satisfied that an import permit has been granted for any living specimen.

5. The introduction from the sea of any specimen of a species included in Appendix I 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:

- (a) a Scientific Authority of the State of introduction advises that the introduction will not be detrimental to the survival of the species involved;
- (b) a Management Authority of the State of introduction is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it; and
- (c) a Management Authority of the State of introduction is satisfied that the specimen is not to be used for primarily commercial purposes.

#### **Article IV: Regulation of trade in specimens of species included in Appendix II**

1. All trade in specimens of species included in Appendix II shall be in accordance with the provisions of this Article.

2. The export of any specimen of a species included in Appendix II 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:

- (a) a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species;
- (b) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora; and
- (c) a Management Authority of the State of export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.

3. A Scientific Authority in each Party shall monitor both the export permits granted by that State for specimens of species included in Appendix II 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 to be taken to limit the grant of export permits for specimens of that species.

4. The import of any specimen of a species included in Appendix II shall require the prior presentation of either an export permit or a re-export certificate.

5. The re-export of any specimen of a species included in Appendix II 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:

- (a) a Management Authority of the State of re-export is satisfied that the specimen was imported into that State in accordance with the provisions of the present Convention; and
- (b) a Management Authority of the State of re-export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.

6. The introduction from the sea of any specimen of a species included in Appendix II 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:

- (a) a Scientific Authority of the State of introduction advises that the introduction will not be detrimental to the survival of the species involved; and
- (b) a 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.

7. Certificates referred to in paragraph 6 of this Article may be granted on the advice of a Scientific Authority, in consultation with other national scientific authorities or, when appropriate,

international scientific authorities, in respect of periods not exceeding one year for total numbers of specimens to be introduced in such periods.

#### **Article V: Regulation of trade in specimens of species included in Appendix III**

1. All trade in specimens of species included in Appendix III shall be in accordance with the provisions of this Article.
2. The export of any specimen of a species included in Appendix III from any State which has included that species in Appendix III 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:
  - (a) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora; and
  - (b) a Management Authority of the State of export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.
3. The import of any specimen of a species included in Appendix III shall require, except in circumstances to which paragraph 4 of this Article applies, the prior presentation of a certificate of origin and, where the import is from a State which has included that species in Appendix III, an export permit.
4. In the case of re-export, a certificate granted by the Management Authority of the State of re-export that the specimen was processed in that State or is being re-exported shall be accepted by the State of import as evidence that the provisions of the present Convention have been complied with in respect of the specimen concerned.

#### **Article VI: Permits and certificates**

1. Permits and certificates granted under the provisions of Articles III, IV, and V shall be in accordance with the provisions of this Article.
2. An export permit shall contain the information specified in the model set forth in Appendix IV, and may only be used for export within a period of six months from the date on which it was granted.
3. Each permit or certificate shall contain the title of the present Convention, the name and any identifying stamp of the Management Authority granting it and a control number assigned by the Management Authority.
4. Any copies of a permit or certificate issued by a Management Authority shall be clearly marked as copies only and no such copy may be used in place of the original, except to the extent endorsed thereon.
5. A separate permit or certificate shall be required for each consignment of specimens.

6. A Management Authority of the State of import of any specimen shall cancel and retain the export permit or re-export certificate and any corresponding import permit presented in respect of the import of that specimen.

7. Where appropriate and feasible a Management Authority may affix a mark upon any specimen to assist in identifying the specimen. For these purposes "mark" means any indelible imprint, lead seal or other suitable means of identifying a specimen, designed in such a way as to render its imitation by unauthorized persons as difficult as possible.

## **Article VII: Exemptions and other special provisions relating to trade**

1. The provisions of Articles III, IV and V shall not apply to the transit or transshipment of specimens through or in the territory of a Party while the specimens remain in Customs control.

2. Where a Management Authority of the State of export or re-export is satisfied that a specimen was acquired before the provisions of the present Convention applied to that specimen, the provisions of Articles III, IV and V shall not apply to that specimen where the Management Authority issues a certificate to that effect.

3. The provisions of Articles III, IV and V shall not apply to specimens that are personal or household effects. This exemption shall not apply where:

- (a) in the case of specimens of a species included in Appendix I, they were acquired by the owner outside his State of usual residence, and are being imported into that State; or
- (b) in the case of specimens of species included in Appendix II:
  - (i) they were acquired by the owner outside his State of usual residence and in a State where removal from the wild occurred;
  - (ii) they are being imported into the owner's State of usual residence; and
  - (iii) the State where removal from the wild occurred requires the prior grant of export permits before any export of such specimens; unless a Management Authority is satisfied that the specimens were acquired before the provisions of the present Convention applied to such specimens.

4. Specimens of an animal species included in Appendix I bred in captivity for commercial purposes, or of a plant species included in Appendix I artificially propagated for commercial purposes, shall be deemed to be specimens of species included in Appendix II.

5. Where a Management Authority of the State of export is satisfied that any specimen of an animal species was bred in captivity or any specimen of a plant species was artificially propagated, or is a part of such an animal or plant or was derived therefrom, a certificate by that Management Authority to that effect shall be accepted in lieu of any of the permits or certificates required under the provisions of Article III, IV or V.

6. The provisions of Articles III, IV and V shall not apply to the non-commercial loan, donation or exchange between scientists or scientific institutions registered by a Management Authority of their State, of herbarium specimens, other preserved, dried or embedded museum specimens, and live plant material which carry a label issued or approved by a Management Authority.

7. A Management Authority of any State may waive the requirements of Articles III, IV and V and allow the movement without permits or certificates of specimens which form part of a travelling zoo, circus, menagerie, plant exhibition or other travelling exhibition provided that:

- (a) the exporter or importer registers full details of such specimens with that Management Authority;
- (b) the specimens are in either of the categories specified in paragraph 2 or 5 of this Article; 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.

#### **Article VIII: Measures to be taken by the Parties**

1. The Parties shall take appropriate measures to enforce the provisions of the present Convention and to prohibit trade in specimens in violation thereof. These shall include measures:

- (a) to penalize trade in, or possession of, such specimens, or both; and
- (b) to provide for the confiscation or return to the State of export of such specimens.

2. In addition to the measures taken under paragraph 1 of this Article, a Party may, when it deems it necessary, provide for any method of internal reimbursement for expenses incurred as a result of the confiscation of a specimen traded in violation of the measures taken in the application of the provisions of the present Convention.

3. As far as possible, the Parties shall ensure that specimens shall pass through any formalities required for trade with a minimum of delay. To facilitate such passage, a Party may designate ports of exit and ports of entry at which specimens must be presented for clearance. The Parties shall ensure further 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.

4. Where a living specimen is confiscated as a result of measures referred to in paragraph 1 of this Article:

- (a) the specimen shall be entrusted to a Management Authority of the State of confiscation;
- (b) the Management Authority shall, after consultation with the State of export, return the specimen to that State at the expense of that State, or to a rescue centre or such other place as the Management Authority deems appropriate and consistent with the purposes of the present Convention; and
- (c) the Management Authority may obtain the advice of a Scientific Authority, or may, whenever it considers it desirable, consult the Secretariat in order to facilitate the decision under subparagraph (b) of this paragraph, including the choice of a rescue centre or other place.

5. A rescue centre as referred to in paragraph 4 of this Article means an institution designated by a Management Authority to look after the welfare of living specimens, particularly those that have been confiscated.

6. Each Party shall maintain records of trade in specimens of species included in Appendices I, II and III which shall cover:

- (a) the names and addresses of exporters and importers; and
- (b) the number and type of permits and certificates granted; the States with which such trade occurred; the numbers or quantities and types of specimens, names of species as included in Appendices I, II and III and, where applicable, the size and sex of the specimens in question.

7. Each Party shall prepare periodic reports on its implementation of the present Convention and shall transmit to the Secretariat:

- (a) an annual report containing a summary of the information specified in sub-paragraph (b) of paragraph 6 of this Article; and
- (b) a biennial report on legislative, regulatory and administrative measures taken to enforce the provisions of the present Convention.

8. The information referred to in paragraph 7 of this Article shall be available to the public where this is not inconsistent with the law of the Party concerned.

#### **Article IX: Management and Scientific Authorities**

1. Each Party shall designate for the purposes of the present Convention:

- (a) one or more Management Authorities competent to grant permits or certificates on behalf of that Party; and
- (b) one or more Scientific Authorities.

2. A State depositing an instrument of ratification, acceptance, approval or accession shall at that time inform the Depositary Government of the name and address of the Management Authority authorized to communicate with other Parties and with the Secretariat.

3. Any changes in the designations or authorizations under the provisions of this Article shall be communicated by the Party concerned to the Secretariat for transmission to all other Parties.

4. Any Management Authority referred to in paragraph 2 of this Article shall, if so requested by the Secretariat or the Management Authority of another Party, communicate to it impression of stamps, seals or other devices used to authenticate permits or certificates.

#### **Article X: Trade with States not party to the Convention**

Where export or re-export is to, or import is from, a State not a Party to the present Convention, comparable documentation issued by the competent authorities in that State which substantially conforms with the requirements of the present Convention for permits and certificates may be accepted in lieu thereof by any Party.

#### **Article XI: Conference of the Parties**

1. The Secretariat shall call a meeting of the Conference of the Parties not later than two years after the entry into force of the present Convention.

2. Thereafter the Secretariat shall convene regular meetings at least once every two years, unless the Conference decides otherwise, and extraordinary meetings at any time on the written request of at least one-third of the Parties.

3. At meetings, whether regular or extraordinary, the Parties shall review the implementation of the present Convention and may:

- (a) make such provision as may be necessary to enable the Secretariat to carry out its duties, and adopt financial provisions;
- (b) consider and adopt amendments to Appendices I and II in accordance with Article XV;
- (c) review the progress made towards the restoration and conservation of the species included in Appendices I, II and III;
- (d) receive and consider any reports presented by the Secretariat or by any Party; and
- (e) where appropriate, make recommendations for improving the effectiveness of the present Convention.

4. At each regular meeting, the Parties may determine the time and venue of the next regular meeting to be held in accordance with the provisions of paragraph 2 of this Article.

5. At any meeting, the Parties may determine and adopt rules of procedure for the meeting.

6. The United Nations, its Specialized Agencies and the International Atomic Energy Agency, as well as any State not a Party to the present Convention, may be represented at meetings of the Conference by observers, who shall have the right to participate but not to vote.

7. Any body or agency technically qualified in protection, conservation or management of wild fauna and flora, in the following categories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by observers, shall be admitted unless at least one third of the Parties present object:

- (a) international agencies or bodies, either governmental or non-governmental, and national governmental agencies and bodies; and
- (b) national non-governmental agencies or bodies which have been approved for this purpose by the State in which they are located.

Once admitted, these observers shall have the right to participate but not to vote.

## **Article XII: The Secretariat**

1. Upon entry into force of the present Convention, a Secretariat shall be provided by the Executive Director of the United Nations Environment Programme. To the extent and in the manner he considers appropriate, he may be assisted by suitable inter-governmental or non-governmental international or national agencies and bodies technically qualified in protection, conservation and management of wild fauna and flora.

2. The functions of the Secretariat shall be:

- (a) to arrange for and service meetings of the Parties;

- (b) to perform the functions entrusted to it under the provisions of Articles XV and XVI of the present Convention;
- (c) to undertake scientific and technical studies in accordance with programmes authorized by the Conference of the Parties as will contribute to the implementation of the present Convention, including studies concerning standards for appropriate preparation and shipment of living specimens and the means of identifying specimens;
- (d) to study the reports of Parties and to request from Parties such further information with respect thereto as it deems necessary to ensure implementation of the present Convention;
- (e) to invite the attention of the Parties to any matter pertaining to the aims of the present Convention;
- (f) to publish periodically and distribute to the Parties current editions of Appendices I, II and III together with any information which will facilitate identification of specimens of species included in those Appendices;
- (g) to prepare annual reports to the Parties on its work and on the implementation of the present Convention and such other reports as meetings of the Parties may request;
- (h) to make recommendations for the implementation of the aims and provisions of the present Convention, including the exchange of information of a scientific or technical nature;
- (i) to perform any other function as may be entrusted to it by the Parties.

### **Article XIII: International measures**

1. When the Secretariat in the light of information received is satisfied that any species included in Appendix I or II is being affected adversely by trade in specimens of that species or that the provisions of the present Convention are not being effectively implemented, it shall communicate such information to the authorized Management Authority of the Party or Parties concerned.
2. When any Party receives a communication as indicated in paragraph 1 of this Article, it shall, as soon as possible, inform the Secretariat of any relevant facts insofar as its laws permit and, where appropriate, propose remedial action. Where the Party considers that an inquiry is desirable, such inquiry may be carried out by one or more persons expressly authorized by the Party.
3. The information provided by the Party or resulting from any inquiry as specified in paragraph 2 of this Article shall be reviewed by the next Conference of the Parties which may make whatever recommendations it deems appropriate.

### **Article XIV: Effect on domestic legislation and international conventions**

1. The provisions of the present Convention shall in no way affect the right of Parties to adopt:
  - (a) stricter domestic measures regarding the conditions for trade, taking, possession or transport of specimens of species included in Appendices I, II and III, or the complete prohibition thereof; or



- (b) domestic measures restricting or prohibiting trade, taking, possession or transport of species not included in Appendix I, II or III.

2. The provisions of the present Convention shall in no way affect the provisions of any domestic measures or the obligations of Parties deriving from any treaty, convention, or international agreement relating to other aspects of trade, taking, possession or transport of specimens which is in force or subsequently may enter into force for any Party including any measure pertaining to the Customs, public health, veterinary or plant quarantine fields.

3. The provisions of the present Convention shall in no way affect the provisions of, or the obligations deriving from, any treaty, convention or international agreement concluded or which may be concluded between States creating a union or regional trade agreement establishing or maintaining a common external Customs control and removing Customs control between the parties thereto insofar as they relate to trade among the States members of that union or agreement.

4. A State party to the present Convention, which is also a party to any other treaty, convention or international agreement which is in force at the time of the coming into force of the present Convention and under the provisions of which protection is afforded to marine species included in Appendix II, shall be relieved of the obligations imposed on it under the provisions of the present Convention with respect to trade in specimens of species included in Appendix II that are taken by ships registered in that State and in accordance with the provisions of such other treaty, convention or international agreement.

5. Notwithstanding the provisions of Articles III, IV and V, any export of a specimen taken in accordance with paragraph 4 of this Article shall only require a certificate from a Management Authority of the State of introduction to the effect that the specimen was taken in accordance with the provisions of the other treaty, convention or international agreement in question.

6. Nothing in the present Convention shall prejudice the codification and development of the law of the sea by the United Nations Conference on the Law of the Sea convened pursuant to Resolution 2750 C (XXV) of the General Assembly of the United Nations nor the present or future claims and legal views of any State concerning the law of the sea and the nature and extent of coastal and flag State jurisdiction.

#### **Article XV: Amendments to Appendices I and II**

1. The following provisions shall apply in relation to amendments to Appendices I and II at meetings of the Conference of the Parties:

- (a) Any Party may propose an amendment to Appendix I or II for consideration at the next meeting. The text of the proposed amendment shall be communicated to the Secretariat at least 150 days before the meeting. The Secretariat shall consult the other Parties and interested bodies on the amendment in accordance with the provisions of subparagraphs (b) and (c) of paragraph 2 of this Article and shall communicate the response to all Parties not later than 30 days before the meeting.
- (b) Amendments shall be adopted by a two-thirds majority of Parties present and voting. For these purposes "Parties present and voting" means Parties present and casting an affirmative or negative vote. Parties abstaining from voting shall not be counted among the two-thirds required for adopting an amendment.

- (c) Amendments adopted at a meeting shall enter into force 90 days after that meeting for all Parties except those which make a reservation in accordance with paragraph 3 of this Article.

2. The following provisions shall apply in relation to amendments to Appendices I and II between meetings of the Conference of the Parties:

- (a) Any Party may propose an amendment to Appendix I or II for consideration between meetings by the postal procedures set forth in this paragraph.
- (b) For marine species, the Secretariat shall, upon receiving the text of the proposed amendment, immediately communicate it to the Parties. It shall also consult intergovernmental bodies having a function in relation to those species especially with a view to obtaining scientific data these bodies may be able to provide and to ensuring co-ordination with any conservation measures enforced by such bodies. The Secretariat shall communicate the views expressed and data provided by these bodies and its own findings and recommendations to the Parties as soon as possible.
- (c) For species other than marine species, the Secretariat shall, upon receiving the text of the proposed amendment, immediately communicate it to the Parties, and, as soon as possible thereafter, its own recommendations.
- (d) Any Party may, within 60 days of the date on which the Secretariat communicated its recommendations to the Parties under sub-paragraph (b) or (c) of this paragraph, transmit to the Secretariat any comments on the proposed amendment together with any relevant scientific data and information.
- (e) The Secretariat shall communicate the replies received together with its own recommendations to the Parties as soon as possible.
- (f) If no objection to the proposed amendment is received by the Secretariat within 30 days of the date the replies and recommendations were communicated under the provisions of subparagraph (e) of this paragraph, the amendment shall enter into force 90 days later for all Parties except those which make a reservation in accordance with paragraph 3 of this Article.
- (g) If an objection by any Party is received by the Secretariat, the proposed amendment shall be submitted to a postal vote in accordance with the provisions of sub-paragraphs (h), (i) and (j) of this paragraph.
- (h) The Secretariat shall notify the Parties that notification of objection has been received.
- (i) Unless the Secretariat receives the votes for, against or in abstention from at least one-half of the Parties within 60 days of the date of notification under sub-paragraph (h) of this paragraph, the proposed amendment shall be referred to the next meeting of the Conference for further consideration.
- (j) Provided that votes are received from one-half of the Parties, the amendment shall be adopted by a two-thirds majority of Parties casting an affirmative or negative vote.
- (k) The Secretariat shall notify all Parties of the result of the vote.

- (l) If the proposed amendment is adopted it shall enter into force 90 days after the date of the notification by the Secretariat of its acceptance for all Parties except those which make a reservation in accordance with paragraph 3 of this Article.

3. During the period of 90 days provided for by sub-paragraph (c) of paragraph 1 or subparagraph (l) of paragraph 2 of this Article any Party may by notification in writing to the Depositary Government make a reservation with respect to the amendment. Until such reservation is withdrawn the Party shall be treated as a State not a Party to the present Convention with respect to trade in the species concerned.

#### **Article XVI: Appendix III and amendments thereto**

1. Any Party may at any time submit to the Secretariat a list of species which it identifies as being subject to regulation within its jurisdiction for the purpose mentioned in paragraph 3 of Article II. Appendix III shall include the names of the Parties submitting the species for inclusion therein, the scientific names of the species so submitted, and any parts or derivatives of the animals or plants concerned that are specified in relation to the species for the purposes of subparagraph (b) of Article I.

2. Each list submitted under the provisions of paragraph 1 of this Article shall be communicated to the Parties by the Secretariat as soon as possible after receiving it. The list shall take effect as part of Appendix III 90 days after the date of such communication. At any time after the communication of such list, any Party may by notification in writing to the Depositary Government enter a reservation with respect to any species or any parts or derivatives, and until such reservation is withdrawn, the State shall be treated as a State not a Party to the present Convention with respect to trade in the species or part or derivative concerned.

3. A Party which has submitted a species for inclusion in Appendix III may withdraw it at any time by notification to the Secretariat which shall communicate the withdrawal to all Parties. The withdrawal shall take effect 30 days after the date of such communication.

4. Any Party submitting a list under the provisions of paragraph 1 of this Article shall submit to the Secretariat a copy of all domestic laws and regulations applicable to the protection of such species, together with any interpretations which the Party may deem appropriate or the Secretariat may request. The Party shall, for as long as the species in question is included in Appendix III, submit any amendments of such laws and regulations or any interpretations as they are adopted.

#### **Article XVII: Amendment of the Convention**

1. An extraordinary meeting of the Conference of the Parties shall be convened by the Secretariat on the written request of at least one-third of the Parties to consider and adopt amendments to the present Convention. Such amendments shall be adopted by a two-thirds majority of Parties present and voting. For these purposes "Parties present and voting" means Parties present and casting an affirmative or negative vote. Parties abstaining from voting shall not be counted among the two-thirds required for adopting an amendment.

2. The text of any proposed amendment shall be communicated by the Secretariat to all Parties at least 90 days before the meeting.

3. An amendment shall enter into force for the Parties which have accepted it 60 days after two thirds of the Parties have deposited an instrument of acceptance of the amendment with the Depositary Government. Thereafter, the amendment shall enter into force for any other Party 60 days after that Party deposits its instrument of acceptance of the amendment.

#### **Article XVIII: Resolution of disputes**

1. Any dispute which may arise between two or more Parties with respect to the interpretation or application of the provisions of the present Convention shall be subject to negotiation between the Parties involved in the dispute.

2. If the dispute cannot be resolved in accordance with paragraph 1 of this Article, the Parties may, by mutual consent, submit the dispute to arbitration, in particular that of the Permanent Court of Arbitration at The Hague, and the Parties submitting the dispute shall be bound by the arbitral decision.

#### **Article XIX: Signature**

The present Convention shall be open for signature at Washington until 30th April 1973 and thereafter at Berne until 31st December 1974.

#### **Article XX: Ratification, acceptance, approval**

The present Convention shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Government of the Swiss Confederation which shall be the Depositary Government.

#### **Article XXI: Accession**

1. The present Convention shall be open indefinitely for accession. Instruments of accession shall be deposited with the Depositary Government.

2. This Convention shall be open for accession by regional economic integration organizations constituted by sovereign States which have competence in respect of the negotiation, conclusion and implementation of international agreements in matters transferred to them by their Member States and covered by this Convention.

3. In their instruments of accession, such organizations shall declare the extent of their competence with respect to the matters governed by the Convention. These organizations shall also inform the Depositary Government of any substantial modification in the extent of their competence. Notifications by regional economic integration organizations concerning their competence with respect to matters governed by this Convention and modifications thereto shall be distributed to the Parties by the Depositary Government.

4. In matters within their competence, such regional economic integration organizations shall exercise the rights and fulfil the obligations which this Convention attributes to their Member States, which are Parties to the Convention. In such cases the Member States of the organizations shall not be entitled to exercise such rights individually.

5. In the fields of their competence, regional economic integration organizations shall exercise their right to vote with a number of votes equal to the number of their Member States which are Parties to the Convention. Such organizations shall not exercise their right to vote if their Member States exercise theirs, and vice versa.

6. Any reference to "Party" in the sense used in Article I (h) of this Convention to "State"/"States" or to "State Party"/"State Parties" to the Convention shall be construed as including a reference to any regional economic integration organization having competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this Convention.

#### **Article XXII: Entry into force**

1. The present Convention shall enter into force 90 days after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession, with the Depositary Government.

2. For each State which ratifies, accepts or approves the present Convention or accedes thereto after the deposit of the tenth instrument of ratification, acceptance, approval or accession, the present Convention shall enter into force 90 days after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

#### **Article XXIII: Reservations**

1. The provisions of the present Convention shall not be subject to general reservations. Specific reservations may be entered in accordance with the provisions of this Article and Articles XV and XVI.

2. Any State may, on depositing its instrument of ratification, acceptance, approval or accession, enter a specific reservation with regard to:

- (a) any species included in Appendix I, II or III; or
- (b) any parts or derivatives specified in relation to a species included in Appendix III.

3. Until a Party withdraws its reservation entered under the provisions of this Article, it shall be treated as a State not a Party to the present Convention with respect to trade in the particular species or parts or derivatives specified in such reservation.

#### **Article XXIV: Denunciation**

Any Party may denounce the present Convention by written notification to the Depositary Government at any time. The denunciation shall take effect twelve months after the Depositary Government has received the notification.

#### **Article XXV: Depositary**

1. The original of the present Convention, in the Chinese, English, French, Russian and Spanish languages, each version being equally authentic, shall be deposited with the Depositary Government, which shall transmit certified copies thereof to all States that have signed it or deposited instruments of accession to it.

2. The Depositary Government shall inform all signatory and acceding States and the Secretariat of signatures, deposit of instruments of ratification, acceptance, approval or accession, entry into force of the present Convention, amendments thereto, entry and withdrawal of reservations and notifications of denunciation.

3. As soon as the present Convention enters into force, a certified copy thereof shall be transmitted by the Depositary Government to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

In witness whereof the undersigned Plenipotentiaries, being duly authorized to that effect, have signed the present Convention. Done at Washington this third day of March, One Thousand Nine Hundred and Seventy-three.