

OVERVIEW ON IMPLEMENTATION OF CITES PROCESS IN JAMAICA

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Jamaica became a Party to Convention on the International Trade in Endangered Species of Wild Fauna and Flora (hereinafter the Convention), on June 22, 1997. On April 1, 2000, the Endangered Species (Protection, Conservation and Regulation of Trade) Act was enacted. This Act was promulgated to ensure the codification of Jamaica's obligations under the Convention.

The Endangered Species (Protection, Conservation and Regulation of Trade) Act 2000

Objective

The Act provides for the management of endangered species of Wild Fauna and Flora and for the regulation of trade. More specifically, it makes provisions for the importation and exportation of specified species of wild fauna and flora consistent with the requirements of the Convention and incorporates a controlled permitting regime relating to the importation and exportation of wild fauna and flora.

Administration

As required by the Convention the Act establishes a Management and a Scientific Authority. Under the The Endangered Species (Protection, Conservation and Regulation of Trade) Designation of Management Authority) Order, 2000 , the Minister with responsibility for the environment designated the Natural Resources Conservation Authority (NRCA) as the Management

Authority. NRCA was established by the Natural Resources Conservation Authority Act, 1991 and has lead responsibility for the management of Jamaica's natural resources. The functions of the Management Authority include:

- Taking such steps as are necessary for the protection, conservation and management of endangered species of wild fauna and flora against overexploitation through international or domestic trade
- Promote public awareness
- Advise the Minister on matters of policy relating to the trade in endangered species
- Grant permits and certificates in respect of trade in endangered specie of wild flora and fauna
- Determine national quotas
- Formulate and implement recovery and management plans
- Identify critical habitats
- Determine methods of shipment

The Scientific Authority in addition to advising the management Authority on the vulnerability of any species may also :

- Provide advise relating to policy
- Conduct research
- Advise on the likely effect of a proposed import, export . re-export or introduction from the sea of any species
- Monitor the grant of export permits
- Prepare annual reports on any specimen or species that is vulnerable, threatened or at risk; the status of the species in the schedules; make recommendations for the removal or inclusion of any species from the schedules

The Permitting System

There are three Four schedules to the Act.

The First Schedule ([Appendix I of CITES](#)) refers to:

All species threatened with extinction which are or may be affected by trade. Trade in specimens in these species are subjected to strict regulations in order not to further endanger their survival and must only be approved in certain circumstances.

The Second Schedule ([Appendix II of CITES](#)) refers to:

All species which although not now threatened with extinction, may become so if trade in specimens of such species is not subject to strict regulations in order to avoid utilization which may be detrimental to their survival.

Other species which must be subject to certain regulation in order that trade in specimens of certain species may be brought under effective control

The Third Schedule ([Appendix III of CITES](#)) refers to;

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 cooperation of other parties in the control of trade.

The Fourth Schedule includes:

Species in Jamaica the trade of which is to be controlled to prevent or restrict exploitation and which require the co-operation of other parties in the control of trade in such species. ([View Fourth Schedule](#))

Any persons wishing to apply for **an import, export, re-export Permit or an introduction from the sea certificate** must apply to the Management Authority. In the case of an import permit, the person must prior to applying for a permit apply to the management Authority for a **Certificate of Origin** for that specimen or species that he wishes to import.

A Domestic Trade permit is required for domestic trade in any specimen or species listed in any of the schedules.

First Schedule Export Permits (S20)

- A first schedule permit may only be granted if :
- The Scientific Authority advises the Management Authority that exportation will not be detrimental to the survival of the species
- That the application relates only to scientific research or transfer from one scientific institution to another

- That the specimen was legally obtained
- That transportation of any living specimen will be prepared and transported so as to minimize risks to the health of the specimen
- That an import licence has been granted by the relevant Authority in the state of import
- The reason for exportation is exceptional

First Schedule Imports (S21)

Import Permits may be granted if:

- The Scientific Authority is satisfied that the import will not be detrimental to the survival of the species
- The recipient of a living species is suitably equipped to house and care for it

First Schedule Re-Export Certificate

- Certificates will be granted if:
- If the specimen was legally imported
- An import permit has been granted by the relevant Authority in the state to which the specimen is to be re-exported

Second Schedule Export Permit (S24)

These permits are granted based on the

- The Scientific Authority advises the Management Authority that exportation will not be detrimental to the survival of the species
- That transportation of any living specimen will be prepared and transported so as to minimize risks to the health of the specimen

The Scientific Authority may also determine that the export of a specimen may be limited in order to maintain that species (S24 (2))

Second Schedule Import Permit (S26)

These permits are granted if:

- The Management Authority is satisfied that the specimen will not be used for purposes detrimental to its survival
- In case of a living specimen that the recipient is suitable equipped to house and care for it

Second Schedule Re-Export Certificate (S26)

- A re-export certificate may be granted if the Management Authority is satisfied that:
- The specimen was legally imported
- Any living specimen will be prepared and transported in a manner that is not likely to cause harm to the specimen
- An import permit has been granted from the Relevant Authority in the state from which it was imported

Second Schedule Introduction from the Sea Certificate (S27)

A certificate may be granted where:

- The Scientific Authority advises the Management Authority that the introduction from the sea of that species will not be detrimental to the survival of that species
- That transportation of any living specimen will be prepared and transported so as to minimize risks to the health of the specimen
- In case of a living specimen that the recipient is suitably equipped to house and care for it

Third Schedule Export Permit (S28)

- This is granted The Scientific Authority advises the Management Authority that the export will not be detrimental to the survival of the species
- Where the specimen was legally obtained
- Any living specimen will be prepared and transported in a manner that is not likely to cause harm to the specimen

Third Schedule Import Permit (S29)

- That the specimen will not be used for any purpose detrimental to its survival
- The recipient of a living species is suitably equipped to house and care for it

An application for an import permit under this schedule must be accompanied by a certificate of origin and an import permit, where the species is being imported from a convention state.

Third Schedule Re-export Certificate (S30)

- 1) The Management Authority may grant a re-export certificate for any specimen specified in the Third Schedule if it is satisfied that :-
 - The specimen was legally imported into Jamaica
 - Any living specimen will be prepared and transported in a manner that is not likely to cause harm to the specimen
 - An import permit for the living specimen has been granted by a relevant authority.

Fourth Schedule Export Permits (S31)

The Management Authority may grant an export permit for any specimen of a species referred to in the Fourth Schedule if it is satisfied that:-

- Such specimen was increased in number by artificial means or bred in captivity; and
- The export of that specimen is not likely to be detrimental to its survival

Non Transferability and Life of a Permit (S32)

Permits are not transferable and may be granted for specified periods but not exceeding six months in the case of an export permit and three months in the case of an export of re-export certificate. Permits may not be issued retrospectively (S34)

Grant or Refusal of Permit (S33)

The management Authority has a discretion to refuse the grant of a permit or certificate based on the following considerations:

Where the Scientific Authority recommends a refusal on the ground that granting of such a permit would not be in the best interest of the public citing factors such as:-

- The need to protect certain species of wild fauna or flora from exploitation through international trade.
- The preservation of the natural environment
- The public's ability to have unhindered access to the natural environment
- Where false or misleading information is presented in an application
- When an applicant is under the age of 18 years
- Where an applicant is bankrupt
- When an individual has been convicted under the said Act immediately ten years before applying for this permit
- to a corporate body If the company is on the verge of closing down or If the company is in receivership
- If within ten years immediately prior to the application the company or any director has been convicted of an offence under section 40, 41, 42, 43 or 44 or
- Has been convicted at least five years immediately before the application
- If the Management Authority does not consider the applicant a fit and proper person to be issued with a permit

Suspension of Permits (S35)

The Management Authority may:

- suspend a permit or certificate if the holder is in breach of any of the regulations or provisions of the Act or any of the terms under which the permit or certificated was granted; or

- If the holder of the permit or certificate notifies the Management Authority in writing that he will no longer be carrying out the activities for which the permit or certificate was granted.

Before suspending a permit or certificate, the Management Authority shall advise the holder in writing of the proposed suspension; giving the reason for the suspension, requiring the holder to remedy the breach within a specific time and requesting that the permit or certificate be returned to the Management Authority within a specified time.

The holder of a certificate or permit who is served with a notice is required to notify the Management Authority in writing that the breach has been remedied.

Upon receipt of notice from the holder, the Management Authority shall request that an inspection be carried in order to be satisfied that the breach has been remedied. The notice of suspension will then be withdrawn

Revocation of Permits (S36)

The Management Authority shall revoke a permit if

- The application contains any false or misleading information;
- The applicant does not remedy a breach within a certain time for which a notice of suspension was served;
- Or that there are material changes in the circumstances existing at the time the permit was granted.

Appeals (S37)

Within twenty-eight of the date of notification of the decision of the Management Authority not to grant, to suspend or to revoke a permit or certificate, an applicant may, if not satisfied with the decision appeal to the Minister.

Registers and Records (Ss38 and 39)

The Management Authority is mandated to keep a register which may contain prescribed information. Registers are open for public inspection and members of the public may request and pay a fee for copies.

The Act also requires every permit or certificate holder to keep such records as may be prescribed. Note that to date, there has been no prescribed particulars or information in relation to registers and records.

Offences and Penalties (S40)

- Trading without a permit: Maximum fine JA\$2,000,000.00 or maximum two years imprisonment or both on summary conviction
- Trading without a permit: Maximum fine JA\$2,000,000.00 or maximum ten years imprisonment or both on indictment
- Knowingly using any conveyance or vehicle for the transportation of endangered species

S41:

Enclosing endangered species with any matter sent by post or knowingly using any conveyance or vehicle for the transportation of endangered species
: Maximum fine JA\$1,000,000.00 or maximum one year imprisonment on summary conviction for a first offence and upon conviction for a second or third offence a maximum fine of JA\$2,000,000.00 or maximum two years imprisonment or both fine and imprisonment. If convicted on indictment, the maximum imprisonment is ten years.

S42:

- Making false or misleading statements in order to obtain a permit
- Knowingly furnishing false or misleading statements
- Knowingly utters produces or makes false or misleading statements
- Falsifying information contained in a permit or certificate

On Summary conviction maximum fine JA\$1,000,000.00 or maximum imprisonment of one year or both fine and imprisonment.

S43:

Threatening or assaulting an Authorized Officer: On summary conviction, maximum fine JA\$500,000.00 or maximum imprisonment twelve months or both fine or imprisonment.

S44:

- Failure to keep records required by the Act
- Fails without reasonable excuse to produce documents to an Authorized Officer if requested to do so

- Maximum fine JA\$200,000.00 or maximum imprisonment three months or both fine and imprisonment

Enforcement S45

The Authorized Officer may at all reasonable times:

- Enter business premises of any person suspected to be trading in endangered species and inspect documents
- Seize and detain specimen
- Seize and detain equipment
- Take samples of any specimen or species found on the business premises

S46:

- Without warrant search equipment if he suspects that the equipment is being used or has been used in the commission of an offence against this Act
- Seize and detain equipment if evidence reveals that the equipment is being used or has been used in the commission of an offence

NB. If there is a conviction, such equipment may upon the application of the Director of Public Prosecutions be forfeited to the crown. **(S47)**. However, every specimen of a species for which there is a conviction under the Act is to be forfeited to the crown. Specimen forfeited may be returned to the wild; stored, donated or returned to its owner at the expense of the state. **(S48)**.

S49. A Resident Magistrate may if satisfied by information on oath that there is reasonable cause for suspecting that:

- Any specimen to which this Act applies is in the possession of or under the control of any person in contravention of this Act
- Any person is in possession of or in control of any document directly or indirectly relating to or connected with any transaction or dealing with such specimen which if carried out would contravene the provisions of this Act or relates to a transaction intended to be carried out in any place outside the island of Jamaica and which would be in contravention of any law in Jamaica.

The search warrant may authorize the Officer named in the warrant to enter premises at any time within one month of the issue of the warrant.

Principles

The Precautionary Principle

The Act makes reference to the employment of the precautionary principle and provides in Section 17 (3) that where the Scientific Authority recommends that a list of species in Jamaica and in other countries are vulnerable, threatened, at risk endangered , extirpated or extent and makes any recommendation fro the removal or exclusion from the schedules, that list must be based on '*the best available scientific evidence or ecological principles*'. However '*where there is little or no scientific evidence available, the Scientific Authority may ground its reasons on the precautionary principle or other relevant information or facts*'.

Public Participation

Subsection 7 of Section 17 provides that any member of the public may recommend to the Management Authority that any specimen or species be included or not excluded from the fourth schedule.

Exemptions(S5)

The Act does not apply to:

- specimens in transit or the transshipment of specimens in Jamaica while the specimen remain under the control of the Commissioner of Customs
- personal or household effects
- non-commercial loans, donations or exchanges between scientists or scientific institutions; herbarium specimens or live plant material which carry any mark or label
- artificially propagated plants or animals bred in captivity
- Where the specimen was acquired before the provisions of the Convention in relation to that species

Waivers (S5)

The Management Authority may waive the requirements of the Act in the following circumstances:

- Where the specimen form part of a traveling zoo, circus, menagerie, plant or other exhibition and the exporter or importer notifies the Management Authority that they were in possession of the specimen before the Convention applied to them
- Where the specimen were or are a part of or derived from any specimen of any animal species that was bred in captivity or a plant species which was artificially propagated.
- The management Authority is satisfied that any living specimen will be prepared and transported in a manner that is not likely to cause harm to the specimen

Procedural matters on Application for a permit or Certificate

Subsequent to the passage of the Act, regulations have been passed to give effect to more procedural matters particularly those matters relating to applications in general and matters specifically related to the trade in Queen Conch (*Strombus gigas*). Applications to trade in endangered species internationally must be made on the prescribed application forms. These application forms are published in the following Jamaica Gazette Supplements:

- Endangered Species (Protection, Conservation and Regulation of Trade) Regulation, 2000 – Applications for Permits and Certificates;
- Endangered Species (Protection, Conservation and Regulation of Trade) Establishment of Individual Export Quota (Conch, *Strombus gigas*) Regulations 2000-Application Form for Individual Export Quota for *Strombus gigas*;
- Endangered Species (Protection, Conservation and Regulation of Trade) (*Strombus gigas*) Regulation, 2000 -Application Form for Export / Import / Re-Export of conch (*Strombus gigas*) per Shipment.

All applications must be made on prescribed application forms and accompanied by the relevant documents and application fee receipt. The aforementioned must

be completed and submitted to the Wildlife Unit, NRCA. Specimens are inspected by one or more technical officers from the Wildlife Unit for verification of quantities and species. Thereafter relevant documents (Animal and Importation Permit, copy of CITES Import Permit for Appendix 1 species, and in the case of aquaculture and marine products a health certificate from the Veterinary Services Division in the Ministry of Agriculture pursuant to the Aquaculture Inland Marine Products and By Products Act. In the case of the export of Queen Conch (*Strombus gigas*) *The Endangered Species (Protection, Conservation and Regulation of Trade) Establishment of Individual Export Quota (Conch, Strombus gigas) Regulations 2000-Application Form for Individual Export Quota for Strombus gigas* is applicable and the Management Authority requires proof of the individual Conch Quota issued by the Ministry of Agriculture, Certificate of Inspection issued by the Fisheries Division and a certificate issued by the Veterinary Division certifying the quality of the Conch in storage). Documents are checked and subsequently sent to one of the regular or special meetings of the Scientific Authority for final processing. The decisions of the Scientific Authority are always communicated to the applicants within one week after the meeting. In instances where the matter is extremely sensitive, the Management Authority is advised first. When authorization is granted the relevant information is entered in the prescribed registers.

All applicants who are denied CITES permits or certificates are advised in writing by the Management Authority. Any person who is aggrieved by the decision of the Management Authority to refuse to grant a permit or certificate or revoke such permit or certificate may appeal in writing to the Minister within twenty- eight days of the date of notification of the decision. All relevant documents, correspondence and records must be submitted to Minister within seven days by the Management Authority for a hearing of the appeal. The Minister shall request all parties including their attorneys-at law to attend the hearing of the appeal.

In the case of live animals, micro-chips bands or photographs are used as the identification instruments. The container requirements and general care guidelines outlined in the recent Live Animals Regulations are presented as an attachment to the permits or certificates. The Scientific Authority may also specify additional transport and housing requirements for live animals and plants.

Procedural Matters Relating to the Management and Scientific Authorities

The Management Authority (NRCA) is comprised of ten members who serve for a period of two years. NRCA has a staff compliment of one hundred and twenty employees. The Authority meets monthly and is supported by various technical and administrative committees. At the Authority, the CITES Secretariat is placed within the Wildlife Unit. The Senior Director of the Wildlife Unit performs the duties of Chief Officer to the Management Authority and *ex officio* member to the Scientific Authority.

Section 13 and the sixth Schedule of the Endangered Species (Protection, Conservation and Regulation of Trade) Act 2000 established and outlined the operational procedures of the Scientific Authority. The Scientific Authority is comprised of eight appointed members including a chairman and vice-chairman. They serve a period of a maximum of three years and are eligible for re-appointment. The Authority meeting is held every six weeks, but in extraordinary cases special meetings are convened on receipt of a written request.

The Minutes of the Scientific Authority meeting are distributed to the Chairman of the Management Authority, Executive Director of Management Authority and the Director of Environment in the Ministry of Land and Environment under which the NRCA falls. Jamaica's annual reports to the Convention are prepared by the NRCA in accordance with the trade-computerized database and the Convention's criteria. All reports are submitted to CITES by NRCA.

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