

## TRADE IN ENDANGERED SPECIES AMENDMENT BILL

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### EXPLANATORY NOTE

THIS Bill increases significantly the penalties for offences against the Trade in Endangered Species Act 1989 and inserts into that Act new enforcement provisions.

*Clause 1* relates to the Short Title.

*Clause 2* inserts into the principal Act new *section 36A*, which provides a power of arrest without a warrant. The new section is based on section 39 of the Summary Offences Act 1981.

*Subsection (1)* empowers any Endangered Species Officer or member of the Police to arrest without a warrant any person whom he or she has good cause to suspect of having committed an offence against the Act.

*Subsection (2)* requires an Endangered Species Officer who arrests a person under *subsection (1)* to deliver that person to a member of the Police as soon as practicable.

*Subsection (3)* authorises members of the public to assist in an arrest under *subsection (1)*.

*Clause 3* corrects a drafting error in section 36 (1) of the principal Act by replacing the word "Secretary" with the word "Director-General".

*Clause 4* inserts into the principal Act new *sections 39A to 39C*, which relate to seizure and forfeiture of vehicles and containers used in the commission of offences.

*Section 39A* confers on an Endangered Species Officer the power to stop and seize any vehicle or container that—

- (a) Contains any endangered, threatened, or exploited species; or
- (b) Is in the possession of a person whom the officer has good cause to suspect of having committed an offence against the principal Act.

A similar provision is contained in section 40 (1) (d) of the Conservation Act 1987.

*Section 39B* provides for vehicles and containers that have been seized under *section 39A* to be forfeited to the Crown. This provision is based on section 46 of the Conservation Act 1987.

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*Subsection (1)* provides for the Director-General of Conservation to retain the vehicle or container pending the proceedings in respect of which it has been seized.

*Subsection (2)* requires the Director-General to release the vehicle or container if no proceedings are taken within 6 months of the seizure or if the proceedings are dismissed.

*Subsection (3)* empowers a Court to direct that a vehicle or container be forfeited to the Crown.

*Subsection (4)* provides for the Minister of Conservation to release forfeited property.

*Subsection (5)* provides that forfeiture under this section is in addition to, and not in substitution for, other penalties that may be imposed.

*Section 39c* empowers a District Court Judge to order the return of a vehicle or container that has been seized under *section 39A*.

*Clause 5* corrects a drafting error in section 41 of the principal Act by replacing the words “under this section” with the words “under section 39 of this Act”.

*Clause 6* increases the penalties specified in sections 44 to 47 of the principal Act and replaces those sections.

*Section 44* is amended as follows:

- (a) The maximum fine for unlawfully trading in any specimen of an endangered species is increased from \$20,000 to \$100,000 in the case of an individual, and from \$40,000 to \$200,000 in the case of a body corporate. A term of imprisonment not exceeding 5 years is also provided for in the case of an individual, in addition to a fine:
- (b) The maximum fine for unlawfully trading in any specimen of a threatened species is increased from \$10,000 to \$50,000 in the case of an individual, and from \$20,000 to \$100,000 in the case of a body corporate. A term of imprisonment not exceeding 3 years is also provided for in the case of an individual, in addition to a fine:
- (c) The maximum fine for unlawfully trading in any specimen of an exploited species is increased from \$7,500 to \$37,500 in the case of an individual, and from \$15,000 to \$75,000 in the case of a body corporate:
- (d) The offences referred to in paragraphs (a) and (b) above are made indictable offences.

*Section 45* is amended as follows:

- (a) The maximum fine for unlawful possession of any specimen of an endangered species is increased from \$20,000 to \$100,000 in the case of an individual, and from \$40,000 to \$200,000 in the case of a body corporate. A term of imprisonment not exceeding 5 years is also provided for in the case of an individual, in addition to a fine:
- (b) The maximum fine for unlawful possession of any specimen of a threatened species is increased from \$10,000 to \$50,000 in the case of an individual, and from \$20,000 to \$100,000 in the case of a body corporate. A term of imprisonment not exceeding 3 years is also provided for in the case of an individual, in addition to a fine:
- (c) The maximum fine for unlawful possession of any specimen of an exploited species is increased from \$7,500 to \$37,500 in the case of an individual, and from \$15,000 to \$75,000 in the case of a body corporate:
- (d) The offences referred to in paragraphs (a) and (b) above are made indictable offences.

*Section 46* is amended as follows:

- (a) The maximum fine for failing to comply with any conditions attached to a permit or certificate under the principal Act is increased from \$5,000 to \$10,000 in the case of an individual, and from \$10,000 to \$20,000 in the case of a body corporate:
- (b) The word "Minister" is replaced with the words "Director-General". This corrects a drafting error.

*Section 47* is amended by increasing the penalties for making a false statement for the purpose of procuring anything to be done or not to be done under any of Parts I to III of the principal Act. The maximum term of imprisonment is increased from 3 months to 2 years, and the maximum fine is increased from \$2,000 to \$5,000.

*Clauses 7 to 10* effect amendments of a technical or consequential nature.

*Clause 11* amends section 213 of the Customs Act 1966 to empower officers of Customs and members of the Police to detain and search persons suspected of having committed an offence against section 44 or section 45 of the principal Act (as set out in *clause 6* of this Bill). Section 213 presently applies where a person is suspected of having committed an offence against the Customs Act 1966 or an offence involving the importation or exportation of drugs in contravention of the Misuse of Drugs Act 1975.

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*Hon. Philip Woollaston*

## TRADE IN ENDANGERED SPECIES AMENDMENT

### ANALYSIS

Title	
1. Short Title	species without permit or certificate
2. Power of arrest	45. Possession of specimens of endangered, threatened, or exploited species
3. Authority to act as officer	46. Failure to comply with conditions of permit or certificate
4. New sections inserted	47. Making false statements
39A. Power to seize vehicles and containers	7. Onus of proof in respect of certain offences
39B. Forfeiture of vehicles and containers	8. Forfeiture of property on conviction
39C. Power of Court to order return of seized vehicle or container	9. Regulations
5. Release of seized specimens	10. Consequential amendment to Summary Proceedings Act 1957
6. New sections substituted	11. Amendments to Customs Act 1966
44. Trading in endangered, threatened, or exploited	

### A BILL INTITULED

#### **An Act to amend the Trade in Endangered Species Act 1989 and to amend certain other enactments**

BE IT ENACTED by the Parliament of New Zealand as follows:

5     **1. Short Title**—This Act may be cited as the Trade in Endangered Species Amendment Act 1990, and shall be read together with and deemed part of the Trade in Endangered Species Act 1989\* (hereinafter referred to as the principal Act).

10    **2. Power of arrest**—The principal Act is hereby amended by inserting, after section 36, the following section:

“36A. (1) Any officer or any member of the Police may arrest and take into custody without a warrant any person whom he or she has good cause to suspect of having committed an offence against this Act.

\*1989, No. 18

“(2) Where any officer arrests any person under the power conferred by **subsection (1)** of this section, he or she shall as soon as practicable call a member of the Police to his or her aid and deliver the arrested person into the custody of that member of the Police.

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“(3) Any person called upon to do so by any person referred to in **subsection (1)** of this section is justified in assisting him or her in good faith to arrest any person.”

**3. Authority to act as officer**—Section 36 (1) of the principal Act is hereby amended by omitting the word “Secretary”, and substituting the word “Director-General”.

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**4. New sections inserted**—The principal Act is hereby amended by inserting, after section 39, the following sections:

“**39A. Power to seize vehicles and containers**—Any 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 the officer reasonably believes that the vehicle or container either—

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“(a) Contains any endangered, threatened, or exploited species; or

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“(b) Is in the possession of any person whom the officer has good cause to suspect of having committed an offence against this Act.

“**39B. Forfeiture of vehicles and containers**—(1) Subject to **section 39c** of this Act, where any vehicle or container is seized under **section 39A** of this Act, it shall, pending any criminal proceedings under this Act against the owner or any person in possession of the vehicle or container, be retained by the Director-General.

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“(2) If no proceedings are taken in respect of the offence concerned within 6 months of the seizure under this Act of any vehicle or container, or if the proceedings concerned are discharged or dismissed, the vehicle or container shall be released from the custody of the Director-General.

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“(3) On the conviction of any person for any offence against this Act, any vehicle or container retained under **subsection (1)** of this section in respect of that offence may, on the direction of the Court, be forfeited to the Crown; and, in that case, shall be disposed of as the Minister thinks fit.

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“(4) Any person whose property has been forfeited to the Crown under this section or any person having a legal or equitable interest in any such property (being, in neither case, a

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person convicted of an offence out of which the forfeiture arose) may apply to the Minister, within 30 days of the conviction concerned, for the release of the property forfeited; and the Minister may order the release of the property on  
5 payment to the Crown of any amount the Minister thinks appropriate, being an amount not exceeding the amount the items forfeited are estimated by the Director-General to be likely to realise if sold by public auction in New Zealand.

“(5) Any forfeiture directed under this section shall be in  
10 addition to, and not in substitution for, any other penalty that may be imposed.

“39c. **Power of Court to order return of seized vehicle or container**—(1) Where any vehicle or container is seized under **section 39A** of this Act, any person claiming to be entitled  
15 to possession of the vehicle or container may at any time apply to a District Court Judge for an order that it be delivered to that person.

“(2) On an application under **subsection (1)** of this section, a District Court Judge may—

20 “(a) Adjourn the application, on such terms and conditions as he or she 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 terms and conditions as he  
25 or she thinks fit.

“(3) Nothing in this section applies to any vehicle or container if a Court has directed under **section 39b (3)** of this Act that it be forfeited to the Crown.”

**5. Release of seized specimens**—Section 41 of the principal Act is hereby amended by omitting the words “under this section”, and substituting the words “under section 39 of this Act”.

**6. New sections substituted**—The principal Act is hereby amended by repealing sections 44 to 47, and substituting the  
35 following sections:

“44. **Trading in endangered, threatened, or exploited species without permit or certificate**—(1) Every person commits an offence who—

40 “(a) Trades in any specimen of an endangered species without the appropriate permit or certificate granted under any of sections 13 to 16 of this Act; or

- “(b) Trades in any specimen of a threatened species without the appropriate permit or certificate granted under any of sections 17 to 20 of this Act; or
- “(c) Trades in any specimen of an exploited species without the appropriate permit or certificate granted under any of sections 21 to 24 of this Act. 5
- “(2) Every person who commits an offence against **subsection (1) (a)** of this section is liable on conviction on indictment,—
- “(a) In the case of a natural person, to imprisonment for a term not exceeding 5 years or to a fine not exceeding \$100,000, or to both: 10
- “(b) In the case of a body corporate, to a fine not exceeding \$200,000.
- “(3) Every person who commits an offence against **subsection (1) (b)** of this section is liable on conviction on indictment,— 15
- “(a) In the case of a natural person, to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$50,000, or to both:
- “(b) In the case of a body corporate, to a fine not exceeding \$100,000. 20
- “(4) Every person who commits an offence against **subsection (1) (c)** of this section is liable on summary conviction,—
- “(a) In the case of a natural person, to a fine not exceeding \$37,500:
- “(b) In the case of a body corporate, to a fine not exceeding \$75,000. 25
- “**45. Possession of specimens of endangered, threatened, or exploited species**—(1) Every person commits an offence who has in his or her possession, or has under his or her control though under the custody of another, any specimen of an endangered, threatened, or exploited species that he or she knows— 30
- (a) Has been imported or introduced from the sea into New Zealand otherwise than in accordance with this Act; or 35
- (b) Is intended to be exported or re-exported from New Zealand otherwise than in accordance with this Act.
- “(2) Every person who commits an offence against **subsection (1)** of this section in respect of a specimen of an endangered species is liable on conviction on indictment,— 40
- “(a) In the case of a natural person, to imprisonment for a term not exceeding 5 years or to a fine not exceeding \$100,000, or to both:

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

5 “(3) Every person who commits an offence against subsection (1) of this section in respect of a specimen of a threatened species is liable on conviction on indictment,—

“(a) In the case of a natural person, to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$50,000, or to both:

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

“(4) Every person who commits an offence against subsection (1) of this section in respect of a specimen of an exploited species is liable on summary conviction,—

15 “(a) In the case of a natural person, to a fine not exceeding \$37,500:

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

20 “46. **Failure to comply with conditions of permit or certificate**—(1) Every person commits an offence who fails to comply with any of the conditions specified by the Director-General in respect of any permit or certificate granted to him or her under Part I of this Act

“(2) Every person who commits an offence against subsection (1) of this section is liable on summary conviction,—

25 “(a) In the case of a natural person, to a fine not exceeding \$10,000:

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

30 “47. **Making false statements**—(1) Every person commits an offence who, for the purpose of procuring anything to be done or not to be done under Part I or Part II or Part III of this Act, whether for his or her own benefit or for the benefit of any other person,—

35 “(a) Makes a statement that he or she knows to be false in a material particular; or

“(b) Recklessly makes a statement that is false in a material particular.

40 “(2) Every person who commits an offence against subsection (1) of this section is liable on summary conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$5,000.”

**7. Onus of proof in respect of certain offences**—Section 50 of the principal Act is hereby amended by omitting the



words “under this Act”, and substituting the words “against this Act”.

**8. Forfeiture of property on conviction**—Section 51 of the principal Act is hereby amended by omitting from subsection (1) and also from subsection (2) the words “under this Act”, and substituting in each case the words “against this Act”. 5

**9. Regulations**—Section 54 of the principal Act is hereby amended by repealing paragraph (f), and substituting the following paragraph: 10

“(f) Prescribing offences in respect of the contravention of, or non-compliance with, any regulations made under this Act; and prescribing fines not exceeding \$2,000 in respect of any such offence.”.

**10. Consequential amendment to Summary Proceedings Act 1957**—The First Schedule to the Summary Proceedings Act 1957 is hereby amended by inserting in Part II, in the appropriate columns and in the appropriate alphabetical order, the following words: 15

“The Trade in Endangered Species Act 1989	44 (1) (a)	Trading in specimen of endangered species without appropriate permit or certificate
	44 (1) (b)	Trading in specimen of threatened species without appropriate permit or certificate
	45 (1)	Unlawful possession of specimen of endangered or threatened species.”

**11. Amendments to Customs Act 1966**—(1) Section 2 (1) of the Customs Act 1966 is hereby amended by inserting in the definition of the term “restricted goods”, after the words “the Customs Acts”, the words “or the Trade in Endangered Species Act 1989”. 20

(2) Section 213 (8) of the Customs Act 1966 (as substituted by section 2 (3) of the Customs Amendment Act 1985) is hereby amended by inserting, after paragraph (b), the following paragraph: 25

“(ba) Importation or exportation or possession in circumstances constituting an offence against section 30

44 or section 45 of the Trade in Endangered Species Act 1989; and”.

(3) Section 218 (2) of the Customs Act 1966 (as substituted by section 14 (1) of the Customs Acts Amendment Act 1985) is hereby amended by inserting, after the words “the Customs Acts”, the words “or to an investigation under the Trade in Endangered Species Act 1989”.