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NATIONAL ORDINANCE of 13 February 1995 containing rules for the conservation of nature and wildlife (Nature Conservancy Ordinance)

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IN THE NAME OF THE QUEEN!

THE GOVERNOR OF ARUBA

Whereas, it is desirable, in the context of the accession of Aruba to various conventions for the protection of flora and fauna, the maintenance of biodiversity and the conservation and management of ecosystems and habitats, to establish rules on this and to replace outdated rules by new ones;

Having heard the Advisory Council and after consultation with the Legislative Council, has adopted the following national ordinance:

CHAPTER I

General provisions

Article 1

1. In this national ordinance and the provisions based upon it the following terms shall have the following meanings:

indigenous flora and fauna: the animals and plants occurring naturally on Aruba or in Aruban waters;

species: each species, subspecies or geographically separate population of flora or fauna;

the Committee: the committee referred to in article 2, paragraph 1;

import: bringing goods into Aruba;

export: taking goods out of Aruba;

the Minister: the Minister responsible for nature conservancy;

scientific authority: an expert or scientific body designated by national decree;

the Convention: the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed at Washington on 3 March 1973;

the Protocol: the Protocol concerning Specially Protected Areas and Wildlife adopted at Kingston on 18 January 1990 to the Convention for the Protection and Development of the Marine Environment of

the Wider Caribbean Region done at Cartagena de Indias
on 24 March 1983;

- specimen: (a) any animal or plant, whether alive or dead, of a species listed in an
appendix to the Convention or an annex to the
Protocol;
- (b) any recognisable part of an animal or plant as referred to at (a);
- (c) anything derived from or wholly or partly made from animals or plants as referred to
at (a) or from parts thereof;
- (d) goods which, as is apparent from an accompanying document or from the packaging,
brand or label or from some other circumstances,
are derived from or wholly or partly made from
animals or plants as referred to at (a) or from parts
thereof;

State Party: a State in respect of which the Convention or the Protocol has entered into
force.

2. In so far as is necessary for the implementation of other conventions for the protection of flora
and fauna and their habitats which are in force for Aruba, rules for their implementation
may be made by national decree containing general measures.
3. The text in force of the Convention and the Protocol and of the conventions referred to in
paragraph 2 shall be available for inspection by any person at the Inspectorate of
Customs and Excise and of the Foreign Relations Department of Aruba.

CHAPTER II

Protection of local wildlife

§ 1. The Committee

Article 2

1. There shall be a Committee which advises the Minister, either on request or of its own
volition, on measures to implement this national ordinance and which, on request,
assists him with this implementation.

2. The Committee shall be named the Flora and Fauna Protection Committee and shall consist of at least five and no more than seven independent members, who are appointed by national decree for a term of five years.
3. The head of the Housing, Spatial Development and the Environment Department shall act, in that capacity, as secretary to the Committee. Officials may be assigned by the Minister to the Committee as advisory members.

Article 3

1. Further rules on the composition, procedure and powers of the Committee shall be laid down by national decree containing general measures.
2. An amount to be paid to the members for attending the meetings of the Committee may be fixed by national decree containing general measures.

§ 2. The protection of indigenous flora and fauna

Article 4

1. The species of indigenous flora and fauna whose survival on Aruba is endangered shall be designated by national decree containing general measures.
2. The following may be designated by national decree containing general measures:
 - (a) the species of indigenous flora and fauna whose presence on Aruba is so valuable that they require protection even though they are not endangered;
 - (b) individual plants or groups of plants whose continued presence on Aruba is desirable in the interests of wildlife protection.
3. The Committee shall be heard before a national decree as referred to in paragraph 1 or 2 is adopted.
4. Further rules may be laid down in a national decree as referred to in paragraphs 1 and 2 in the interest of protecting the species and individual plants referred to therein.

Article 5

1. It is prohibited to export a live specimen of an animal or plant belonging to a species designated under article 4, paragraph 1 or 2.
2. It is prohibited to export eggs of an animal belonging to a species designated under article 4, paragraph 1 or 2.

Article 6

1. It is prohibited to kill or injure an animal belonging to a species designated under article 4, paragraph 1 or 2.
2. It is prohibited to remove or damage all or part of a plant belonging to a species designated under article 4, paragraph 1 or 2.
3. The prohibition referred to in paragraph 1 does not apply to those who act in accordance with an instruction given by a veterinary surgeon.

Article 7

1. It is prohibited to destroy a nest or lair, and the eggs it contains, of an animal belonging to a species designated under article 4, paragraph 1 or 2.
2. It is prohibited to remove or have possession of the eggs of an animal as referred to in paragraph 1.
3. It is prohibited to capture or deliberately disturb a wild animal as referred to in paragraph 1.

Article 8

1. The Minister may grant exemption from a prohibition as referred to in article 5, article 6, paragraph 2, and article 7, paragraphs 2 and 3, in accordance with rules to be laid down by national decree containing general measures.

2. The scientific authority shall be immediately consulted about every request received for exemption.
3. An exemption may be granted subject to limitations; an exemption may be made subject to observance of rules, which may be amended at any time.
4. An exemption may be cancelled if:
 - (a) the information provided in order to obtain the exemption is found to be so incomplete or incorrect that a different decision would have been taken if complete or correct information had been provided;
 - (b) one or more of the rules subject to which the exemption was granted have not been observed;
 - (c) circumstances have occurred which would have led to a different decision if they had been known when the exemption was granted;
 - (d) the circumstances have changed to such an extent since the granting of the exemption that no exemption would have been granted if these circumstances had existed on the date of the permit.

Article 9

The import, possession and use of certain means, designated by national decree, for capturing or killing animals, not being means used in the context of veterinary treatment, may be prohibited or limited by national decree containing general measures. Article 4, paragraph 3, shall apply *mutatis mutandis*.

§ 3. Designation of nature reserves

Article 10

1. State-owned property, whether land or water, may be designated as a nature reserve by national decree containing general measures, partly for the protection of a species designated under article 4, paragraphs 1 and 2 (a), or an individual plant designated under article 4, paragraph 2 (b).

2. Rules concerning the management of and access to a nature reserve shall also be laid down by or under a national decree as referred to in paragraph 1.

CHAPTER III

Protection of non-indigenous flora and fauna

Article 11

1. The import and export of a specimen of a species listed in Appendices I and II to the Convention or in the annexes to the Protocol is prohibited.
2. The Minister may grant exemption from the prohibition referred to in paragraph 1 in accordance with rules to be laid down by national decree containing general measures. Article 8, paragraphs 2, 3 and 4, shall apply.

Article 12

1. The import of a specimen of a species which has been included in Appendix III to the Convention by a State Party other than Aruba is prohibited without the prior presentation of a valid certificate of origin relating to that specimen issued by or on behalf of the relevant State Party.
2. The export of a specimen of a species which has been included in Appendix III to the Convention by a State Party other than Aruba is prohibited without the prior presentation of a permit from the Minister. Before issuing a permit the Minister shall consult the scientific authority.
3. The Minister shall lay down rules relating to the form and content of the document referred to in paragraph 2 and the further conditions governing its issue.

Article 13

1. It is prohibited to kill or injure an animal of a species that appears in the appendices to the Convention or the annexes to the Protocol.

2. Article 6, paragraph 3, shall apply.

Article 14

Possession of a specimen is prohibited if the person in possession knows or should reasonably suspect that the specimen was imported in breach of article 11, paragraph 1, or article 12, paragraph 1.

Article 15

Article 11, paragraph 1, and article 12, paragraphs 1 and 2, shall not apply to specimens sent by Aruba to another State Party, or by another State Party to Aruba, in fulfilment of obligations resulting from the Convention or the Protocol.

CHAPTER IV

Registers

Article 16

1. The Minister shall arrange for the following registers to be kept:
 - (a) a register of live animals kept in captivity on Aruba which belong to a species listed in the appendices to the Convention or the annexes to the Protocol;
 - (b) a register of live animals kept in captivity on Aruba which belong to a species designated under article 4, paragraph 1 or 2;
 - (c) a register of exporters and importers of specimens who are established on Aruba;
 - (d) a register of documents issued under Chapter III.

2. Rules concerning the content, form and management of each of the registers referred to in paragraph 1 and the data and documents that should be provided with the notice for inclusion in the registers referred to in paragraph 1 (a) and concerning the obligations which may be imposed in respect of the registration of animals as referred to in paragraph 1 (a) and (b) shall be laid down by national decree containing general measures.

3. The registers shall be public.

Article 17

1. It is prohibited to possess a live animal as referred to in article 16, paragraph 1 (a) or (b), without proof of registration of that animal in the relevant register.
2. The prohibition referred to in paragraph 1 shall not apply to animals that have been entrusted to a manager pursuant to article 21, paragraph 1, or article 22, paragraph 1.
3. Article 6, paragraph 3, shall apply.

CHAPTER V

Enforcement

Article 18

1. Officials designated by national decree shall be charged with enforcing observance of the provisions laid down by or pursuant to this national ordinance. Such a national decree shall be published in the Government Gazette of Aruba.
2. The officials designated under paragraph 1 shall be competent to take the following action, but only in so far as this is reasonably necessary for the performance of their duties:
 - (a) to request all information;
 - (b) to inspect all business books and records, documents and other information carriers and to copy them or to remove them temporarily for this purpose;
 - (c) to inspect and examine goods, to remove them temporarily for this purpose and to take samples thereof;
 - (d) to enter, accompanied by persons designated by them, all places, with the exception of homes if they do not have the express permission of the occupant.
3. If necessary, access to a place as referred to in paragraph 2 (d) shall be obtained with the help of the police.

4. Rules concerning the manner in which the officials designated under paragraph 1 should perform their duties shall be laid down by national decree containing general measures.
5. All persons are obliged to provide any cooperation required under paragraph 2 to the officials designated under paragraph 1.

CHAPTER VI

Penalties

Article 19

1. Any person who breaches a prohibition contained in article 5, paragraph 1, article 6, paragraphs 1 and 2, article 11, paragraph 1, article 12, paragraphs 1 and 2, or article 13, paragraph 1, shall be liable either to detention for a maximum of two years or a fine not exceeding one hundred thousand Aruban guilders or to both.
2. Any person who breaches a prohibition contained in article 5, paragraph 2, article 7, paragraphs 1 and 2, or article 14 shall be liable either to detention for a maximum of six months or a fine not exceeding twenty-five thousand Aruban guilders or to both.
3. Any person who breaches a prohibition contained in article 7, paragraph 3, or article 17, paragraph 1, or a prohibition issued under article 1, paragraph 2, article 4, paragraph 4, article 9 or article 10, paragraph 2, shall be liable either to detention for a maximum of three months or a fine not exceeding ten thousand Aruban guilders or to both.

Article 20

The offences referred to in article 19, paragraph 1, are serious offences; the other offences are minor offences.

Article 20a

1. In addition to the persons referred to in article 184 of the Code of Criminal Procedure of Aruba, those charged with investigating offences defined by or pursuant to this national

ordinance shall be officials designated by national decree. Such a national decree shall be published in the Government Gazette of Aruba.

2. Rules concerning the requirements that the officials designated under paragraph 1 must fulfil may be laid down by national decree containing general measures.

Article 21

1. Living specimens discovered by officials as referred to in article 20a, paragraph 1, shall, after consultation with the scientific authority, be immediately confiscated and handed over to a person or institution designated as manager for this purpose by the Minister.
2. If no objection to the confiscation is lodged under article 150 of the Code of Criminal Procedure of Aruba within seven days or if any such objection has been irrevocably dismissed, the manager shall return living specimens that have come from a State Party as quickly as possible to that State Party, in consultation with it and at the expense of the owner, the carrier or the importer or his agent. If the State Party concerned does not wish to have the specimens returned, they shall, after consultation with the scientific authority, either be transferred to a suitable habitat in Aruba or sent to another State Party in consultation with that State Party at the expense of the owner, the carrier or the importer or his agent.
3. Living specimens that have not come from a State Party shall as quickly as possible either be transferred by the manager to a suitable habitat in Aruba or sent to another State Party in consultation with that State Party at the expense of the owner, the carrier or the importer or his agent and after consultation with the scientific authority.

Article 22

1. Confiscated live animals or plants belonging to species designated under article 4, paragraph 1 or 2, shall be immediately handed over to a person or institution designated as manager for this purpose by the Minister. Live animals or plants which belong to a species referred to in the first sentence and have been declared forfeit and removed from circulation shall be reintroduced into the wild as quickly as possible by the manager at the expense of the

owner or holder and subject to rules prescribed by the Minister. The Committee shall be consulted before these rules are adopted.

2. Dead specimens and eggs of animals belonging to the species designated under article 4, paragraph 1 or 2, which have been declared forfeit and removed from circulation shall be destroyed by the manager at the expense of the owner, the carrier, the importer or his agent. In special cases the Minister may, after hearing the scientific authority, depart from the provision of the first sentence, provided that it is certain that the goods in question will not enter into free circulation.

Article 23

1. The amount owed under article 21, paragraph 2 or 3, and article 22, paragraphs 1 and 2, together with the costs of collection, may be collected by Aruba by means of a distress warrant conferring, among other things, the right of immediate execution.
2. No money shall be collected until after the debtor has been given a written warning to fulfil his obligations within a period of at least ten days, as specified therein. The warning shall contain a notification that the amount owed will be collected in accordance with paragraph 1 in so far as it has not been paid within the prescribed period.
3. The distress warrant shall be served and executed in the manner prescribed in the Code of Civil Procedure of Aruba with regard to judgments and authentic instruments.
4. Objection by the debtor to the execution of a distress warrant shall be instituted by application for a court summons against Aruba.
5. The lodging of an objection shall not stay the start or continuation of the execution, subject to the right of the person who has lodged the objection to apply for a provisionally enforceable order.

CHAPTER VII

Concluding provisions

Article 24

The semicolon in article 97 (b) of the Import, Export and Transit National Ordinance shall be replaced by a full stop. Article 97 (c) is repealed.

Article 25

The following are repealed:

- (a) National Ordinance on the Protection of Useful Species of Fauna (AB 1990 no. GT 46);
- (b) the Marine Environment Ordinance;
- (c) the Marine Nature Reserves National Ordinance;
- (d) the Aloe Plants (Export Prohibition) National Ordinance;
- (e) the Endangered Fauna and Flora (Import and Export Prohibition) National Decree (AB 1991 no. 102).

Article 26

1. This national ordinance shall enter into force at the start of the first calendar month after its publication in the Official Bulletin of Aruba, with the exception of: article 17, which shall enter into force at the start of the third calendar month after that of the entry into force of this national ordinance; article 24, which shall take effect on the day after its publication in the Official Bulletin of Aruba and shall have retroactive effect to 1 April 1992; and article 25 (b), which shall enter into force on a date to be specified by national decree.
2. It may be cited as the Nature Conservancy Ordinance.

Done at Oranjestad, 13 February 1995

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