

LEGISLATIVE COUNCIL BRIEF

Protection of Endangered Species of Animals and Plants Ordinance
(3 of 2006)

Protection of Endangered Species of Animals and Plants (Exemption for Appendix I Species) Order

Protection of Endangered Species of Animals and Plants (Exemption for Appendices II and III Species) Order

INTRODUCTION

A At the meeting of the Executive Council on 9 May 2006, the Council ADVISED and the Chief Executive ORDERED that the Protection of Endangered Species of Animals and Plants (Exemption for Appendix I Species) Order (Appendix I Order), at **Annex A**, should be made.

B 2. The Protection of Endangered Species of Animals and Plants (Exemption for Appendices II and III Species) Order (Appendices II and III Order), at **Annex B**, is to be made by the Secretary for the Environment, Transport and Works (the Secretary) at the same time as the Appendix I Order. These two Exemption Orders provide exemptions from licensing requirements for certain endangered species under the Protection of Endangered Species of Animals and Plants Ordinance (3 of 2006) (“new Ordinance”) in line with the control regime of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

JUSTIFICATIONS

3. CITES imposes different export and import controls over endangered species listed in its Appendices^{Note 1}. The Animals and Plants (Protection of Endangered Species) Ordinance (Cap.187) was enacted in 1976 to give effect to CITES in Hong Kong. We introduced the Protection of Endangered Species of Animals and Plants Bill in

Note 1 Appendix I: Species threatened with extinction which are or may be affected by trade.
Appendix II: Species which, although not necessarily now threatened with extinction, may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival; and other species which must be subject to regulation in order that trade in specimens of certain species referred to above may be brought under effective control.
Appendix III: Species which any Party to CITES identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the co-operation of other Parties in the control of trade.

April 2005 to align Hong Kong's control regime with CITES and to streamline the licensing requirements. The Bill was passed into law by the Legislative Council on 1 March 2006. When the new Ordinance comes into operation, it will replace Cap.187 to give effect to CITES in Hong Kong.

4. The current control regime of endangered species in Hong Kong as laid out in Cap. 187 requires a licence to be issued by the Director of Agriculture, Fisheries and Conservation for the import, export, re-export or possession of all scheduled species unless exempted. The Animals and Plants (Protection of Endangered Species) (Exemption) Order made under section 18 of Cap. 187 exempts certain scheduled species from licensing requirements. Such exemptions are part and parcel of the control mechanism set out in CITES articles, resolutions, decisions or notifications. Under section 47 of the new Ordinance, the Chief Executive in Council may make an order to exempt certain Appendix I endangered species from licensing requirements while the Secretary may make an order to exempt certain Appendices II and III species from licensing requirements. The Appendix I Order and the Appendices II and III Order are required to replace the existing Animals and Plants (Protection of Endangered Species) (Exemption) Order. We have also taken the opportunity to remove certain inconsistent treatments in the existing Order which are not justified on operational ground, and to update the exemption requirements based on the latest decisions made by the Conference of the Parties to CITES.

5. The Appendix I Order mainly provides for exemptions in respect of species that belong to the following categories:

- (a) a specimen for cooperative conservation programmes which is arranged to be loaned, donated or exchanged for non-commercial purposes between participants in a co-operative conservation programme;
- (b) a specimen for scientific or educational study or for display in museum or herbarium; and
- (c) a specimen being part of the personal or household effects of a person which is imported, exported, re-exported or possessed for non-commercial purposes.

6. Apart from the above three categories, the Appendices II and III Order also provides exemption for the export of an artificial propagated plant species which is accompanied with a phytosanitary certificate.

THE EXEMPTION ORDERS

7. The Appendix I Order is to provide for exemptions for certain species from the provisions regulating the import, export, re-export and possession and control of specimens of Appendix I species under the new Ordinance.

8. The Appendices II and III Order is to provide for exemptions for certain species from the provisions regulating the import, export, re-export, possession and control of specimens of Appendices II and III species under the new Ordinance.

LEGISLATIVE TIMETABLE

9. The legislative timetable is -

Publication in the Gazette	19 May 2006
Tabling at the Legislative Council	24 May 2006

IMPLICATIONS OF THE TWO EXEMPTION ORDERS

10. The two exemption orders have financial and civil service implications as set out at **Annex C**.

11. The two exemption orders are in conformity with the Basic Law, including the provisions concerning human rights. They will not affect the binding effect of the new Ordinance. They have no economic, environmental and productivity implications. They have no significant sustainability implications.

PUBLIC CONSULTATION

12. The exemptions for the endangered species as set out in the two Exemption Orders were included as part of the legislative proposal when the Bill was put up for consultation with relevant parties. The Agriculture, Fisheries and Conservation Department had consulted the Endangered Species Advisory Committee and representatives of the trade (including those from traditional Chinese medicine, floral, pet and leather trade groups) on the legislative proposal. The Endangered Species Protection Liaison Group (comprising representatives of law enforcement authorities and local green groups) had also been consulted. They supported the legislative proposal as the proposal will simplify the existing licensing requirements and facilitate legitimate trading in the species. The Panel on Environmental Affairs of the Legislative Council was also consulted of the Bill to align Hong Kong's control regime with CITES and to simplify the existing licensing system

in November 2004. Members supported the legislative proposal.

PUBLICITY

13. A press release will be issued on 17 May 2006. A spokesman will be available to handle enquiries.

BACKGROUND

14. CITES aims to regulate international trade in endangered species to protect wildlife from over exploitation or extinction. It requires control over the import and export of the species listed in its three Appendices, including their readily recognizable parts and derivatives.

ENQUIRY

15. Any enquiry on this brief should be directed to Mr Eric Chan, Assistant Director of Environmental Protection (Conservation) (telephone number: 2594 6036).

Environmental Protection Department
17 May 2006

**PROTECTION OF ENDANGERED SPECIES OF
ANIMALS AND PLANTS (EXEMPTION FOR
APPENDIX I SPECIES) ORDER**

(Made by the Chief Executive in Council under section 47(1) and (3) of the
Protection of Endangered Species of Animals and Plants Ordinance
(3 of 2006))

PART 1

PRELIMINARY

1. Commencement

This Order shall come into operation on the day appointed for the commencement of the Protection of Endangered Species of Animals and Plants Ordinance (3 of 2006).

PART 2

**CONSERVATION PROGRAMMES AND SCIENTIFIC AND
EDUCATIONAL PURPOSES**

**2. Exemption in respect of import of specimens
for co-operative conservation programmes**

(1) A person who imports a specimen of an Appendix I species shall be exempt from section 5(1) of the Ordinance if, upon the landing of the specimen in Hong Kong –

- (a) he proves to the satisfaction of an authorized officer that the specimen is a programme specimen; and
- (b) he surrenders or causes to be surrendered to an authorized officer for retention and cancellation a Convention certifying document issued in respect of the specimen,

stating that the specimen is not a live specimen of wild origin.

(2) In this section –

“programme specimen” (計劃標本) means a specimen which is arranged to be loaned, donated or exchanged for non-commercial purposes between participants in a co-operative conservation programme and –

- (a) those participants include one or more range states of the species to which the specimen belongs; or
- (b) the programme is supported by one or more such range states;

“range state” (分佈國), in relation to a species, means a state whose territory is within the natural range of distribution of the species or a particular population of the species.

3. Exemption in respect of possession or control of specimens for scientific or educational study or for display in museum or herbarium

A person who has in his possession or under his control a specimen (other than a live animal) of an Appendix I species shall be exempt from section 9(1) of the Ordinance if he proves to the satisfaction of the Director that the specimen is possessed or controlled for the purpose of scientific or educational study or for display in any museum or herbarium.

PART 3

PERSONAL OR HOUSEHOLD EFFECTS

4. Meaning of personal or household effects

For the purposes of this Part, a specimen shall be treated as part of the personal or household effects of a person if –

- (a) the specimen is personally owned or possessed by the person for non-commercial purposes only; and
- (b) where the specimen is being imported, exported or re-exported –
 - (i) it is worn or carried by the person or included in his personal baggage; or
 - (ii) the import, export or re-export forms part of a household move of the person.

5. Exemption in respect of import, etc. of personal or household effects

(1) A person who imports, exports or re-exports a specimen (other than a live animal) of an Appendix I species shall be exempt from section 5(1),7(1) or 8(1) (as the case may be) of the Ordinance if –

- (a) the specimen is not of a species specified in the Schedule;
- (b) the specimen is part of the personal or household effects of the person; and
- (c) the specimen was legally acquired by the person.

(2) A person who imports a live animal of an Appendix I species shall be exempt from section 5(1) of the Ordinance if –

- (a) the animal is not of a species specified in the Schedule;
- (b) the animal is part of the personal or household effects of the person;
- (c) the animal was legally acquired by the person; and
- (d) upon the landing of the animal in Hong Kong, the person surrenders or causes to be surrendered to an authorized officer for retention and cancellation a Convention certifying document issued in respect of the animal.

(3) Subsections (1) and (2) do not apply where –

- (a) the person acquired the specimen outside his usual place of residence; and

- (b) the specimen –
 - (i) is being taken into Hong Kong;
 - (ii) is being taken out of Hong Kong to the person's usual place of residence; or
 - (iii) is being taken out of Hong Kong with the intention of it being taken to the person's usual place of residence.

6. Exemption in respect of export or re-export of personal or household effects acquired pre-Convention

A person who exports or re-exports a specimen (other than a live animal) of an Appendix I species shall be exempt from section 7(1) or 8(1) (as the case may be) of the Ordinance if –

- (a) the specimen is part of the personal or household effects of the person;
- (b) the specimen was legally acquired by the person; and
- (c) before the removal of the specimen from Hong Kong, the person produces or causes to be produced to an authorized officer a pre-Convention certificate issued in respect of the specimen.

7. Exemption in respect of possession or control of personal or household effects

(1) A person who has in his possession or under his control a specimen (other than a live specimen) of an Appendix I species shall be exempt from section 9(1) of the Ordinance if –

- (a) the specimen is not of a species specified in the Schedule; and
- (b) the specimen is part of the personal or household effects of the person.

(2) A person who has in his possession or under his control a live specimen of an Appendix I species shall be exempt from section 9(1) of the Ordinance if –

- (a) the specimen is not of a species specified in the Schedule;
- (b) the specimen is part of the personal or household effects of the person; and
- (c) the person proves to the satisfaction of the Director that –
 - (i) where the person began to possess or control the specimen before the commencement of the Ordinance, the possession or control before that commencement had never been in contravention of the repealed Ordinance; and
 - (ii) where the person began to possess or control the specimen on or after that commencement –
 - (A) the specimen was imported or introduced from the sea in compliance with the repealed Ordinance or the Ordinance (whichever was in force at that time); or
 - (B) he legally acquired the specimen in Hong Kong.

SCHEDULE

[ss. 5 & 7]

APPENDIX I SPECIES REFERRED TO IN SECTIONS 5 AND 7

1. *Ailuropoda melanoleuca* <Giant Panda>.
2. All species of the family *Rhinocerotidae* <Rhinoceroses>.

Note: In the English text of this Schedule, any common name in English of a scientific name, if known, is included within angle brackets (< >) after the

scientific name. In the Chinese text of this Schedule, any common name in Chinese of a scientific name or the Chinese translation of the scientific name, if known, is included within angle brackets (< >) after the scientific name.

Clerk to the Executive Council

COUNCIL CHAMBER

2006

Explanatory Note

The object of this Order is to provide for exemptions from the provisions regulating the import, export, re-export, possession and control of specimens of Appendix I species under the Protection of Endangered Species of Animals and Plants Ordinance (3 of 2006). The Order contains provisions on the particular circumstances for exemptions in respect of –

- (a) specimens for co-operative conservation programmes;
- (b) specimens for scientific or educational study or for display in a museum or herbarium; and
- (c) specimens that form part of a person's personal or household effects.

**PROTECTION OF ENDANGERED SPECIES OF
ANIMALS AND PLANTS (EXEMPTION FOR
APPENDICES II AND III SPECIES) ORDER**

(Made by the Secretary for the Environment, Transport and Works under section 47(2), (4) and (5) of the Protection of Endangered Species of Animals and Plants Ordinance (3 of 2006))

PART 1

PRELIMINARY

1. Commencement

This Order shall come into operation on the day appointed for the commencement of the Protection of Endangered Species of Animals and Plants Ordinance (3 of 2006).

PART 2

**CONSERVATION PROGRAMMES AND SCIENTIFIC AND
EDUCATIONAL PURPOSES**

**2. Exemption in respect of import of specimens
for co-operative conservation programmes**

(1) A person who imports a specimen of an Appendix II species shall be exempt from section 11(1) of the Ordinance if, upon the landing of the specimen in Hong Kong –

- (a) he proves to the satisfaction of an authorized officer that the specimen is a programme specimen; and
- (b) he surrenders or causes to be surrendered to an authorized officer for retention and cancellation a Convention certifying document issued in respect of the specimen.

(2) In this section –

“programme specimen” (計劃標本) means a specimen which is arranged to be loaned, donated or exchanged for non-commercial purposes between participants in a co-operative conservation programme and –

- (a) those participants include one or more range states of the species to which the specimen belongs; or
- (b) the programme is supported by one or more such range states;

“range state” (分佈國), in relation to a species, means a state whose territory is within the natural range of distribution of the species or a particular population of the species.

3. Exemption in respect of possession or control of specimens for scientific or educational study or for display in museum or herbarium

A person who has in his possession or under his control a specimen of an Appendix II species shall be exempt from section 15(1) of the Ordinance if he proves to the satisfaction of the Director that the specimen is possessed or controlled for the purpose of scientific or educational study or for display in any museum or herbarium.

PART 3

PERSONAL OR HOUSEHOLD EFFECTS

4. Meaning of personal or household effects

For the purposes of this Part, a specimen shall be treated as part of the personal or household effects of a person if –

- (a) the specimen is personally owned or possessed by the person for non-commercial purposes only; and
- (b) where the specimen is being imported, exported or re-exported –

- (i) it is worn or carried by the person or included in his personal baggage; or
- (ii) the import, export or re-export forms part of a household move of the person.

5. Exemption in respect of import, etc. of Appendix II species as personal or household effects

(1) A person who imports, exports or re-exports a specimen (other than a live animal) of an Appendix II species shall be exempt from section 11(1), 13(1) or 14(1) (as the case may be) of the Ordinance if –

- (a) the specimen is part of the personal or household effects of the person; and
- (b) the specimen was legally acquired by the person.

(2) A person who imports a live animal of an Appendix II species shall be exempt from section 11(1) of the Ordinance if –

- (a) the animal is part of the personal or household effects of the person;
- (b) the animal was legally acquired by the person; and
- (c) upon the landing of the animal in Hong Kong, the person surrenders or causes to be surrendered to an authorized officer for retention and cancellation a Convention certifying document issued in respect of the animal.

(3) Subsections (1) and (2) do not apply where –

- (a) the person acquired the specimen outside his usual place of residence; and
- (b) the specimen –
 - (i) is being taken into Hong Kong;
 - (ii) is being taken out of Hong Kong to the person's usual place of residence; or

(iii) is being taken out of Hong Kong with the intention of it being taken to the person's usual place of residence.

(4) In a case where a person imports, exports or re-exports a specimen (other than a live specimen) of an Appendix II species and subsection (1) does not apply to the case because of subsection (3), he shall be exempt from section 11(1), 13(1) or 14(1) (as the case may be) of the Ordinance if –

- (a) the specimen is part of the personal or household effects of the person;
- (b) the specimen was legally acquired by the person;
- (c) the Director has not been advised through a notification from the Secretariat that –
 - (i) in the case of import, the place from which the specimen is imported requires an export permit or re-export certificate for the export or re-export of the specimen from that place; or
 - (ii) in the case of export or re-export, the place to which the specimen is exported or re-exported requires an export permit or re-export certificate for the export or re-export of the specimen to that place; and
- (d) where the specimen is of a species specified in column 2 of the Schedule, the quantity of the specimen imported, exported or re-exported by the person at one time and in one lot does not exceed the limit specified in column 3 of that Schedule opposite the species to which the specimen belongs.

6. Exemption in respect of import, etc. of Appendix III species as personal or household effects

A person who imports, exports or re-exports a specimen (other than a live animal) of an Appendix III species shall be exempt from section 11(1),13(1) or 14(1) (as the case may be) of the Ordinance if –

- (a) the specimen is part of the personal or household effects of the person; and
- (b) the specimen was legally acquired by the person.

7. Exemption in respect of export or re-export of personal or household effects acquired pre-Convention

A person who exports or re-exports a specimen of an Appendix II species or Appendix III species shall be exempt from section 13(1) or 14(1) (as the case may be) of the Ordinance if –

- (a) the specimen is part of the personal or household effects of the person;
- (b) the specimen was legally acquired by the person; and
- (c) before the removal of the specimen from Hong Kong, the person produces or causes to be produced to an authorized officer a pre-Convention certificate issued in respect of the specimen.

8. Exemption in respect of possession or control of personal or household effects

A person who has in his possession or under his control a specimen of an Appendix II species which is a live specimen of wild origin or a live specimen treated as a specimen of an Appendix II species under section 2(2) of the Ordinance shall be exempt from section 15(1) of the Ordinance if –

- (a) the specimen is part of the personal or household effects of the person; and

- (b) the person proves to the satisfaction of the Director that –
 - (i) where the person began to possess or control the specimen before the commencement of the Ordinance, the possession or control before that commencement had never been in contravention of the repealed Ordinance; and
 - (ii) where the person began to possess or control the specimen on or after that commencement –
 - (A) the specimen was imported or introduced from the sea in compliance with the repealed Ordinance or the Ordinance (whichever was in force at that time); or
 - (B) he legally acquired the specimen in Hong Kong.

PART 4

ARTIFICIALLY PROPAGATED PLANT SPECIES

9. Exemption in respect of export of specimens of artificially propagated plant species

A person who exports a specimen of an Appendix II species shall be exempt from section 13(1) of the Ordinance if he produces or causes to be produced to an authorized officer, before the removal of the specimen from Hong Kong, a phytosanitary certificate –

- (a) that is issued under section 6(3) of the Plant (Importation and Pest Control) Ordinance (Cap. 207) in respect of the specimen and is for the time being in force; and
- (b) that shows that –
 - (i) the specimen is an artificially propagated plant specimen; and

- (ii) the specimen is not treated as a specimen of an Appendix II species under section 2(2) of the Ordinance.

SCHEDULE

[s. 5]

SPECIES REFERRED TO IN SECTION 5

Item	Species	Limit on quantity
1.	Caviar of any species of the order Acipenseriformes <sturgeons>	Up to 250 grams per person
2.	Rainstick of any species of the family Cactaceae <cacti>	Up to 3 specimens per person
3.	Any species of the order Crocodylia <e.g. alligators, crocodiles or caimans>	Up to 4 specimens per person
4.	Shell of the species <i>Strombus gigas</i> <queen conch>	Up to 3 specimens per person
5.	Any species of the genus <i>Hippocampus</i> <seahorses>	Up to 4 specimens per person
6.	Shell of any species of the family Tridacnidae <giant clams>	Up to 3 specimens, each of which may be one intact shell or two matching halves, not exceeding 3 kilograms per person

Note: In the English text of this Schedule, any common name in English of a scientific name, if known, is included within angle brackets (< >) after the scientific name. In the Chinese text of this Schedule, any common name in Chinese of a scientific name or the Chinese translation of the scientific name, if known, is included within angle brackets (< >) after the scientific name.

Secretary for the Environment,
Transport and Works

2006

Explanatory Note

The object of this Order is to provide for exemptions from the provisions regulating the import, export, re-export, possession and control of specimens of Appendix II species and Appendix III species under the Protection of Endangered Species of Animals and Plants Ordinance (3 of 2006). The Order contains provisions on the particular circumstances for exemptions in respect of –

- (a) specimens for co-operative conservation programmes;
- (b) specimens for scientific or educational study or for display in a museum or herbarium;
- (c) specimens that form part of a person's personal or household effects; and
- (d) specimens of artificially propagated plants.

Financial and Civil Services Implications

The streamlined licensing system under the Protection of Endangered Species of Animals and Plants Ordinance will reduce the number of licence applications required by the traders and the public for scheduled species. The reduction in Government revenue as a result of decrease in number of licence applications is estimated to be about two million dollars a year in which about 0.32 million is due to the exemptions provided in the Exemption Orders. The staff resources required in processing the licence will also decrease accordingly. The Agriculture, Fisheries and Conservation Department will deploy the resources released from processing licence applications, which is roughly estimated to be about 2,000 man hour, to step up the related enforcement, education and publicity works.