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BAHAGIAN II

Disiarkan dengan Kebenaran

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No. S 77

**CONSTITUTION OF BRUNEI DARUSSALAM
(Order under Article 83(3))**

WILD FAUNA AND FLORA ORDER, 2007

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**CONSTITUTION OF BRUNEI DARUSSALAM
(Order under Article 83(3))**

WILD FAUNA AND FLORA ORDER, 2007

In exercise of the power conferred by Article 83(3) of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

Citation and long title.

1. (1) This Order may be cited as the Wild Fauna and Flora Order, 2007.

(2) The long title of this Order is "An Order to give effect to the Convention on International Trade in Endangered Species of Wild Fauna and Flora and for matters connected herewith".

Interpretation.

2. (1) In this Order, unless the context otherwise requires —

"aircraft" means any machine that can derive support in the atmosphere from the reaction of the air;

"airport" means any place which has been prescribed under the Customs Order, 2006 (S 39/06) as a customs airport;

"animal" means any member of the animal kingdom, including without limitation any mammal, fish, bird, amphibian, reptile, mollusc, arthropod or other invertebrate, but does not include human beings;

"Appendix" means the Appendix I, II or III to the Convention and any amendment thereto which may come into force;

"Appendix I" means the Appendix I to the Convention which lists all species threatened with extinction which are or may be affected by trade;

"Appendix II" means the Appendix II to the Convention which lists all species that are not threatened with extinction but may become so if trade is not regulated;

"Appendix III" means the Appendix III to the Convention which lists all species identified by any party to the Convention that require regulation in its jurisdiction for the purpose of preventing or restricting

exploitation and require the cooperation of other parties in the control of trade;

"authorised officer" means —

(a) any police officer;

(b) any officer of customs, as defined in section 2(1) of the Customs Order, 2006 (S 39/06); or

(c) any public officer appointed by the Minister under section 5 of this Order;

"Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora signed at Washington, District of Columbia on the 3rd day of March 1973 and any amendment made thereto which has come into force and has been accepted by the Government;

"country" includes a territory;

"cruel treatment" in relation to any animal, means the infliction upon that animal of pain or suffering that in its kind or degree, or in its object, or in the circumstances in which it is inflicted, is unreasonable or unnecessary;

"Director" means the Director of the Department of Agriculture, and includes the Deputy Director of Agriculture;

"dwelling house" means any building or part of a building that is suitable for residential accommodation of any kind; and includes every garage, shed and other building used in connection therewith, but does not include the land appurtenant to a dwelling house;

"export" means the shipment of any specimen in any vehicle to a country outside Brunei Darussalam; but does not include the re-export of any specimen or the shipment in transit of any specimen outside Brunei Darussalam;

"import" means the shipment of any specimen in any vehicle into the territorial limits of Brunei Darussalam; but does not include the introduction from the sea of any specimen or the shipment in transit of any specimen into the territorial limits of Brunei Darussalam;

"introduce from the sea" means introduce into Brunei Darussalam a specimen from any marine environment not under the jurisdiction of any country;

"management authority" means —

(a) in relation to Brunei Darussalam, the Director;

(b) in relation to any other country, the management authority appointed by that country for the purposes of the Convention;

"Minister" means the Minister of Industry and Primary Resources, and includes the Deputy Minister of Industry and Primary Resources;

"personal or household effect" means —

(a) personally owned or possessed for non-commercial purposes;

(b) legally acquired; and

(c) at the time of import, export or re-export —

(i) worn, carried or included in personal baggage; or

(ii) included in goods which are part of a household move;

"plant" means any angiosperm, gymnosperm, fern or fern ally; and includes any moss, liverwort, alga, including cyanophyte, lichen, fungus or related organism;

"port" means any area declared to be a port under section 3 of the Ports Act (Chapter 144);

"re-export" means the export of any specimen that has previously been imported, whether or not in the same form as at the time of its importation;

"Scientific Authority" means the Scientific Authority specified in section 6(1);

"species" means any species, sub-species, variety, form or geographically separate population thereof;

"specimen" means —

(a) any animal or plant, whether alive or dead; or

(b) any recognisable part or derivative thereof which appears from an accompanying document, the packaging or a mark or label, or from any other circumstances, to be a recognisable part or derivative of an

animal or plant of species included in the Appendix, unless such part or derivative is specifically exempted from the Convention;

"trade" means export, import, re-export or introduce from the sea;

"vehicle" means any means of transport, whether or not self-propelled, that may travel by land, sea or air, and includes any aircraft or vessel;

"vessel" includes any ship or boat or any other description of vessel used in navigation.

(2) Every specimen of any species listed in Appendix I —

(a) in the case of an animal, bred in captivity; or

(b) in the case of a plant, artificially propagated,

shall, for the purposes of this Order, be deemed a specimen of a species listed in Appendix II.

(3) Any reference to the appropriate management authority or to the appropriate scientific authority shall be read as a reference to the management authority or scientific authority determined by the Director to have the scientific competence to comment on the species under consideration.

(4) Any reference to the relevant authority of a country shall be read as a reference —

(a) where that country is a party to the Convention, to the appropriate management authority of that country; or

(b) where that country is not a party to the Convention, to the competent authority of that country within the meaning of Article X of the Convention.

(5) For the avoidance of doubt, it is hereby declared that sections 14 to 17 apply to specimens of species listed in Appendix I that are deemed, by virtue of subsection (2), to be specimens of species listed in Appendix II.

No derogation from other written laws.

3. The provisions of this Order are in addition to and not in substitution for the provisions of any other written law in relation to the export or import of, or trade in, any goods, and do not affect the exercise of any power in those laws in relation to any item of goods.

Administration of Order.

4. The Director shall be responsible for the general administration of this Order, subject to any general or special directions of the Minister.

Appointment of authorised officers.

5. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, appoint any public officer to be an authorised officer for the purposes of this Order and of any regulations made hereunder.

Scientific Authority.

6. (1) For the purposes of this Order, the Minister shall appoint an Authority, to be known as the Scientific Authority, to consist of the Director of the Forestry Department who shall be the chairman and 2 other members.

(2) The Scientific Authority shall advise the Director upon any question which he may refer to it in connection with the administration of this Order.

(3) Subject to this Order, the Scientific Authority may regulate its own procedure in such manner as it thinks fit.

PART I

TRADE IN SPECIES

Trade in species.

7. Subject to Part II, no person shall trade in any specimen of any species listed in the Appendix into or from Brunei Darussalam except pursuant to the appropriate permit or certificate granted under this Part.

Application for permit or certificate.

8. (1) Any person who proposes to trade in any specimen of any species listed in the Appendix shall apply in writing to the Director for the appropriate permit or certificate that, if granted, would authorise that trade.

(2) Every application shall state the —

(a) full name and address of the applicant;

(b) type of trade to which the application relates;

(c) species and the number of specimens of that species to be traded;

(d) country to or from which they are to be conveyed.

(3) Except as the Director may otherwise determine, a separate application shall be required for each consignment of specimens of any such species.

(4) No person shall make an application under this section to trade in any specimen of any such species where trade in that specimen is subject to controls under any other written law, unless authorisation in respect of such trade has first been obtained under that written law.

(5) Every applicant for a permit or certificate shall furnish to the Director, in addition to the particulars required under subsection (2), such further information as the Director may require.

(6) Without limiting the generality of subsection (5), every applicant to whom that subsection applies shall include, with every application for the export or re-export of a specimen in respect of which application the Director has required any analysis to be carried out pursuant to section 46, the results of such analysis.

(7) Every applicant for a permit or certificate shall pay the prescribed fee.

Grant of permit or certificate.

9. (1) Every permit or certificate granted under sections 10 to 21 shall relate to a specific application.

(2) The Director may, at his discretion, having regard to sections 10 to 21 —

(a) grant such permit or certificate in respect of all or any of the specimens included in any application; or

(b) decline to grant any such application.

(3) Where the Director is of the opinion that a permit or certificate should be declined or should be granted subject to conditions, he shall inform the applicant accordingly, giving the grounds on which that opinion is based, and inviting the applicant to make submissions on the matter before the application is formally dealt with.

(4) The Director may grant a permit or certificate either unconditionally or subject to such conditions as he may specify.

(5) Every such permit or certificate shall be in such form as the Director may approve.

(6) Every such permit or certificate may be revoked or varied at any time by the Director in any case where he is satisfied that the conditions in the permit or certificate have not been complied with, or can only be met by varying the conditions of the permit or certificate.

(7) Any person granted a permit or certificate may at any time surrender it by forwarding a written note to that effect, together with the permit or certificate, to the Director.

Authority to trade in species in Appendix I

Permit to export species.

10. The Director may, after consultation with the appropriate management authority and scientific authority, grant a permit to export any specimen of any species listed in Appendix I to an applicant, if those authorities are satisfied that —

- (a) the export of it is not detrimental to the survival of that species;
- (b) it was not obtained in contravention of any written law;
- (c) that specimen is to be prepared and shipped so that the risk of —
 - (i) injury to the specimen;
 - (ii) adverse effect on the health of the specimen; and
 - (iii) in the case of an animal, cruel treatment of the specimen, is minimised; and
- (d) permission to import that specimen has been granted by the relevant authority of the country of import.

Permit to import species.

11. The Director may, after consultation with the appropriate management authority and scientific authority, grant a permit to import any specimen of any species listed in Appendix I to an applicant, if those authorities are satisfied that —

- (a) the import of it is not detrimental to the survival of that species;

(b) the proposed recipient of that specimen is suitably equipped to house and care for it;

(c) it is not to be used primarily for commercial purposes; and

(d) permission to export or re-export that specimen has been granted by the relevant authority of the country of export or re-export.

Certificate to re-export species.

12. The Director may, after consultation with the appropriate management authority and scientific authority grant a certificate to re-export any specimen of any species listed in Appendix I to an applicant, if those authorities are satisfied that —

(a) in the case of that specimen being imported —

(i) before the commencement of this Order, it was not imported in contravention of any written law; or

(ii) after the commencement of this Order, it was imported in accordance with this Order;

(b) it is to be prepared and shipped so that the risk of —

(i) injury to the specimen;

(ii) adverse effect on the health of the specimen; and

(iii) in the case of an animal, cruel treatment of the specimen, is minimised; and

(c) permission to import that specimen has been granted by the relevant authority of the country of import.

Certificate to introduce from the sea species.

13. The Director may, after consultation with the appropriate management authority and scientific authority, grant a certificate to introduce into Brunei Darussalam from the sea any specimen of any species listed in Appendix I to an applicant, if those authorities are satisfied that —

(a) the introduction of it is not detrimental to the survival of that species;

(b) that specimen is to be handled so that the risk of —

- (i) injury to the specimen;
 - (ii) adverse effect on the health of the specimen; and
 - (iii) in the case of an animal, cruel treatment of the specimen, is minimised;
- (c) the proposed recipient of that specimen is suitably equipped to house and care for it;
- (d) it is not to be used primarily for commercial purposes; and
- (e) it was not obtained in contravention of any written law.

Authority to trade in species in Appendix II

Permit to export species.

14. The Director may, after consultation with the appropriate management authority and scientific authority, grant a permit to export any specimen of any species listed in Appendix II to an applicant, if those authorities are satisfied that —

- (a) the export of it is not detrimental to the survival of that species;
- (b) it was not obtained in contravention of any written law; and
- (c) that specimen will be prepared and shipped so that the risk of —
 - (i) injury to the specimen;
 - (ii) adverse effect on the health of the specimen; and
 - (iii) in the case of an animal, cruel treatment of the specimen, is minimised.

Permit to import species.

15. Any person who proposes to import any specimen of any species listed in Appendix II must present, before or at the time of import of that specimen, a permit to export or a certificate to re-export issued by the relevant authority of the country of export or re-export.

Certificate to re-export species.

16. The Director may, after consultation with the appropriate management authority and scientific authority, grant a certificate to re-export any specimen of any species listed in Appendix II to an applicant, if those authorities are satisfied that —

- (a) in the case of that specimen being imported —
 - (i) before the commencement of this Order, it was not imported in contravention of any written law; or
 - (ii) after the commencement of this Order, it was imported in accordance with this Order;
- (b) it will be prepared and shipped so that the risk of —
 - (i) injury to the specimen;
 - (ii) adverse effect on the health of the specimen; and
 - (iii) in the case of an animal, cruel treatment of the specimen, is minimised.

Certificate to introduce from the sea species.

17. The Director may, after consultation with the appropriate management authority and scientific authority, grant a certificate to introduce from the sea any specimen of any species listed in Appendix II to an applicant, if those authorities are satisfied that —

- (a) the introduction of it is not detrimental to the survival of that species;
- (b) that specimen is to be handled so that the risk of —
 - (i) injury to the specimen;
 - (ii) adverse effect on the health of the specimen; and
 - (iii) in the case of an animal, cruel treatment of the specimen, is minimised; and
- (c) it was not obtained in contravention of any written law.

Authority to trade in species in Appendix III

Permit to export species.

18. The Director may, after consultation with the appropriate management authority and scientific authority, grant a permit to export any specimen of any species listed in Appendix III to the applicant, if those authorities are satisfied that —

- (a) that specimen was not obtained in contravention of any written law; and
- (b) it is to be prepared and shipped so that the risk of —
 - (i) injury to the specimen;
 - (ii) adverse effect on the health of the specimen; and
 - (iii) in the case of an animal, cruel treatment of the specimen, is minimised.

Permit to import species.

19. Any person who proposes to import any specimen of any species listed in Appendix III must present, before or at the time of import of the specimen, a permit to export or a certificate to re-export issued by the relevant authority of the country of export or re-export.

Certificate to re-export species.

20. The Director may, after consultation with the appropriate management authority and scientific authority, grant a certificate to re-export any specimen of any species listed in Appendix III to an applicant.

Certificate to introduce from the sea species.

21. The Director may, after consultation with the appropriate management authority and scientific authority, grant a certificate to introduce from the sea any specimen of any species listed in Appendix III to an applicant.

Permits and certificates

Effect of permits and certificates.

22. (1) Except as the Director may otherwise determine, a permit or certificate shall authorise the holder to undertake on one occasion the type of trade to which the permit or certificate relates in only the specimen or specimens of species as listed in the Appendix specified in that permit or certificate.

(2) Every permit or certificate granted under any of sections 10 to 21 shall come into force on the date on which it was signed.

(3) Notwithstanding subsection (2), every permit or certificate shall remain in force for a period of 6 months, or such lesser period as may be specified therein, unless it is sooner revoked or surrendered.

(4) A permit or certificate shall be personal to the holder, and shall not be transferable to or vest by operation of law in any other person.

Permit or certificate to be produced.

23. For the purposes of this Order, where the holder of a permit or certificate undertakes the trade in accordance with that permit or certificate, the holder shall —

(a) before, in the case of exporting or re-exporting; or

(b) before or at the time of importation or introduction, in the case of importing or introducing from the sea,

produce the permit or certificate, or cause the permit or certificate to be produced, to an authorised officer.

Control of persons arriving from overseas.

24. (1) Every person shall, on arriving in Brunei Darussalam, permit an authorised officer to inspect and examine any specimen of any species listed in Appendix I in his possession as part of his personal or household effects, and shall afford to that officer all reasonable facilities and assistance in carrying out any such inspection and examination, and shall produce any permit or certificate granted under this Part or under Part II in respect of that specimen.

(2) Subject to section 27, where any person is found to be in possession of any specimen of a species listed in Appendix I, or a specimen that an authorised officer has reasonable cause to believe or suspect may be of any such species, and

has not been granted a permit or certificate in respect of that specimen under this Part or under Part II, he shall —

- (a) surrender that specimen to the authorised officer;
- (b) state his full name to the authorised officer; and
- (c) in the case of —
 - (i) a citizen of Brunei Darussalam or a permanent resident, state his address;
 - (ii) a visitor to Brunei Darussalam, state an address at which he may be contacted and his permanent address outside Brunei Darussalam,

and where that person has voluntarily disclosed the presence of the specimen to the authorised officer as soon as practicable after the specimen arrived in Brunei Darussalam, for the purposes of this Order, he shall be taken not to have imported that specimen.

(3) Any specimen surrendered to an authorised officer under subsection (2) shall be conveyed to any place considered by the Director appropriate for the holding of that specimen.

(4) If any specimen surrendered to an authorised officer under subsection (2) is subsequently ascertained not to be a specimen of a species listed in Appendix I, it shall be released to the person who surrendered it.

Disposal and release of specimens seized from persons arriving from overseas.

25. (1) Where a citizen of Brunei Darussalam or a permanent resident surrenders a specimen of any species under section 24(1), that specimen shall be forfeited to the Government and disposed of in accordance with section 44.

(2) Any visitor to Brunei Darussalam who surrenders a specimen under section 24(2) may apply to the Director for the return of that specimen to him when he leaves Brunei Darussalam.

(3) Subject to subsection (4), the Director shall consider any application under subsection (2) as expeditiously as possible and the specimen shall be dealt with as follows —

- (a) if the Director grants the application, he shall cause all reasonable steps to be taken to enable the applicant to take the specimen from the

airport or port at which the visitor surrendered the specimen, if and when he leaves Brunei Darussalam;

(b) if the Director declines the application, that specimen shall be forfeited to the Government and disposed of in accordance with section 44.

(4) Any specimen that has been surrendered in accordance with this section shall not be released under subsections (2) or (3)(a) to the person who had possession of it at the time of surrender, until he has paid all costs and expenses incurred by the Government in relation to the custody of the specimen, including any costs of transporting the specimen.

PART II

EXEMPTIONS

Certificate of acquisition.

26. (1) Any person who desires to export or re-export a specimen of any species listed in the Appendix that was legally acquired before the provisions of this Order applied to that specimen shall apply in writing to the Director for a certificate of acquisition.

(2) The Director may, after (if necessary) consultation with the appropriate other management authority, issue a certificate of acquisition to the applicant if the management authority is satisfied that the specimen to which the application relates was legally acquired before the provisions of this Order applied to that specimen.

(3) Part I shall not apply to any person who has been issued with a certificate of acquisition under subsection (2).

(4) Notwithstanding subsection (3), sections 7, 8 and 22 shall, with all necessary modifications, apply to a certificate of acquisition.

Species as personal or household effects.

27. (1) Except as provided in subsection (2), Part I shall not apply to any dead specimen of species listed in Appendix I or II, any recognisable part or derivative thereof, that is a personal or household effect being introduced into Brunei Darussalam, or exported or re-exported therefrom.

(2) Part I shall apply to any specimen that is a personal or household effect being imported into Brunei Darussalam where —

(a) it is of any species listed in Appendix I or II acquired by the owner outside Brunei Darussalam; or

(b) it is of any species listed in the Appendix that is imported for primarily commercial reasons,

unless that specimen is accompanied by a certificate of acquisition or a certificate of exemption issued by the appropriate management authority.

Certificate for specimens bred in captivity or artificially propagated.

28. (1) Any person who desires to export or re-export a specimen of any species listed in Appendix II or III that —

(a) in the case of an animal, was bred in captivity;

(b) in the case of a plant, was artificially propagated; or

(c) is a recognisable part or derivative of such a specimen,

shall apply in writing to the Director for a certificate for specimens bred in captivity or artificially propagated.

(2) The Director may, after (if necessary) consultation with the appropriate management authority, issue a certificate for specimens bred in captivity or artificially propagated to an applicant if he is satisfied that the specimen to which the application relates was bred in captivity or, as the case may be, was artificially propagated, or is a recognisable part or derivative of such a specimen.

(3) For the purposes of trade, a certificate for specimens bred in captivity or artificially propagated shall be accepted in lieu of any of the permits or certificates granted under any of sections 14 to 21.

(4) For the purpose of this section, sections 7, 8 and 22 shall, with all necessary modifications, apply to a certificate for specimens bred in captivity or artificially propagated.

Scientific transfer.

29. Part I shall not apply to the non-commercial loan, donation or exchange between registered scientific institutions in Brunei Darussalam recognised by the Director and registered scientific institutions in other countries recognised by the relevant authorities of those countries, of —

(a) herbarium and other preserved, dried, or embedded museums specimens;

(b) live plants materials;

(c) legally acquired animal and plant specimens that are under the authority of a registered scientific institution,

that are specimens of any species listed in the Appendix and which carry a label issued or approved by the Director.

Travelling circus or exhibition.

30. The Director may, after (if necessary) consultation with the appropriate management authority, waive the requirement of holding a permit or certificate granted under Part I in respect of any specimen of any species listed in the Appendix that form part of a travelling zoo, circus, menagerie, plant exhibition or other travelling exhibition where —

(a) the exporter or importer registers full details of such specimen with the Director;

(b) the specimen was —

(i) acquired before the provisions of the Convention applied to that specimen; or

(ii) in the case of an animal, bred in captivity or in the case of a plant, artificially propagated; and

(c) that management authority is satisfied that any living specimen will be transported and cared for so that the risk of —

(i) injury to the specimen;

(ii) adverse effect on the health of the specimen; and

(iii) in the case of an animal, cruel treatment of the specimen, is minimised.

PART III

AUTHORISED OFFICERS

Authority to act as authorised officer.

31. (1) The Director shall issue to any public officer appointed under section 5 a warrant authorising him to exercise the powers conferred on authorised officers under this Part.

(2) Every such warrant shall contain —

(a) a reference to this section;

(b) the full name of the authorised officer; and

(c) a reference to the powers set out in sections 33 to 36.

(3) The production by an authorised officer of —

(a) a warrant issued under this section; or

(b) any evidence that he is a police officer or an officer of customs,

shall, until the contrary is proved, be sufficient authority for any such authorised officer to do anything authorised by this Part.

(4) Every person appointed under section 5 who ceases to hold office as an authorised officer shall forthwith surrender to the Director the warrant issued to him under subsection (1) of this section.

(5) Any person who fails to comply with subsection (4) is guilty of an offence.

Power of investigation.

32. In any case relating to the commission of an offence under this Order, an authorised officer shall have all the powers of a police officer under the Criminal Procedure Code (Chapter 7) in relation to an investigation into such an offence.

Power of arrest.

33. An authorised officer may arrest without warrant any person who has committed or whom he reasonably suspects to have committed an offence against this Order or under any regulations made hereunder.

Right of entry.

34. (1) Subject to section 35(2) and notwithstanding any other written law, an authorised officer who has reasonable grounds to believe that an offence against this Order or under any regulations made hereunder has been or is being committed, may at any time —

(a) stop and enter or board any vehicle;

(b) enter, pass across or remain on any land or premises (including a dwelling house);

(c) demand any information relating to that breach from any person in or on that vehicle, land or premises and require him to produce —

(i) any permit or certificate granted under this Order; and

(ii) any other documents relating to trade in any species listed in Appendix I;

(d) for the purpose of such analysis as the Director considers necessary to determine whether an offence against this Order or under any regulations made hereunder has occurred, take samples, subject to subsection (6), from any specimen in any vehicle or on any land or premises (including a dwelling house) where the officer has reasonable grounds to believe that such specimen is evidence that an offence against this Order or under any regulations made hereunder has been or is being committed.

(2) Notwithstanding subsection (1), no authorised officer shall enter any dwelling house or, in the case of the exercise of the power under subsection (1)(d), any other land or premises unless he is authorised in that behalf by a search warrant obtained under section 35(2).

(3) Every authorised officer exercising a power to enter under subsection (1) shall identify himself and have with him due evidence of his appointment and shall produce that evidence to the owner or occupier or, as the case may be, the person in charge of the vehicle, land or premises —

(a) if practicable, on first entering the vehicle or on the land or premises; and

(b) whenever subsequently reasonably required to do so by that owner or occupier or person in charge.

(4) If an authorised officer exercises a power to enter under subsection (1), written advice of the entry and the purpose of the entry shall be given to the

owner or occupier or, as the case may be, person in charge of the vehicle, land or premises as soon as practicable after that entry where —

(a) no prior notice or agreement of the entry was given or made; or

(b) that owner or occupier or person in charge was not present at the time of entry.

(5) An authorised officer lawfully exercising his powers under this section may make or take copies of any document, and for this purpose may take possession of and remove it from the place where it is kept, for such period of time as is reasonable in the circumstances.

(6) Every authorised officer proposing to take a sample under subsection (1)(d) from any live animal —

(a) must do so either personally or, where requested by the owner or person in charge of the animal, by instructing a veterinary surgeon to do so; and

(b) must make every effort to avoid unnecessary disturbance of the animal, including, with respect to an animal which is secured within an enclosure, exercising his powers only during the hours of daylight except where the authorised officer judges that there will be less disturbance to the animal if the powers are exercised outside those hours.

Power of search.

35. (1) Subject to subsection (2), any authorised officer who has entered any vehicle, land, or premises (including a dwelling house) under section 34 may search that vehicle, land or premises and open (by force if necessary) any bulk cargo container, packing case, crate, box, or any other form of receptacle in or on that vehicle, land or premises.

(2) A magistrate who, on application by an authorised officer in writing made on oath, is satisfied that there is in any dwelling house —

(a) any specimen of any species listed in the Appendix that there is reasonable ground to believe —

(i) has been traded otherwise than in accordance with this Order; or

(ii) is intended to be traded otherwise than in accordance with this Order;

(b) any thing which there is reasonable ground to believe may be evidence of the commission of any offence against this Order; or

(c) any thing which there is reasonable ground to believe is intended to be used for the purpose of committing any such offence,

may issue a search warrant to that officer and the provisions of sections 60, 62, 64, 65 and 66 of the Criminal Procedure Code (Chapter 7) shall apply accordingly.

(3) A search warrant is also required pursuant to subsection (2) in the case of entry to any other vehicle, land or premises for the exercise of the power under section 34(1)(d).

Seizure of species traded in contravention of Order.

36. (1) Where an authorised officer finds, in or on any vessel or aircraft or at any port or airport, any specimen of any species listed in the Appendix that —

(a) is being traded otherwise than in accordance with this Order; or

(b) is not listed on the inward or outward report in respect of that vessel or aircraft,

that specimen shall be forfeited to the Government, and shall be seized by him and disposed of in accordance with section 44.

(2) Any authorised officer who has reasonable cause to believe that any specimen of such species has been imported or introduced from the sea into Brunei Darussalam otherwise than in accordance with this Order, may seize that specimen and —

(a) in the case of an animal, any descendant of that specimen; or

(b) in the case of a plant, any propagation of that specimen,

and shall deliver it into the custody of the Director.

(3) Any authorised officer who has reasonable cause to believe that any specimen of such species is intended to be exported or re-exported from Brunei Darussalam otherwise than in accordance with this Order, may seize that specimen and shall deliver it into the custody of the Director.

(4) Any authorised officer seizing any specimen under this section may also seize —

(a) any container, packing case, crate, box, or any other form of receptacle (not being a bulk cargo container or a pallet) holding that specimen; and

(b) any other thing which the authorised officer has reason to believe will be evidence of a breach of the provisions of this Order or of any regulations made hereunder,

and shall deliver it into the custody of the Director:

Provided that the owner or the person entitled to the possession of the items seized under this subsection may apply to the court at any time for the return of those items not being items that are required for evidential purposes in a hearing of any court, and the court may order the retention of those items or their return on such conditions as it thinks fit.

(5) No compensation shall be payable in respect of any specimen seized under subsection (1).

Power to seize vehicles and containers.

37. (1) Any authorised officer may stop and seize any vehicle on the ground or in water, or stop in transit and seize any parcel, package, case, bag, luggage or other container, if he reasonably believes —

(a) that the vehicle or container contains any species listed in the Appendix; or

(b) that the vehicle or container —

- (i) is in the possession of a person who has committed an offence against this Order; and
- (ii) has been used in connection with the commission of an offence against this Order.

(2) In this section, "in transit" has the same meaning as in section 2(1) of the Customs Order, 2006 (S 39/06).

Director to retain seized vehicles and containers.

38. (1) Subject to section 40, where any vehicle or container is seized under section 37, it shall, pending any criminal proceedings under this Order against the owner or any person in possession of the vehicle or container, be retained in the custody of the Director.

(2) Following the seizure of any vehicle or container under section 37 (not being a vehicle or container that has been forfeited to the Government) the Director may, at his discretion, temporarily return such vehicle or container to the owner or to the person who had been in possession of it immediately prior to such seizure on security being furnished to his satisfaction that it shall be surrendered to him on demand.

(3) The Director shall take reasonable care of any property while it is retained in his custody under subsection (1).

Forfeiture of seized vehicles and containers.

39. (1) Upon the conviction of any person for any offence against this Order, any vehicle or container retained in respect of that offence under section 38(1) may, on the order of the court, be forfeited to the Government; and in that case, the vehicle or container shall be disposed of as the Minister thinks fit.

(2) Any person whose property has been forfeited to the Government under this section or any person having a legal or equitable interest in any such property (not being, in either case, a person convicted of an offence out of which the forfeiture arose) may apply to the Minister, within 30 days of the conviction, for the release of the property so forfeited; and the Minister may order the release of that property on payment to the Government of such amount he thinks appropriate, being an amount not exceeding the amount which the items forfeited are estimated by the Director to realise if sold by public auction in Brunei Darussalam.

(3) In considering whether to order the release of any property under subsection (2), the Minister shall have regard to —

(a) the relationship between the person applying for release of the property and the person convicted of the offence; and

(b) the extent to which it was foreseeable that the property would be used in connection with the commission of an offence against this Order when it was placed in the possession of the offender.

(4) Any forfeiture ordered under this section shall be in addition to, and not in substitution for, any other penalty that may be imposed by a court or by this Order.

Power of court to order return of seized vehicle or container.

40. (1) Where any vehicle or container is seized under section 38, any person claiming to be entitled to possession of that vehicle or container may at any time apply to the court for an order that it be delivered to him.

(2) On an application under subsection (1), the court may —

(a) adjourn the application, on such conditions as it thinks fit, to enable proceedings to be brought or completed; or

(b) make an order for the return of the vehicle or container to the applicant, on such conditions as it thinks fit.

(3) Nothing in this section applies to any vehicle or container if a court has ordered under section 39(1) that it be forfeited to the Government.

Effect of order for release of seized vehicle or container.

41. Where the Minister makes an order under section 40(2) in respect of a vehicle or container that has been forfeited to the Government, the forfeiture order made in respect of that vehicle or container shall cease to have effect.

Custody of seized specimens.

42. (1) Where, in the opinion of the Director, any specimen seized pursuant to sections 36(2) or (3) may die, rot, spoil or otherwise perish, he may dispose of it in accordance with section 44(1) as if that specimen had been forfeited to the Government.

(2) Where the ownership of —

(a) any specimen seized pursuant to sections 36(2) or (3); or

(b) any receptacle or thing seized pursuant to section 37(4),

cannot, at the time of seizure or within 90 days from the date of seizure, be ascertained it shall be forfeited to the Government, and disposed of —

(i) in the case of a specimen, in accordance with section 44; or

(ii) in the case of a receptacle or thing, as the Director directs, subject to any conditions imposed by the court pursuant to section 36(4).

(3) Except as provided in subsections (1) or (2) —

(a) every specimen seized pursuant to sections 36(2) or (3); and

(b) every receptacle or thing seized pursuant to this section,

shall be held in the custody of the Director until —

- (i) a decision is made not to lay any charge in respect of the alleged offence for which the specimen, receptacle or thing was seized; or
- (ii) where such a charge is laid, upon the completion of proceedings in respect of the alleged offence for which the specimen, receptacle or thing was seized, or such sooner time as the court may determine.

(4) The decision whether or not to lay any charge in respect of an alleged offence for which any specimen, receptacle or thing is seized under this section shall be made as soon as reasonably practicable after that specimen, receptacle or thing is seized, taken possession of or detained.

Release of seized specimens.

43. Subject to section 36(1) and to sections 42(1) and (2), where any specimen, receptacle or thing has been seized under section 36 and not previously returned by the court pursuant to section 36(4), then —

(a) on a decision being made not to lay a charge; or

(b) on the acquittal of any person charged with an offence for which the specimen, receptacle, or thing is subject to forfeiture,

such specimen, receptacle or thing shall forthwith be released from the custody of the Government to the owner or person who had possession of the specimen at the time of seizure.

Disposal of seized specimens.

44. (1) Any specimen of any species listed in the Appendix forfeited to the Government shall be disposed of in such manner as the Director may direct, after consultation with the relevant scientific and management authorities.

(2) The Director may negotiate the return and the payment of any costs associated with that return, of any specimen imported into Brunei Darussalam, otherwise than in accordance with this Order, with the management authority of the country from where that specimen originated.

(3) All costs and expenses of and attendant upon any disposal of a specimen forfeited to the Government and seized under section 36(1) shall be borne by the owner or the person who had possession thereof, and shall be recoverable from

him as a debt due to the Government, and no compensation shall be payable in respect thereof.

Specimens seized in respect of which there is no prosecution forfeited if not claimed within 30 days.

45. (1) If there is no prosecution with regard to any specimen seized under this Order, such specimen shall be taken and forfeited at the expiration of 30 days from the date of seizure unless a claim thereto is made before such date in the manner set out in this section.

(2) Any person asserting that he is the owner of such specimen and that it is not liable to forfeiture may personally or by his agent authorised in writing give written notice to an authorised officer that he claims the same.

(3) On receipt of such notice the authorised officer shall refer the claim to the Director who may direct that such specimen be released or may direct such authorised officer to refer the matter to a court for his decision.

(4) The court shall issue a summons requiring the person asserting that he is the owner of the specimen and the person from whom it was seized to appear before it.

(5) Upon his appearance or default to appear, due service of such summons being proved, the court shall proceed to the examination of the matter and on proof that an offence against this Order has been committed and that such specimen was the subject matter, or was used in the commission, of such offence shall order the specimen to be forfeited, or may, in the absence of such proof, order its release.

(6) In any proceedings under subsections (4) and (5), the burden of proof thereof shall lie on the person asserting that he is the owner of the specimen and on the person from whom it was seized as if such owner or person had been the defendant in a prosecution under this Order.

(7) All specimens forfeited under subsection (1) shall be disposed of in accordance with section 44.

PART IV

MISCELLANEOUS PROVISIONS

Taking and analysis of samples of specimens.

46. (1) Where, in any application made under this Order, a question arises as to whether a specimen of any animal has been bred in captivity and the Director has reasonable cause to suspect that the specimen has not been bred in captivity, he may, prior to making a decision on that application, require that samples of that specimen be taken for the purpose of such analysis as he considers necessary to determine whether the specimen concerned has been bred in captivity.

(2) Subject to subsection (3), such samples are to be taken by and under the supervision of such person as the Director specifies.

(3) Every such sample from a live animal must be taken by a veterinary surgeon where requested by the owner or person in charge of the animal.

(4) The Director may require an applicant to bear the cost of taking and analysis of any sample required pursuant to this section.

Trading in species without permit or certificate.

47. (1) Any person who —

(a) trades in any specimen of any species listed in Appendix I without the appropriate permit or certificate granted under any of sections 10 to 13;

(b) trades in any specimen of any species listed in Appendix II without the appropriate permit or certificate granted under any of sections 14 to 17; or

(c) trades in any specimen of any species listed in Appendix III without the appropriate permit or certificate granted under any of sections 18 to 21,

is guilty of an offence.

(2) Any person who commits an offence against subsection (1)(a) is liable on conviction —

(a) in the case of an individual, to imprisonment for a term not exceeding 5 years, a fine not exceeding \$100,000 or both;

(b) in the case of a body corporate, to a fine not exceeding \$200,000.

(3) Any person who commits an offence against subsection (1)(b) is liable on conviction —

(a) in the case of an individual, to imprisonment for a term not exceeding 3 years, a fine not exceeding \$50,000 or both;

(b) in the case of a body corporate, to a fine not exceeding \$100,000.

(4) Any person who commits an offence against subsection (1)(c) is liable on conviction —

(a) in the case of an individual, to a fine not exceeding \$37,500;

(b) in the case of a body corporate, to a fine not exceeding \$75,000.

Possession of specimens of species.

48. (1) Any person who has in his possession or has under his control though under the custody of another, any specimen of any species listed in the Appendix that he knows or has reasonable grounds for suspecting —

(a) has been imported or introduced from the sea into Brunei Darussalam otherwise than in accordance with this Order; or

(b) is intended to be exported or re-exported from Brunei Darussalam otherwise than in accordance with this Order,

is guilty of an offence.

(2) Any person who commits an offence against subsection (1) in respect of a specimen of any species listed in Appendix I is liable on conviction —

(a) in the case of an individual, to imprisonment for a term not exceeding 5 years, a fine not exceeding \$100,000 or both;

(b) in the case of a body corporate, to a fine not exceeding \$200,000.

(3) Any person who commits an offence against subsection (1) in respect of a specimen of any species listed in Appendix II is liable on conviction —

(a) in the case of an individual, to imprisonment for a term not exceeding 3 years, a fine not exceeding \$50,000 or both;

(b) in the case of a body corporate, to a fine not exceeding \$100,000.

(4) Any person who commits an offence against subsection (1) in respect of a specimen of any species listed in Appendix III is liable on conviction —

(a) in the case of an individual, to a fine not exceeding \$37,500;

(b) in the case of a body corporate, to a fine not exceeding \$75,000.

Failure to comply with conditions of permit or certificate.

49. Any person who fails to comply with any of the conditions specified by the Director in respect of any permit or certificate granted to him under Part I is guilty of an offence and liable on conviction —

(a) in the case of an individual, to a fine not exceeding \$10,000;

(b) in the case of a body corporate, to a fine not exceeding \$20,000.

Making false statements.

50. Any person who, for the purpose of procuring anything to be done or not to be done under Parts I, II or III, whether for his own benefit or for the benefit of any other person —

(a) makes a statement that he knows to be false in a material particular; or

(b) recklessly makes a statement that is false in a material particular,

is guilty of an offence and liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$5,000.

Obstructing or hindering authorised officer.

51. Any person who intentionally obstructs or hinders any authorised officer in the performance of his duty under this Order or any regulations made hereunder is guilty of an offence and liable on conviction to imprisonment for a term not exceeding 3 months, a fine not exceeding \$2,000 or both.

General penalty.

52. Any person who commits an offence against this Order or under any regulations made hereunder for which no penalty is provided otherwise than in this section is liable on conviction —

(a) in the case of an individual, to imprisonment for a term not exceeding 5 years, a fine not exceeding \$100,000 or both;

(b) in the case of a body corporate, to a fine not exceeding \$200,000.

Compounding of offences.

53. The Director may compound any offence under this Order, which is prescribed to be a compoundable offence, by accepting from the person reasonably suspected of having committed such offence a sum not exceeding \$2,000.

Onus of proof in respect of certain offences.

54. Where any person is charged with an offence against this Order arising out of his doing, without a permit or certificate, any action for which a permit or certificate is required, the onus shall be on that person to prove that at the relevant time he held the required permit or certificate.

Forfeiture of property on conviction.

55. (1) Subject to subsection (2), upon the conviction of any person for any offence against this Order —

(a) any specimen of any species listed in the Appendix in respect of which the offence has been committed; and

(b) any container, packing case, crate, box or any other form of receptacle (not being a bulk cargo container or a pallet) used in relation to the commission of the offence,

whether or not they have been seized, taken possession of or detained under section 36, shall be forfeited to the Government and disposed of —

(i) in the case of a specimen, in accordance with section 44;

(ii) in the case of any container, packing case, crate, box or any form of receptacle, as the Director directs.

(2) Notwithstanding the conviction of any person for any offence against this Order, no specimen shall be forfeited or disposed of until proceedings are finally determined.

(3) Any person whose receptacle has been forfeited to the Government under subsection (1) or any person having a legal or equitable interest in such

property may apply to the Minister within 30 days of the conviction for the release of the property so forfeited; and the Minister may order the release of that property on payment to the Government of such amount as he thinks appropriate, being an amount not exceeding the amount which the items otherwise forfeited are estimated by the Director to realise if sold by public auction in Brunei Darussalam.

(4) Any forfeiture directed or redemption payment imposed pursuant to this section shall be in addition to, and not in substitution for, any other penalty that may be imposed by a court or by this Order.

Protection of authorised officers and others.

56. Any person who does any act in pursuance or intended pursuance of any of the functions conferred on him by or under this Order shall not be under any civil or criminal liability in respect thereof, whether on the ground of want of jurisdiction, mistake of law or fact or on any other ground, unless he has acted, or omitted to act, in bad faith or without reasonable cause.

Offences by bodies corporate.

57. (1) Where an offence against this Order which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of that body, or of a person purporting to act in any such capacity, he, as well as the body corporate, is also guilty of the offence and liable to be proceeded against and punished accordingly.

(2) In relation to a body corporate whose affairs are managed by its members, "director", in subsection (1), means any member of that body corporate.

Regulations.

58. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations for all or any of the following purposes —

(a) prescribing the fees to be paid in respect of any permit or certificate granted under this Order;

(b) prescribing the recording of trade in species listed in the Appendix;

(c) regulating the non-commercial loan, donation and exchange between registered scientific institutions in Brunei Darussalam and those in other countries;

(d) prescribing the registration of scientific institutions in Brunei Darussalam involved in such exchanges;

(e) regulating the breeding in captivity, in the case of an animal, and the artificial propagation, in the case of a plant, of any specimen of species listed in the Appendix;

(f) specifying requirements with respect to taking and analysis of samples of specimens where such taking and analysis is authorised for any purpose under this Order;

(g) prescribing offences in respect of the contravention of or non-compliance with any regulations made under this Order; and prescribing fines not exceeding \$100,000 in respect of any such offence;

(h) providing for such matters as are contemplated by or necessary for giving full effect to the provisions of, or which may be prescribed under, this Order and for its due administration.

(2) Such regulations may include such incidental, consequential and supplementary provisions as the Minister considers necessary or expedient.

Made this 21st. day of Zulhijjah, 1428 Hijriah corresponding to the 31st. day of December, 2007 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM