

[AS REPORTED FROM THE PLANNING AND DEVELOPMENT
COMMITTEE]

House of Representatives, 9 May 1991.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE HOUSE]

House of Representatives, 23 July 1991.

Words struck out are shown in italics within double bold round brackets, or with double black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

Hon. Denis Marshall

TRADE IN ENDANGERED SPECIES AMENDMENT

ANALYSIS

Title	species without permit or certificate
1. Short Title	
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	

No. 55—3

Price
incl. GST \$2.30

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:

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).

New

1A. Control of arrivals from overseas—Section 27 (1) of the principal Act is hereby amended by omitting the words “Every such person”, and substituting the words “Every person”.

1B. Disposal and release of specimens seized from arrivals from overseas—The principal Act is hereby amended by repealing section 28, and substituting the following section:

“28. (1) Where any New Zealand citizen or permanent resident or intending resident surrenders a specimen of an endangered, threatened, or exploited species under section 27 (2) of this Act, that specimen shall be forfeited to the Crown and shall be disposed of in accordance with section 42 of this Act.

“(2) Any visitor to New Zealand who surrenders a specimen under section 27 (2) of this Act may apply to the Director-General for the specimen to be returned to the visitor when the visitor leaves New Zealand.

“(3) Subject to subsection (4) of this section, the Director-General shall consider any application under subsection (2) of this section as expeditiously as possible and the specimen shall be dealt with as follows:

“(a) If the Director-General grants the application, the Department shall take all reasonable steps to enable the applicant to take the specimen from the aerodrome or port at which the visitor surrendered the specimen, if and when the visitor leaves New Zealand:

New

“**(b)** If the Director-General declines the application, that specimen shall be forfeited to the Crown and shall be disposed of in accordance with section 42 of this Act.

5

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

10

1c. Certificate for specimens bred in captivity or artificially propagated—(1) Section 31 (1) of the principal Act is hereby amended by omitting the words “an endangered, threatened, or exploited species”, and substituting the words “any species specified in the Second Schedule or the Third Schedule to this Act”.

15

(2) Section 31 (3) of the principal Act is hereby amended by omitting the expression “13”, and substituting the expression “17”.

20

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.

25

“(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.

30

“(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.”

35

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”.

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

Struck Out

- “**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— 5
- “(a) Contains any endangered, threatened, or exploited species; or 10
- “(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. 15
- “(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. 20
- “(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. 25
- “(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 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; 30
- and the Minister may order the release of the property on 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. 35 40

Struck Out

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

5

New

“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 either—

10 “(a) That the vehicle or container contains any endangered, threatened, or exploited species; or

“(b) That the vehicle or container—

15 “(i) Is in the possession of a person who has committed an offence against this Act; and

“(ii) Has been used in connection with the commission of an offence against this Act.

20 “39B. **Director-General to retain seized 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.

25 “(2) If at any time following the seizure of any vehicle or container under section 39A of this Act (not being a vehicle or container that has been forfeited to the Crown) it appears to the Director-General that the officer who seized the vehicle or container is unable to establish clearly that he or she had the reasonable belief necessary to exercise that power, the

30 Director-General shall immediately release the vehicle or container from his or her custody.

“(3) The Director-General shall exercise reasonable care of any property while it is retained in his or her custody under subsection (1) of this section.

35 “39BA. **Proceedings to be prosecuted promptly and diligently**—(1) Proceedings in respect of an offence against this Act shall be commenced promptly and prosecuted with due

New

diligence if they arise in connection with the use of any vehicle or container seized under **section 39A** of this Act.

“(2) If no proceedings are taken in respect of the offence concerned within 6 months of the seizure under **section 39A** of 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. 5

“**39BB. Forfeiture of seized vehicles and containers—**

(1) On the conviction of any person for any offence against this Act, any vehicle or container retained in respect of that offence under **section 39B (1)** of this Act may, on the order of the Court, be forfeited to the Crown; and, in that case, the vehicle or container shall be disposed of as the Minister thinks fit. 10

“(2) 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 (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 concerned, for the release of the property forfeited; and the Minister may order the release of the property on 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. 15 20 25

“(3) In considering whether to order the release of any property on payment of an amount under **subsection (2)** of this section, 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 30

“(b) The extent to which it was foreseeable that the property would be used in connection with the commission of an offence against this Act when it was placed in the possession of the offender. 35

“(4) Any forfeiture ordered under this section shall be in 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 40

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.

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

“(a) Adjourn the application, on such terms and conditions as he or she thinks fit, to enable proceedings to be brought or completed; or

10 “(b) Make an order for the return of the vehicle or container to the applicant, on such terms and conditions as he or she thinks fit.

“(3) Nothing in this section applies to any vehicle or container if a Court has ~~((directed under section 39B (3))~~ ordered under section 39BB (1) of this Act that it be forfeited to the Crown.

15

New

20 “39D. **Effect of order for release of seized vehicle or container**—Where the Minister makes an order under section 39BB (2) of this Act in respect of a vehicle or container that has been forfeited to the Crown, the forfeiture order made in respect of that vehicle or container shall cease to have effect.”

25 **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 following sections:

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

“(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

35 “(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.
- “(2) Every person who commits an offence against **subsection (1) (a)** of this section is liable on conviction on indictment,— 5
- “(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. 10
- “(3) Every person who commits an offence against **subsection (1) (b)** of this section 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: 15
- “(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) (c)** of this section is liable on summary conviction,—
- “(a) In the case of a natural person, to a fine not exceeding \$37,500: 20
- “(b) In the case of a body corporate, to a fine not exceeding \$75,000.
- “**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— 25
- (a) Has been imported or introduced from the sea into New Zealand otherwise than in accordance with this Act; 30
- or
- (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,— 35
- “(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: 40
- “(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) of this section in respect of a specimen of a threatened species is liable on conviction on indictment,—

5 “(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.

10 “(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,—

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

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

“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,—

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

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

“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,—

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

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

“(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.”

40 **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:

“(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

Struck Out

New

9A. Second and Third Schedules amended—(1) Part I of the Second Schedule to the principal Act is hereby amended by omitting from the third column of Division 12 the word “speceis”, and substituting the word “species”.

15

(2) Part I of the Third Schedule to the principal Act is hereby amended by omitting from the fourth column of Division 1 the words “porcupine, South Amercian”, and substituting the words “porcupine, South American”.

20

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:

25

“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.”

5 **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”.

(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:

10 “(ba) Importation or exportation or possession in circumstances constituting an offence against section 44 or section 45 of the Trade in Endangered Species Act 1989; and”.

15 (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”.