

CITES World

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in Endangered Species of Wild Fauna and Flora (CITES)

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The importance of legislation to CITES

From the Editor

In a country based on the rule of law, it is law that empowers government officials to act, places limits on human actions and articulates policy in relation to international wildlife trade. International agreements like CITES are generally not self-executing, so legislation is needed to give effect to them at the national level.

Creating and adopting effective and enforceable legislation is not an easy task. Effective legislation is not just a piece of paper but the practical solution to a problem. Enforceable legislation is that which is realistic in terms of what can be achieved within a country's particular context and its human or financial resources.

The Parties have some guidance on what to include in their legislation. Articles III to VII of the Convention set forth the conditions under which trade should take place. Article IX requires that Parties designate a Management Authority and a Scientific Authority. Article VIII requires that Parties prohibit trade in specimens in violation of the Convention, and penalize such trade and allow for confiscation of specimens illegally traded or possessed. Resolution Conf. 8.4 urges all Parties that have not adopted the appropriate measures to fully implement the Convention to do so, and the Resolution directs the Secretariat to identify Parties that do not have the necessary measures in place, and to provide technical assistance where required. The National Legislation Project initiated through this Resolution has been the Convention's primary mechanism for maintaining attention on this important subject, and for encouraging Parties' legislative efforts.

The provisions of CITES in each Party are similar, though Parties may have different legal structures, national policies, culture, species in trade, or types of trade. This issue of *CITES World* looks at experiences with regard to national legislation. In their own words, Australia, Canada, China and the Hong Kong Special Administrative Region, the Czech Republic, Indonesia, New Zealand, Paraguay, Switzerland, the European Union, the United States of America and Viet Nam share the lessons they have learned in developing, adopting and applying CITES legislation, demonstrating that there are many ways of addressing similar challenges.

The aim of the Convention's National Legislation Project is to ensure that all Parties have a solid legal foundation for regulating international wildlife trade. As the Secretary-General of CITES, Mr Willem Wijnstekers, reminds us, it is only through legislation that is adequate, up to date and efficiently enforced that CITES can really work.

Stephen Nash

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Australia

This article provides a brief overview of Australia's CITES legislation. Australia ratified CITES in July 1976 and Australian CITES legislation is now part of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Australia has a federal system of Government comprising three levels: national, state and local. The EPBC Act is national legislation and it is administered by the Australian Government's Department of the Environment and Heritage (DEH). The Australian CITES Management Authority and Scientific Authority both function within DEH.

Scope of the EPBC Act

In addition to implementing CITES, the EPBC Act provides overall protection for the environment, particularly in relation to matters that could be assessed as being of national environmental significance. It streamlines national environmental assessment and approvals processes, protects Australian biodiversity and integrates management of important natural and cultural places. The provisions relevant to CITES and other wildlife trade are in Part 13A of the EPBC Act. These provisions were last updated in 2001.

The EPBC Act Part 13A regulates:

- the import and export of specimens of species protected under CITES;
- exports of specimens of species native to Australia; and
- imports of live specimens.

Lists of regulated species and specimens are posted on the department website at: www.deh.gov.au/biodiversity/trade-use/lists/index.html

All Australian native plant and animal species are regulated unless they appear on the List of Exempt Native Specimens. A native species is listed as exempt if it is considered not threatened by harvesting and trade. There are special requirements for species listed under CITES or on the EPBC Act list of threatened and endangered species.

The CITES Appendices have been translated into the list of CITES species for the purposes of the EPBC

Act. The layout is different to the CITES Appendices, and it is accompanied by a common-name index to readers. The list also includes notations that indicate Australia's stricter domestic measures. For example, Australia requires import permits for specimens of CITES Appendix-II species, except for non-commercial items within personal baggage in some circumstances. Australia also applies stricter domestic measures in relation to specific species.

Types of approval under the EPBC Act

The EPBC Act treats potential imports and exports as being either commercial or non-commercial.

Non-commercial: There are a number of set categories of non-commercial purposes. These are: research, education, exhibition, conservation breeding or propagation, household pet, personal item and travelling exhibition. For each non-commercial permit, the Australian Scientific Authority must make a non-detriment finding. CITES Appendix-I and II species can be imported or exported for non-commercial purposes. Each category of non-commercial purpose has strict criteria that must be met before approval to import or export is granted. Australia has produced a guide to the import and export of wildlife specimens for non-commercial purposes, which can be viewed at: www.deh.gov.au/biodiversity/trade-use/publications/noncommercial-guide/index.html.

Commercial: If a proposed import or export does not meet the requirements of a non-commercial purpose permit, the import or export must be assessed under the commercial purpose provisions. Specimens of Australian native or CITES-listed species may only be exported for commercial purposes if they come from one of the following sources approved by the Australian CITES Scientific Authority:

- an approved artificial propagation, aquaculture or captive-breeding programme; or
- for wild harvest, an approved wildlife trade operation or wildlife trade management plan.

As part of Australia's stricter domestic measures, specimens of Appendix-II species harvested in the wild can only be imported if they come from a harvest operation that has been approved as a 'commercial import programme' under the EPBC Act. For a wildlife trade management plan or programme to be approved, the Scientific Authority must make a non-

detriment finding: not only for the taxon to be traded, but also for other taxa and ecosystems that would be affected by the harvest.

Penalties for breaches of the EPBC Act

Penalties for offences under the EPBC Act include fines of up to AUD 110,000 and up to 10 years in prison for an individual, and up to AUD 550,000 for a body corporate. As an example of a recent prosecution, an individual was sentenced to six months in prison and fined AUD 2,000 for attempting to import 10 parrot eggs into Australia.

Seized products may be released where the breach is inadvertent or unintentional, but otherwise the seized products will be ultimately destroyed or used by DEH for public educational purposes.

DEH cooperates with the Australian Customs Service and the Australian Federal Police to combat illegal wildlife trade in Australia and overseas. The Australian Quarantine Inspection Service also intercepts wildlife items illegally imported into Australia.

Capacity building in Oceania

Australia has a strong commitment to capacity building in the Oceania region. Australia's efforts in capacity building aim to create a sound knowledge of CITES requirements within the region and to facilitate good relations between the CITES Secretariat and the region. In working with Fiji, Papua New Guinea and TRAFFIC, the focus has been on developing a workable legislative framework, good communication between government agencies and robust administrative procedures.

Australia is currently the regional representative on the CITES Standing Committee for Oceania. It is planned that this role will be passed to Fiji at the next meeting of the Conference of the Parties to CITES. Australia, being conscious of the need for developing countries and economies in transition to have a central role in the important work of Standing Committee, is currently in the process of supporting Fiji to take over this role.

Finally, as a result of our close involvement with other countries in Oceania, Australia has been looking at ways to balance the resources required to support scientific committees adequately with resources required to support other key activities such as capacity building and enforcement. This reflection has contributed to Australia's proposal to review the scientific committees in order to ensure that key

CITES activities such as robust scientific analysis and capacity building receive the funds and support necessary to achieve the required outcomes. DEH is considering other innovations in the South Pacific to facilitate further information exchange and cooperation within the region and to encourage improved and sustainable wildlife management practices.

Australian Department of the Environment and Heritage

Canada

The purpose of the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (WAPPRIITA) is to protect Canadian and alien species of animals and plants that may be at risk of over-exploitation because of illegal trade and to safeguard Canadian ecosystems from the introduction of species considered to be harmful. It accomplishes these objectives by controlling the international trade and interprovincial transport of certain wild animals and plants, as well as their parts and derivatives. WAPPRIITA also makes it an offence to transport illegally-obtained wildlife between provinces and territories or between Canada and other countries.

There are four categories of wild flora and fauna that are covered under WAPPRIITA:

- Schedule 1: all three CITES Appendices, plants and animals;
- Schedule 2: animals that could harm Canadian ecosystems;
- Schedule 3: CITES species threatened and endangered in Canada (these species are excluded from the personal and household effects exemption); and
- wild animals and plants under provincial or territorial control.

International trade in and possession of CITES specimens are addressed in Sections 6 and 8 of the Act:

6. (1) *No person shall import into Canada any animal or plant that was taken, or any animal or plant, or any part or derivative of an animal or plant, that was possessed, distributed or transported in contravention of any law of any foreign State.*



(2) Subject to the regulations, no person shall, except under and in accordance with a permit issued pursuant to subsection 10(1), import into Canada or export from Canada any animal or plant, or any part or derivative of an animal or plant.

8. *Subject to the regulations, no person shall knowingly possess an animal or plant, or any part or derivative of an animal or plant,*

(a) that has been imported or transported in contravention of this Act;

(b) for the purpose of transporting it from one province to another province in contravention of this Act or exporting it from Canada in contravention of this Act; or

(c) for the purpose of distributing or offering to distribute it if the animal or plant, or the animal or plant from which the part or derivative comes, is listed in Appendix I to the Convention.

Under the Act, the definition of import is when an item touches Canadian soil. This includes bonded warehouses and items in transit to another country.

While it is an offence to import a wildlife specimen without the required permits, it is also an offence to import any wildlife specimen in contravention to another country's laws. It is an offence to export CITES specimens without the appropriate permits, and it is also an offence to knowingly possess a plant or animal for the purpose of transporting or exporting it illegally.

WAPPRIITA offences can be prosecuted as either summary conviction offences (similar to a misdemeanour) or indictable offences (similar to a felony). WAPPRIITA offences are 'hybrid' offences with the choice (known as the 'election') of how to proceed left to the prosecution, often in consultation with the enforcement officer. Factors which might influence a decision to proceed with a summary conviction or indictable charge could include: seriousness of the offence, the quantity of items involved, the status of the species involved, the attitude of the accused, the level of cooperation of the accused, and the frequency of the offence.

The penalties for a summary conviction are a maximum CAD 25,000 fine and/or a maximum six-months' jail time (for an individual) or a maximum CAD 50,000 fine (for a corporation).

The penalties for an indictable offence are a maximum CAD 150,000 fine and/or a maximum five-years' jail time (for an individual) or a maximum CAD 300,000 fine (corporation). If a person is convicted of an offence under this Act a second or subsequent time, the amount of the fine may be doubled. Fines may also be computed in respect of each animal, plant, part or derivative as though they had been the subject of separate complaints. Where an offence under this Act is committed or continued on more than one day, it will be deemed to be a separate offence for each day. If the court is satisfied that, as a result of the commission of the offence, monetary benefits have accrued to the person (i.e. proceeds of crime), the court may order the person to pay an additional fine in an amount equal to the court's estimation of the amount of the monetary benefits.

Where a person is convicted of an offence under the Act, the convicting court may, in addition to any punishment imposed, order that any thing detained or seized, or any proceeds realized from its disposition, be forfeited to the Government. The court may also prohibit the person from doing any act that could result in the continuation or repetition of the offence; direct the person to take any action the court considers appropriate to remedy or avoid any harm to any animal or plant; direct the person to publish the facts relating to the commission of the offence; or direct the person to pay an amount of money as compensation for the cost of any remedial or preventive action taken by the Government.

Exemptions may apply for individuals for personal effects; household effects (may include inheritance); tourist souvenirs; and hunting trophies (for black bear and sandhill crane only, destined to the United States of America).

Under the Act officers may carry sidearms; have the power to detain, inspect and seize; may have a shipment opened for inspection; and may demand papers to be presented for inspection or copy.

Knowingly interfering with officers during the course of their duties is also an offence under the Act.

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China

Since its accession to CITES in 1981, China has taken a series of measures to fulfil its obligations under the Convention. In 1981 the Central Government designated the Endangered Species Import and Export Management Office of the People's Republic of China and the Endangered Species Scientific Committee of the People's Republic of China as the Chinese Management Authority and the Scientific Authority respectively. The Law for Protection of Wild Animals was enacted in 1989 and two Regulations, one for terrestrial animals in 1992 and one for aquatic animals the following year, were enacted to implement this law. The Regulation for Protection of Wild Plants was enacted in 1997. This legislation establishes the offence of illegal trade in wildlife and provides that any import and export of specimens of CITES-listed species and of species listed in the Annexes to the Law and Regulations mentioned above shall require the previous issuance of permits or certificates by the Management Authority and shall be subject to control. Furthermore the Customs may check the shipments against the permits or certificates and may confiscate specimens of wildlife traded illegally.

Those who are involved in illegal trade in wildlife or in forging or selling permits or certificates may be fined or criminally penalized in accordance with the provisions of the Criminal Law or other relevant regulations. To guide the application of these provisions, the Supreme People's Court handed down in 2000 judicial interpretations with regard to the trial of criminal offences involving the destruction of wildlife (including smuggling) and providing detailed quantitative criteria for imposing penalties.

In addition to these laws, regulations and judicial interpretations that constitute the fundamental legislative framework for CITES implementation, government agencies related to wildlife management or trade control, such as the State Forestry Administration (the former Ministry of Forestry), the Endangered Species Import and Export Management Office or the State Customs Administration, have also taken various administrative measures to implement CITES and national legislation related to wildlife conservation and utilizations within their own mandates. For example:

- The State Forestry Administration has decided, as it may do under the Regulation for Implementation of the Law for Protection of Wild Animals, that species listed in Appen-

dix I or II of CITES but not occurring naturally within the territory of China shall be considered as species of Rank I or II respectively of the Annexes to the Law for Protection of Wild Animals.

- The State Forestry Administration also established a Valuation Criterion for pricing specimens of different species of wild animals to be applied by the judicial authorities in cases of wildlife smuggling and poaching.
- The Endangered Species Import and Export Management Office, in collaboration with the State Customs Administration, has developed a series of Customs Harmonized System Codes for all specimens of wildlife in international trade that require the issuance of a permit or certificate by the Management Authority, and these codes are updated in line with amendments to the CITES Appendices. This has dramatically improved the Customs officers' capacity to verify documents and specimens of wildlife in trade.
- In order to standardize the application process and issuance of permits and certificates, the Endangered Species Import and Export Management Office has established a set of conditions and procedures to be followed by the applicants and the Management Authority and its branch offices.

Besides these, there are other administrative measures concerning all aspects of wildlife conservation and utilization in China. Though most of these measures are administrative in nature and are neither established nor enacted through a legislative procedure, they work well in wildlife management and CITES implementation in China, complement the legislation framework and are well-accepted and applied by the judicial authorities.

Given that in order to implement CITES many countries have enacted specific legislation, and that the provisions in current Chinese legislation related to CITES implementation are too disperse to be understood and applied conveniently by the public and government agencies, the Management Authority of China launched in 2000 an initiative to develop a Regulation for Import and Export of Endangered Species of Wildlife with the aim of consolidating the existing legislative provisions. The draft of this regulation was submitted to the Legislative Affairs Office of the State Council in 2004. However, as the Central Government of China is now in a process of



reviewing and adjusting its voluminous legislation system after its access to the World Trade Organization, the text of this regulation needs to be further circulated at different levels and to various agencies, as well as to the public. It will be finalized and enacted when all this process is completed.

After the return of Hong Kong in 1997 and Macao in 1999 to Chinese sovereignty, the Central Government of China designated the Agriculture, Fisheries and Conservation Department of the Hong Kong Government and the Advisory Committee for the Protection of Rare Animals and Plants Species of Hong Kong as the Management Authority and the Scientific Authority respectively of the Hong Kong Special Administrative Region and also the Economic Service of the Macao Government as the Management Authority of the Macao Special Administrative Region. These two Special Administrative Regions enjoy a high degree of autonomy, but while the local legislation, enforcement, policies and institution framework related to CITES implementation and wildlife trade control remain in effect in these regions, the Central Government of China assumes responsibilities for the international rights and obligations arising from the application of CITES in the Special Administrative Regions.

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China – Hong Kong SAR

The Hong Kong Special Administrative Region (China) has undertaken to amend its Ordinance on Protection of Endangered Species. I hope that sharing our process and our experience through this CITES newsletter may help other Parties that plan to revamp their existing CITES legislation in future.

The Animals and Plants (Protection of Endangered Species) Ordinance, Cap. 187 (“the Ordinance”) was first enacted in 1976 in order for CITES to come into effect. The Ordinance was reviewed by the CITES Secretariat and ranked as Category-1 legislation. However, the Ordinance has been in force for about 30 years and is becoming more and more complicated due to piecemeal amendments introduced over the years in order to

keep the legislation in line with the decisions of the Conference of the Parties to CITES. The legislative regime to control CITES trade has therefore to be streamlined.

Furthermore, some provisions of the current legislation are stricter than the CITES requirements. For examples, a license is required for the possession of specimens of CITES species in Hong Kong. An import permit is also required for the import of specimens of Appendix-II species. Such stricter measures were required when the Ordinance was first enacted in order to tackle the problem of smuggling, which used to be rampant. Illegal trade in endangered species is however now under control in Hong Kong SAR. It is therefore proposed to trim down such stricter measures to minimize impact on the trade concerned and inconvenience to the public, yet without compromising our obligations under the Convention.

Many rounds of consultations were conducted with stakeholders during the process of reviewing and redrafting the Ordinance, including enforcement officers, non-governmental organizations (NGOs), academics and trade representatives of the pet bird, reptile, aquarium, traditional Chinese medicine, timber, fur and leather, ivory, marine product, floral and fishery trade. The earliest round of consultations started in 1997. The results of those consultations were incorporated into our legislative amendments as far as possible. Our experience has been that consultation meetings provide good opportunities for the Government to explain to the affected parties the necessity of the proposed legislative amendments and to solicit their support for such amendments. These meetings also serve as a forum for collecting information and ideas as traders and NGOs usually have a different perspective from government officials and their views are very often useful in improving the legislation.

The major amendments of the new bill are summarized below:

- The new bill clarifies that its purpose is to enact CITES and the terms used are defined in accordance with CITES. It also rearranges its schedules to correspond with the three CITES Appendices.
- The new bill covers medicines made from all animal and plant species listed under CITES. This would bring the legislative regime in full compliance with the Convention.

- We are currently issuing permits on a species basis. After the legislative amendment, permits would be issued based on individual consignments or keeping premises irrespective of the number of species involved.
- Currently, we apply stricter domestic measures and an import permit and possession licences are both required for specimens of Appendix-II species unless they are specifically exempt under the Ordinance. The new bill would provide an exemption to the need for an import permit and possession licence for all specimens of Appendix-II species other than live specimens of wild origin.
- The existing Ordinance only provides exemption to personal and household effects of manufactured products or artificially propagated plants. The new bill would extend the exemption to all scheduled species in line with CITES Resolution Conf. 13.7 (except giant panda and rhinoceroses as well as export or re-export of live animals).
- Plant exporters need to apply for CITES export permits and phytosanitary certificates for the export of artificially propagated Appendix-II plants. Our new bill would allow the use of phytosanitary certificates as CITES export permits.
- The enforcement power of the authority will be strengthened. The new bill specifies that violating the conditions of a permit is an offence. It gives authorized officers the power to arrest and to enter and inspect trading premises during daytime. It also provides statutory protection to an informer providing information on illegal trade in specimens of endangered species to enforcement agencies.
- The restructuring of the licensing system is welcomed by most traders because they would benefit from a reduced number of required permits and thus could be savings on the permitting fee and administrative costs. Many of them have repeatedly expressed their wish to have the new ordinance enacted as soon as possible.
- Removal of excessive control is also welcomed by traders as this can help to reduce their operational costs. The exemption to personal and household effects would also help minimize the inconvenience caused to the general public and promote legal trade.

- The new bill would strengthen the power of authorized enforcement officers including that of the Management Authority. This would allow the Management Authority to play a more active role in CITES enforcement work.

We have already introduced the bill into the Legislative Council with a view to implementing the re-enacted Ordinance (if passed) in the second half of 2005.

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Czech Republic

When the Convention entered into force in the Czech and Slovak Federal Republic in 1992, the membership in the European Union was still a remote political goal. Nevertheless, it was necessary to develop and enact new CITES legislation. In 1992, the Czech and Slovak parliament adopted an extensive Nature Protection Act which had been, however, drafted with no experience of the Convention. Thus the Act only set down that trade in plants and animals protected by international conventions had to be authorized by the Ministry of Environment.

When that law was evaluated under the CITES Legislation Project, the Czech Republic was placed in Category 2 because the Act only partially met the basic requirements of the Convention. For example the fact that the Nature Protection Act did not authorize Customs controls lead to a rather absurd situation where the Ministry was issuing CITES permits which were not checked at the border. The Czech Constitutional Court also ruled that the Convention affected the basic rights of persons, something which could only be restricted by law, while the Nature Protection Act was proved to be insufficient because it did not set exact rules for trade in CITES specimens.

Hence a new law had to be drafted and was finally enacted in 1997. Because of the government plan to join the European Union, the CITES Act of 1997 had to be drafted from the start in compliance with the relevant European Commission legislation, which at the time was Council Regulation (EEC) No. 3626/82. The CITES Act fully implemented the Convention so the Czech Republic moved up to Category 1 of the CITES Legislation Project. The CITES Act supplemented the Nature Protection Act with respect to regulating trade in and handling of protected fauna and flora. It also set down some measures stricter than those established in the Convention. Inspired by the European Commission legislation, import permits became also required for Appendix-II specimens. That enabled the Czech Republic to follow the EU stricter politics in suspending imports for conservation reasons. The CITES Act also provided for the obligatory registration of some specimens by citizens. That measure helped to better control the domestic trade in the most endangered and problematic species. It is worth mentioning that the Czech Republic restricted imports from non-Parties to the Convention purely for conservation reasons, a measure which had to be repealed when joining the European Union.

In December 1996 the Czech Republic officially applied for the membership in the European Union and started negotiations with the Community that lasted several years. It was agreed that the CITES Act of 1997 would be replaced by a new law in order to implement properly all provisions of the European Commission legislation and would come into effect on the date of accession into the European Union. Coincidentally, the European Union changed its legislation at that time by Council Regulation No. 338/97 which entered into force on 1 June 1997. Subsequently, the European Commission issued several implementing regulations which were, furthermore, frequently amended.

This and the fact that the European Commission legislation on trade in wild fauna and flora is very complex posed a big challenge for the Czech Republic when re-drafting its national law. Fortunately, the Commission and the Member States of the European Commission provided valuable assistance for the candidate countries in the form of study trips, working seminars and legal and technical advice. The Czech Republic received particular assistance from Austria, Denmark, Germany, Italy and the Netherlands. Maybe the most difficult thing was the legislative process itself. Joining the European Union required extensive change in overall national legislation, the CITES Act being a tiny part of that

process. It happened that the new CITES Act was the first draft law implementing a European Commission regulation. The first draft was proposed to the Government in the middle of 2002 and was adopted by the Parliament in January 2004, a short time before accession to the European Union on 1 May 2004.

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Indonesia

Indonesia has been Party since 1978, i.e. for more than 25 years. By joining CITES Indonesia became bound to the provisions of the Convention, including development of legislation enabling effective CITES implementation, as stipulated in Article VIII. At the time Indonesia joined the Convention, the legislation in place was the Ordinance on Nature Protection of 1931. This legislation remained in effect until the enactment of Act No. 5 of 1990 on Conservation of Living Natural Resources and their Ecosystem. This Act then became the main legislation for CITES implementation.

However, following a review of legislation under the CITES National Legislation Project, The Act was classified as Category 3, meaning that it was generally not sufficient for CITES implementation. This is due to the Act's inability to provide penalties for violations related to all CITES listed-species (Act No. 5 can only penalize violations relating to Indonesian protected species). Indonesia was given the deadline of February 1999 to enact sufficient legislation.

This deadline put a lot of pressure on Indonesia, and it led to the establishment of two government Regulations, No. 7 and No. 8 of 1999, to fill the gap in the legislation. These implementing regulations enabled the CITES Secretariat to upgrade Indonesian legislation to Category 2 in 1999. Together with the principal legislation Act No. 5 of 1990, these serve as the basis for CITES implementation in Indonesia.

The establishment of the Decree of the Minister of Forestry No. 447 of 2003 (Administration Directive for the Harvest or Capture and Distribution of Specimen of Wild Plant and Animals) has provided further detailed guidelines for implementing CITES on the ground and, inter alia, establishes the 'chain of custody' of specimens in trade, as follows:

1. The Natural Resources Conservation Office (BKSDA) issues harvesting permits based on the annual quota allocated for the province. BKSDA provides regular reports to the central office of the CITES Management Authority on the permits they have issued.
2. BKSDA or its agencies provide official records on stocks accumulated by collectors prior to transport from points of origin, as well as stocks in warehouses at points of export (such as Jakarta, Surabaya, Medan and Denpasar).
3. BKSDA or its agencies issue standardized domestic transport permits at points of origin. Copies of these permits are sent to the BKSDA office at the destination port, the central office of the CITES Management Authority and the respective trading company. Generally, the domestic transport permit identifies the specimen down to species level.
4. Domestic transport permits are cancelled by the BKSDA office at the destination port upon arrival of the specimens. This office then undertakes inspection of the cargo and provides official records of the inspection.
5. Based on the reports, official records and domestic transport permits, the central office of the CITES Management Authority issues CITES export permits to registered exporters [for example, members of the Indonesian Gaharu (agarwood) Traders Association – ASGARIN].
6. Officials from Customs, plant/animal quarantine, or BKSDA authorities at the port of export undertake verification of the permits to ensure that the specimen being exported matches the permit.
7. Customs, quarantine and BKSDA authorities at the port of export all retain one copy of the CITES export permit.
8. For Customs and statistical purposes, the exporter is required to declare the export on an export declaration form in addition to the CITES export permit. This information is compiled by the Central Bureau of Statistics, and thus provides another method of cross-checking trade statistics.

Altogether, the Indonesian legislation is able to regulate the harvest, domestic transport, domestic possession, domestic trade and international transport of wildlife included in the CITES Appendices.

Indonesian legislation is currently classified in Category 1, meaning that the legislation is sufficient for CITES implementation.

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New Zealand

Among the developed countries, New Zealand was a latecomer to CITES, being the 100th Party to the Convention, acceding in 1989.

New Zealand's position until then had been that it did not need to become a Party to CITES since international trade in its own endangered wildlife was strictly controlled by domestic legislation, the Wildlife Act of 1953, which is still in force, and that its very strict biosecurity policy was sufficient to prevent endangered species from entering New Zealand. Some concern was also expressed that accession to CITES might weaken its strict biosecurity policy since in many cases New Zealand's policy with respect to what is allowed into the country is stricter than the provisions of CITES. This perception was of course not correct, since there is provision in Article XIV of the Convention for countries to adopt stricter domestic measures with respect to species listed in the Appendices to the Convention.

Unlike some other Parties, where CITES implementing legislation is incorporated in broader legislation with respect to endangered species and conservation generally, New Zealand opted to create stand-alone legislation to implement the Convention. This has the benefit of having its own discrete profile and of being relatively short by comparison with the comprehensive legislation some other countries have. It also makes it easier to amend the legislation implementing CITES when necessary.

The New Zealand Trade in Endangered Species Act of 1989 (TIES Act) largely follows the order of the Convention with parts concerning the issue of permits for specimens listed on the three CITES Appendices, which are labelled endangered species (Appendix I), threatened species (Appendix II) and exploited species (Appendix III). This is followed by a part on permits and certificates and then a part dealing with exemptions, as in the Convention. Those parts of the TIES Act which differ from the Convention concern practical matters relating to implementation such as the control of arrivals of specimens of species listed on the Appendices, the disposal or release of specimens seized from people arriving in the country, the powers and duties of officers who enforce the Act, the relationship of the TIES Act with other domestic legislation and penalties for breaching the terms of the Act. The CITES Appendices are contained in Schedules to the Act.

Following early experience with the TIES Act, the Trade in Endangered Species Regulations 1991 were introduced. These amplify the provisions relating to scientific exchange, to breeding or holding parrots in captivity and penalties for supplying no information or false information on parrot exports since there was concern over the origin of some exotic parrot species being exported from New Zealand, the need for live-bird exporters to supply departure details of shipments of live birds included in the Schedules and the fees associated with obtaining permits or certificates. These matters were placed in regulations under the Act rather than the Act itself so that they can be more easily amended.

At the same time the TIES Act was amended to clarify many matters which were considered not clear or were not covered in the original Act, such as the membership of the Scientific Authorities Committee, information requested from applicants for permits or certificates, disposal of specimens, when permits should be presented for imports of specimens of threatened or exploited (Appendix -II and -III) species, some powers of enforcement officers and the question of the treatment of containers and vehicles suspected of holding or transporting specimens of species included in the Schedules to the Act (CITES Appendices). A new section was added on the penalties for those illegally trading in or in possession of specimens of species included in the Schedules to the Act.

The original text of the Act had provided for the Schedules to be amended by way of Order in Council when changes were made to the CITES Appendices. While the Order in Council process provided a much

simpler way of amending the Schedules rather than having to go through the parliamentary legislative process, the Act had not made provision for the Schedules to be revoked and replaced with new Schedules. The proliferation of amendments to the Schedules was found to be impractical and in the 1996 amendments to the TIES Act, provision was made that whenever the CITES Appendices are changed following a CoP, the Schedules may be revoked and replaced with new Schedules which incorporate these amendments.

In 1997 there was a proposal to extend the powers of the TIES Act to control trade in traditional Chinese medicines in New Zealand because of a large increase in imports of products containing parts or derivatives of endangered (Appendix-I) species. Because of the difficulty of intercepting these products at the border it was considered that the domestic sale or trade in such products should be targeted. This was to be achieved by extending the definition of ‘trade’ to include ‘display to the public’ and ‘offers for sale’ of specimens of endangered species for commercial reasons in New Zealand, except as expressly allowed under any other act. The intended effect of extending the definition of ‘trade’ would have been that it would no longer be necessary to intercept illegally imported products only at the border. There was widespread opposition to this proposal, with 87 per cent of submissions being opposed to the change, which would also have involved a vast increase in resources devoted to enforcement of this provision and the issue of permits for authorized domestic trade in captive-bred and artificially propagated specimens of such species. It was decided after much consideration that the proposed extension of the definition of ‘trade’ was inconsistent with the basic rationale and philosophy of the Convention and the TIES Act, which are primarily concerned with the regulation of international trade through border control mechanisms. The Attorney-General also reported that the proposal was inconsistent with the Bill of Rights and it was therefore dropped.

Since 1991 the Act has continued to serve New Zealand well with few changes. Amendments will need to be made to the Act to provide for the change to the exemption for pre-Convention species and consideration will also be given to making some other changes such as widening the exemption for personal and household effects.

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Paraguay/Latin America

For countries that are biodiversity-rich but economically poor or, at best, in development, trade in wildlife theoretically represents an income opportunity for a significant sector of the population and, via taxation, for society as a whole. However, all of that potential is still far from becoming a reality.

In fact, the situation of most of the countries of Latin America could be described as follows: accelerated disappearance of wildlife caused by expansion of the limits of agriculture and illegal trade in specimens, and, as a consequence, progressive loss of genetic heritage, environmental degradation and impoverishment of rural populations.

Analysis of the multiple factors that together bring about this situation would go beyond the scope of this short article, but let us concentrate on one factor that has interesting economic and legal implications: property rights relating to wildlife.

From a purely economic point of view, we could well argue that the expansion of the limits of agriculture is due to the fact that there are no economic indicators acting as a disincentive to it, or, expressed the other way round, that there exists a series of incentives which we could describe as 'perverse'. In general, for the owners of the land, the immediate economic benefit of destroying biodiversity outweighs the benefit of preserving it. In fact, the great majority of biodiversity is not the property of the land-owner, for whom it therefore produces no short-term economic benefits.

This is the situation in almost all countries of Latin America, where wildlife and in particular wild fauna is *res nullius*, 'property of nobody'; and experience shows us that except in a few exceptional cases, nobody looks after the things that belong to nobody.¹ Formally, the body entrusted with ensuring the care of this *property of nobody*, wild fauna, is the Government. In Latin America, the Governments have to carry out this task without sufficient resources and consequently they do it badly, principally because the legal systems for protection of wildlife have been designed in line with a model of surveillance and control which requires a strong government mechanism, something that is always expensive, in order to be able to operate. Thus we reach a situation where there is no economic incentive to protect wildlife and, even worse, in which caring for it is expensive.

To illustrate the results of this perverse equation, let us take the example of the figures from Paraguay. According to the census for the year 2002, 26% of the country's gross domestic product was generated from agricultural and livestock activities, which are highly dependent on the use (and degradation) of natural resources. And what was the percentage allocated in the nation's General Expenditures Budget for the public bodies charged with applying the environmental legislation for the year 2004? It was 0.15% of the total.

It is not news to anyone that since the end of October 2003, the Republic of Paraguay has voluntarily restricted its exports of specimens of CITES-listed species in order to avoid being penalized by the CITES Standing Committee, and that before then, in April 2003, the European Union had prohibited the import of live animals from Paraguay.

In more than one press article, corruption has been mentioned as one of the principal causes for these decisions. While it is undeniable that corruption was a very important factor, we would be distorting our analysis if we identified it as the single or even the main cause of the sanctions on international trade in wildlife currently being imposed on Paraguay.

On the contrary, the principal cause of this situation was the model applied to tackle the wildlife issue. A country which survives on agriculture and livestock (and here we are considering Paraguay, but the example holds for many other countries in the region) cannot seek to conserve its wildlife if this wildlife does not have a price that will allow to strike a balance between the gains which can accrue from the conservation of wildlife on the one hand and from agriculture and livestock on the other. And it is impossible to find such a balance if one of the components of this equation does not have a monetary value for the persons who are best placed to take care of it: the owners of the land where this wildlife can be found.

Thus we come to one of the foundations on which a new model for wildlife could be built: establishing property rights over it. We are not referring simply to simple rights of ownership; but rather to the right to enjoy the gains arising from the use of wildlife, the actual ownership of which could remain within the hands of the State. In other words, a potential system of wildlife concessions, following the same model that the Government uses to grant concessions for the utilization of other natural resources.

This change can obviously not take place from one day to the next; it will require a process of awareness-raising and understanding of the problem which has to touch those in authority. The latter have to understand that trade in wildlife can be a good deal for all: it can serve conservation purposes, increase tax revenues and generate jobs and wealth.

Once the political commitment to change has been achieved, we will have to work together so that the second major change which is needed will come into effect: the change in the legislation which regulates trade in wildlife in Paraguay.



What would be the bases on which this change would be constructed?

- Discarding a rigid conservationist concept² and replacing it with a concept of sustainable use of the resource, and within that idea, granting property rights over wildlife.
- Scientific research and provision of funds to carry it out.
- Transparent, precise and simple administrative procedures for the granting of permits. Greater emphasis on regulated authority and less room for discretionary decision-making.
- Access to information on species and specimen quotas, and public participation in the drawing up of the inventories of species. The principle that administrative proceedings are public, so that all those interested, without any need to call on some legal authority, will be granted access to the applications for utilization of wildlife.
- Incorporation of the preventative and precautionary principles.
- Gradual decentralization of certain powers to local Governments.
- Granting of legal authority to the inspectors to carry out proceedings based on the letter of the law.

- Listing in legal terms of the administrative offences and criminal activities and the penalties relating thereto, which have to be proportional to the gravity of the offence, and must include the penalty of seizure.

Ms Sheila Abed

Chairman of the IUCN Commission on Environmental Law

¹ It is interesting to note that in some cases the concept of property of nobody has been replaced by that of property of everybody which, in practice, is the same as saying 'nobody'. This has occurred in Paraguay, where the Wildlife Act 96/92 changed the description of 'property of nobody', subject to appropriation, as contained in the original version of the Civil Code (Article 2030), stating that there was social benefit and public utility in the protection, management and conservation of wildlife, and also establishing an obligation on all persons to protect it.

² The wording of Article 37 of the Wildlife Act 96/92 is highly significant, stating as it does: "Starting from the promulgation of this Act, the hunting, transport, trade, export, import and re-export of all species of wild fauna, as well as parts thereof and/or derived products, shall be prohibited unless such activity has the explicit authorization of the Implementing Authority". Not to mention that the general regulation to provide for authorization by the Implementing Authority has never gone into force.

Switzerland

The basis of the national CITES-related legislation in Switzerland is of course the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed at Washington D.C. on 3 March 1973. The Convention has been implemented in Switzerland through basically three ordinances, namely the Endangered Species Ordinance (ESO) of 19 August 1981, the Control Ordinance in the Framework of CITES of 16 June 1975 and the Ordinance on the Recognition of Scientific Institutes in the Framework of CITES of 20 October 1980.

The Endangered Species Ordinance applies to the import, transit, export and re-export through the Swiss Customs and political border, as well as to storage in Customs warehouses and removal from warehouses of live and dead animals of wild species (see below) and of plants, of readily identifiable parts of those animals and plants, as well as to products thereof and other goods for which a supporting document, the packaging, the name or a description allows one to establish that these are parts or products of animals included in the CITES Appendices or bird species protected by the Hunting Law of 20 June 1986.

This Endangered Species Ordinance contains among others provisions concerning the CITES management, scientific and controlling agencies; licensing (see below); the conduct of controls within the country during import, transit, export and re-export as well as in Customs warehouses; and penalties. Of particular interest is Article 5 of this ordinance, which regulates licensing. It establishes that a permit is necessary for:

- the import, export and re-export of specimens of animal species included in CITES Appendices I to III;
- the import, export and re-export of specimens of plant species included in CITES Appendix I;
- the export of specimens of plant species included in CITES Appendix II;
- the import, transit, export and re-export of specimens of bird species and live specimens of mammals protected by the Hunting Law of 20 June 1986;
- the import of live specimens of wild species of mammals, birds, reptiles and amphibians that are not included in the CITES Appendices and are not protected by the Hunting Law;
- The keeping of specimens of species included in CITES Appendix I in Customs warehouses; and
- the import of specimens of the genera *Cypripedium* et *Nigritella* (Orchidaceae).

The ordinances implementing CITES thus go beyond the requirements of the Convention: permits are required for the import, export and re-export of animal specimens of all three Appendices and of specimens of bird species and live specimens of mammal species protected under the Federal Hunting Law, and import permits are required for all other live specimens of wild mammals, birds, reptiles, amphibians and *Cypripedium* spp. and *Nigritella* spp.

Article 28 of the Animal Welfare Law is the basis for punitive measures in the framework of CITES fauna and establishes the following:

- Any person who, intentionally violating the Convention of 3 March 1973 on the International Trade in Endangered Species of Wild Fauna and Flora, imports, exports, passes through transit animals or animal products

included in Appendices I to III of that Convention, or enters into their possession shall be punishable by imprisonment or subject to a fine.

- Should the perpetrator have acted out of negligence, he/she shall be punishable by detention¹ or subject to a fine of up to CHF 20,000.
- Any person who violates intentionally the provisions of Article 9, paragraph 1, of the Law on International Trade in Animals, shall be punishable by detention or subject to a fine of up to CHF 20,000. Attempts and complicity are punishable.
- Should the perpetrator have acted out of negligence, he/she shall be subject to a fine.

Comparable provisions concerning CITES flora are contained in the Federal Law on the Protection of Nature and Landscape:

- Any person who, intentionally and without authorization, imports or exports, transports or holds in his/her possession plants or plant products included in Appendices I to III of the Convention of 3 March 1973 on International Trade in Endangered Species of Wild Fauna and Flora in violation of its provisions shall be punishable by imprisonment of up to one year or subject to a fine of up to CHF 100,000.
- Should the perpetrator have acted out of negligence, he/she shall be punishable by detention or subject to a fine of up to CHF 40,000.

The Control Ordinance in the Framework of CITES of 16 June 1975 defines more in detail – and making reference to the Customs tariff and the Ordinance on the Import, Transit and Export of Animals and Animal Products (that regulates the import and transit with regard to animal health requirements) – what animals and animal products are subject at the time of import to a veterinary inspection at the border and must be examined by border veterinarians, also in accordance with the provisions of CITES. The same Ordinance defines what plants are to be controlled by the Phytosanitary Service and what plant products are to be submitted to Customs inspection at the time of import.

The Ordinance on the Recognition of Scientific Institutes in the Framework of CITES, of 20 October 1980, regulates the registration of scientific institutions under the Convention.

Concerning the legislation on protection, conservation and sustainable use of native fauna and flora (species and habitat), the following applies:

The Federal Law on the Protection of Nature and Landscape of 1 July 1966 (FLPNL), and the Ordinance to the Federal Law on the Protection of Nature and Landscape of 16 January 1991 (OPNL) contain provisions for the conservation of habitats and prohibit the intentional killing, taking, transporting, advertizing, selling, mailing, etc. of live and dead hedgehogs, shrews, bats, dormice, snow voles, tobacco mice, harvest mice, reptiles, amphibians and certain invertebrates and plants, such as orchids and many alpine plants, and subject the capture for commercial purposes of otherwise unprotected species to licensing by the Cantons. The Cantonal Nature Conservation Authorities may authorize the taking of protected specimens for scientific or educational purposes.

The Federal Hunting Law and Protection of Free-Living Mammals and Birds of 20 June 1986 (FHL), and the Ordinance on Hunting and Protection of Free-Living Mammals and Birds of 29 February 1988 (OHP) regulate the protection, hunting and capturing of beavers, marmots, squirrels, carnivores, ungulates and birds. They prohibit the capture, intentional killing, advertizing for sale, selling and purchasing of all protected mammals and birds, as well as the taking of eggs and the destruction of nests of protected birds. The Swiss Agency for Environment, Forests and Landscape may exceptionally authorize exemptions from these provisions. The import, transit and export of protected live mammals and of protected live and dead birds are subject to licensing by the Federal Veterinary Office (see ESO). The keeping in captivity of protected mammals or birds is subject to licensing by the Cantons.

The Federal Law on Fishery of 21 June 1991 (FLF), and the Ordinance to the Federal Law on Fishery of 24 November 1993 (OF) regulate fishing in general and afford special protection to endangered species and their habitat. They also subject the introduction of alien species to approval by the Federal Council and licensing by the Federal Department of the Interior.

*T. Althaus
Federal Veterinary Office*

¹ In Swiss law, 'detention' is the most lenient custodial sentence, the duration of which is a minimum of 1 day and a maximum of 3 months.

The European Union

Although the European Union (EU) is not yet a Party to CITES¹, its provisions have been implemented in Community law since 1982, when the first Community-wide legislation implementing the Convention entered into force.

There are three main reasons why CITES is implemented at EU level and not individually by each of the 25 EU Member States²:

- the fact that external trade rules are of exclusive Community competence;
- the absence of systematic border controls as a result of the Customs union; and
- the existence of a Community policy on the environment and legislation on the protection and conservation of the Community's indigenous species.

Currently CITES is implemented across the European Union through a comprehensive Regulation adopted in 1996 [Council Regulation (EC) No. 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein] and a more detailed implementing Regulation [Commission Regulation (EC) 1808/2001], which dates back to 2001 but is in the process of being revised.

Together, these two Regulations reflect the provisions of the Convention and those Resolutions of the Conference of the Parties to CITES which the Member States have decided collectively to implement. However, they are stricter than the Convention in a number of crucial respects:

- Council Regulation (EC) No. 338/97 has four Annexes of which Annexes A, B and C loosely correspond to Appendices I, II and III respectively of the Convention but not exactly – for example, some Appendix II and III species are listed in Annex A because of their status on other Community nature protection legislation (the Birds and Habitats Directives), while Annexes A and B also include some non-CITES species;
- Annex-D, which has no equivalent in CITES, lists species for which import levels are monitored;

- Stricter import conditions apply for species in Annexes A and B than for those in the corresponding Appendices I and II of the Convention;
- Import permits are also required for Annex-B species and these can only be granted when the importing Member State – if necessary, in consultation with all the Member States – deems that trade in the relevant species from the country concerned is sustainable;
- Import notifications are required for Annex-C and -D species;
- There are additional requirements regarding housing and transport of live specimens; and
- More comprehensive restrictions apply for internal trade in Annex-A species.

In addition, the Regulations allow for the Commission to establish general restrictions on the introduction into the Community from certain countries of origin of:

- Annex-A specimens, if the introduction would have a harmful effect on the conservation status of the species, or on the extent of the territory occupied by the relevant population of the species, or on the grounds of other factors relating to conservation;
- Annex-B specimens, if given the current or anticipated trade levels, the introduction would have a harmful effect on the conservation status of the species, or on the extent of the territory occupied by the relevant population of the species or on the grounds of other factors relating to conservation;
- live specimens of specimens in Annex-B, which have a high mortality rate during shipment or for which it has been established that they are unlikely to survive in captivity for a considerable proportion of their life span; and
- live specimens of species for which it has been established that their introduction into the natural environment of the Community would present an ecological threat to wild species of fauna and flora indigenous to the Community.

Import restrictions can only be established after consultation with the countries of origin. They are published in the Official Journal of the European

Union. The most recent ‘Suspensions Regulation’ is Regulation (EC) No 252/2005 of 14 February 2005.

Council Regulation (EC) No. 338/97 establishes three Committees. There is a Regulatory Committee which approves legislative changes made by the Commission and agrees on common interpretation of existing provisions. The Scientific Review Group deals with scientific aspects – in particular, it makes decisions regarding species and countries where imports might be unsustainable, which can lead to formal import suspensions. The Enforcement Working Group, which serves as a forum for the exchange of information among enforcement officers in the Member States. These Committees are chaired by the Commission and meet in total about 10 times a year.

The Regulations implementing CITES are directly binding in all Member States. A few provisions, however, require national legislation. In particular, Council Regulation (EC) No. 338/97 requires Member States to put sanctions in place for a range of specified fraud offences, such as import without a permit, falsification of a permit, etc. In addition, responsibility for issuance of relevant permits and for enforcement lies with the Member States.

The Revision of the European Commission implementing Regulation

The Regulation which sets out the detailed rules for implementing CITES [Regulation (EC) No 1808/2001] is currently being revised in order to take account of Resolutions agreed at the 12th meeting of the Conference of the Parties to CITES (CoP12) in Santiago in November 2002. The main changes proposed include:

- provisions to facilitate import and export of time-sensitive samples (blood, tissue, etc.) required urgently for research and enforcement purposes;
- provisions to ease the cross-border movement of travelling exhibitions (circuses, etc.), covered by a ‘travelling exhibition certificate’;
- provision to ease the cross-border movement of captive-bred personal pets (following the relevant Resolution adopted at CoP10);
- the inclusion of additional categories and quantities of specimens that travellers can carry as personal effects in their luggage without import or export documents; and

- provisions regarding labelling of caviar containers in order to improve traceability of the product.

In addition, the Regulation has been made more readable, clear and user-friendly.

It is expected that the New Regulation will enter into force within the next few months. Additional amendments will be made to it shortly after that in order to take account of some of the Resolutions adopted at CoP13 in Bangkok in October 2004.

The European Commission CITES Team

1 Accession by the European Union requires the ratification of the Gaborone amendment to the Convention by 54 Countries that were a Party in 1983. 44 Parties have ratified to date.

2 Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, the Netherlands, and the United Kingdom of Great Britain and Northern Ireland.

United States of America – The Lacey Act

The United States passed the Lacey Act in 1900 to protect the country's native wildlife from commercial exploitation and other threats. While the Lacey Act still serves that purpose today, this law has evolved over time into a powerful tool for combating global wildlife trafficking.

The Lacey Act supports global conservation by prohibiting international or interstate commerce in wildlife that has been "taken, possessed, transported, or sold" in violation of "foreign law." This unique statute makes it a crime in the United States to trade in wildlife or wildlife products that have been unlawfully acquired in, or removed from, another country.

This prohibition on trafficking in 'tainted' wildlife applies regardless of who commits the original violation. Individual wildlife dealers or businesses that knowingly bring contraband wildlife into the United States may face Lacey Act charges even if they were not responsible for its illegal removal from the wild or unlawful export from the country of origin.

Lacey Act violations involving international trafficking are typically felony offences that carry stiff penalties. Those found guilty can be sent to prison for up to five years and fined as much as USD 250,000. Maximum fines jump to USD 500,000 for a company or organization.

The Lacey Act allows the wildlife laws of other countries to be upheld. Like the CITES treaty, this statute codifies global cooperation. It makes the United States an enforcement partner for any nation that has laws to protect its wildlife from unlawful take and trade.

Charging a wildlife smuggler with a Lacey Act violation based on foreign law sends a powerful message about the gravity of the crime to a judge or jury. Such charges emphasize that an importation was illegal not only because of what may be perceived as an administrative oversight (i.e. failure to obtain a CITES permit), but also because the country where the wildlife comes from treasures it as part of its natural heritage and would never under any circumstances have authorized its export.

The 'foreign law' aspect of the Lacey Act focuses on the key question of legal acquisition in the country of origin. United States law enforcement officers, for example, have successfully used this provision to stop the importation of wildlife accompanied by CITES permits from an intermediary country because the specimens in question could never have lawfully left the country of origin.

The Lacey Act recognizes the rights of countries to protect their wildlife resources. A global network of similar laws would extend the reach of national conservation legislation, strengthen its enforcement, and improve safeguards for species at risk.

*Ms Sandra Cleva
U.S. Fish and Wildlife Service
Office of Law Enforcement*

Photo: Peter Dollinger



Ara macao

Photo: Peter Dollinger



Ara maracana

United States of America – Endangered Species Act

In my position as Chief of the Branch of Permits – International, in the Management Authority of the United States of America, I speak with a large number of people who are interested in importing or exporting animals and plants. While their questions range from the simple to the complex, they often have one thing in common: they are confused about CITES and the U.S. Endangered Species Act (ESA), a stricter domestic legislation, and how they relate to each other. I would like to touch on a few of the most common misconceptions.

Misconception #1: CITES and ESA listing categories are the same.

Under the ESA, listed species are categorized as either threatened or endangered. Many people think that CITES Appendices I and II directly equate to ESA listings as endangered and threatened, and that Appendix III is a special vulnerable category much like many U.S. States have for their protected wildlife. This is not true. The listing of a species under CITES and the ESA involves different processes and listing criteria. While the inclusion of a species in Appendix I or II requires a consideration of whether the species “is or may be affected by trade”, a listing under the ESA is based on whether one or more of five factors are affecting the species: a) loss or des-

truction of habitat; b) overutilization; c) disease or predation; d) inadequacy of regulatory protection; and e) other natural or man-made factors. While some species are listed by both CITES and the ESA and others are only listed by one of them, there is not always a direct correlation between how a species is listed under CITES and how it is listed under the ESA.

Misconception # 2: CITES only protects endangered species.

The second misconception originates from the word *endangered* which features prominently in the title of the Convention “Convention on International Trade in Endangered Species of Wild Fauna and Flora”. Some people assume that only very rare *endangered* animals and plants are covered by the treaty and as such, these same species are listed under the ESA. This is obviously not true. Most CITES species are listed in Appendix II – species not currently threatened with extinction, but that may become so unless trade is closely controlled. Appendix II also encompasses ‘look-alike’ species – species that are difficult to distinguish in trade from species listed for conservation reasons. Even abundant species or those that are widely traded may be listed in Appendix II (e.g. large numbers of parrots, snakes and orchids). Since ESA-listed species are not, in most cases, readily available commercially, people assume the same is true for CITES-listed species. In their minds, if a species is available at their local pet store, it must not be endangered, therefore must not be covered by CITES. This leads to some very surprised individuals when they show up at the border.

General overview – ESA and CITES export and import permit requirements		
	Regulated activities	Permit findings
ESA	<ul style="list-style-type: none"> • Import or export • ‘Off-take’ (within the United States, within the territorial sea of the United States or upon the high seas) • Interstate or foreign commerce • Sell or offer for sale 	<ul style="list-style-type: none"> • Proposed activity will enhance propagation or survival of the species, or be for scientific research, economic hardship, or incidental off-take • Proposed activity could also be for zoological, exhibition, education purposes, or other purposes consistent with the ESA (only threatened species) • Issuance of the permit will not jeopardize the continued existence of the species • Specimen was legally acquired • Expertise and facilities are adequate to accomplish successfully the objectives of the proposed activity
CITES	<ul style="list-style-type: none"> • Import or export • Introduction from the sea 	<ul style="list-style-type: none"> • Proposed activity is not detrimental to the survival of the species • Specimen was legally acquired and traded under CITES • Live specimen will be prepared and shipped humanely • Recipient is suitably equipped to house and care for live animals or plants (only for import of Appendix-I specimens) • Purpose of the import is not for primarily commercial purposes (only Appendix-I specimens)

Misconception #3: CITES only protects wild specimens.

The word *wild* in the title of the treaty also confuses individuals who think only wild-collected animals and plants require CITES permits. This same misconception occurs regarding how the ESA covers species. For both, this concept is not true. Both the ESA and CITES regulates wild and captive-bred animals and wild and artificially propagated plants. When CITES Parties agree to place a species on one of the Appendices, they are recognizing that the demands of international trade are adversely affecting populations in its native habitat. When a species is listed under the ESA, both captive and wild specimens are treated the same way. It should be noted, of course, that as with CITES, special provisions may be adopted under the ESA that allow exceptions to the rule. These ‘special rules’ may lay out situations where the provision of the ESA do not apply or are applied in a limited manner. However, as with the misconception about ‘endangered’, people have been apt to assume that if it is at the local pet store, it must be captive, and therefore is not covered by CITES or the ESA.

In summary, both CITES and the ESA were established to protect species and maintain viable populations in the wild. Although they approach such protection in different ways, both have made significant contributions to species conservation. Identifying some common misconceptions helps us to better understand the differences between these two important conservation measures.

Mr Tim Van Norman
U.S. Fish and Wildlife Service
Division of Management Authority - Branch of Permits

Tupinambis



Photo: Peter Dollinger



Alligator mississippiensis

Photo: Peter Dollinger

Viet Nam

The Convention entered into force in Viet Nam on 20 April 1994. The CITES Management Authority is the Forest Protection Department of the Ministry of Agriculture and Rural Development, and the two CITES Scientific Authorities are the Institute of Ecology and Biological Resources (Viet Nam’s Institute of Science and Technology) and the Centre for Natural Resources and Environment Studies, Ha Noi National University.

The national legislation Viet Nam uses to implement CITES is the following: Government Decree No. 11/2002/ND-CP (23 January 2002) on the management of export, import and transit of wild fauna and flora species; Circular No. 123/2003/TT-BNN of the Minister of Agriculture and Rural Development (14 November 2003) on the Implementation of Decree No. 11/2002/ND-CP; Decree No. 18/HDBT of the Ministers’ Council (17 January 1992) on the list of rare and precious forest flora and fauna species and their management; Prime Minister Directive No. 359-TTg (29 May 1996) on urgent measures to protect wildlife animals; Prime Minister Decision No. 46/2001/QD-TTg (2001) on the management of commodity export and import for the period 2001-2005; Government Decree No. 48/2002/ND-CP (22 April 2002) on the revision of the list of rare and precious flora and fauna species attached to Government Decree No. 18/HDBT; and Prime Minister Directive No. 12/2003/CT-TTg (16 May 2003) on strengthening measures to protect and develop forests.

The administrative penalty (in accordance with Article 10 of Decree 17/CP, 8 February 2002, of the Government) is a fine of up to VND 50 million (approximately USD 3,200). Additionally, permits may be withdrawn and illegal specimens and equipment may be confiscated. The penalty for a criminal offence (in accordance with Article 190 of Criminal Code, 1999) is a fine of up to VND 50 million and imprisonment for up to three years. In severe cases, such as cases involving organized crime, abuse of power, use of forbidden equipment, hunting in forbidden areas and during closed seasons, and other crimes with severe implications, the imprisonment may be for up to seven years.

It should be noted that according to existing regulations, the export for commercial purposes of specimens of all wild animal species taken from the wild, except aquatic ones, is not allowed in Viet Nam.

*Ms Tran Thi Hoa
Forest Protection Department
CITES Management Authority of Viet Nam*

National legislation gives CITES its teeth

From the Secretary-General

CITES is widely recognized as a Convention that has a direct effect in the field and makes a real difference for nature conservation. Through the many Resolutions adopted in its 30 years of existence, CITES has further proven to be flexible and able to deal with both positive and negative developments in wildlife trade.

But no international convention can work without appropriate implementation at the national level. It is therefore absolutely essential that CITES Parties have legislation which allows them to implement all aspects of the Convention. This legislation must be easily adaptable to new Resolutions and changing Appendices.

For the majority of people to follow rules, it is sufficient that they know the rules, understand the reasons behind them and accept the necessity of their existence. Convincing publicity and information materials for traders and the wider public are therefore a must. Unfortunately, there will always be people who do know the rules but who have no intention whatsoever following them. For those there should be adequate sanctions, i.e. sanctions that are regularly applied and that are sufficiently high to prevent infringements or to bring offenders back in line.

As outlined in the editorial and as demonstrated by the contributions from Parties in this issue of *CITES World*, CITES-implementation legislation can take many forms, but there is a wealth of available material that can be used for inspiration: checklists, templates, legislation of countries in a similar position, or with a comparable wildlife trade policy, etc. There is more than enough to choose from and it should be possible for every Party to find the right article, paragraph, provision to meet its specific needs. Also given the

fact that the Secretariat can provide expert assistance and advice on drafting CITES-implementation legislation, there is hardly a justification for Parties not to have appropriate legislation.

I know from personal experience that it can take quite a long time to adopt adequate legislation, that it takes a lot of consultation of other ministries, lots of meetings, answering questions from parliamentary committees, etc. But it can and simply must be done. Only through adequate legislation which is permanently up to date and efficiently enforced – both at the borders and within countries – can CITES really work.

Does your country's legislation strengthen the Convention's teeth?

Willem Wijnstekers

Linking policy development and legislation

Wildlife policy development is an essential precursor to drafting adequate legislation. A clear policy basis facilitates the introduction of procedures and practices to ensure:

- a) coherence and predictability of the legislation;
- b) transparency of legal rights and obligations;
- c) consistency, fairness and due process in legislative application; and
- d) efficiency of management and ease of implementation.

The choice of a wildlife policy, of course, is the prerogative of each Party. What is important is for this policy choice to be made thoughtfully, in consultation with stakeholders, and to be reflected fully and accurately in legislation.

Policies that discourage trade in all wild-taken specimens of animals and plants or that encourage trade in captive-bred animals or artificially propagated plants may not necessarily benefit the conservation of biodiversity. The CITES Secretariat is gathering information on different wildlife trade policies with a view to providing assistance in the development and implementation of policies that support conservation efforts effectively.

The Secretariat

New manual

Wildlife Crime: A guide to the use of forensic and specialist techniques in the investigation of wildlife crime

The use of forensic and specialist techniques in the investigation of wildlife crime has increased dramatically during the last 10 years, and has often played a critical role in securing convictions in a wide range of offences. This book, the latest in the 'Wildlife Crime' series published by the United Kingdom of Great Britain and Northern Ireland's Department for Environment, Food and Rural Affairs on behalf of the Partnership for Action Against Wildlife Crime (PAW), pulls together details of a range of cases where such techniques have been used. PAW encourages and promotes the use of a whole range of standard and non-standard techniques. This publication provides a central reference source and a host of practical advice and will further encourage wildlife enforcers to consider using these techniques as they go about their work. Copies may be obtained online at www.defra.gov.uk/paw/publications/default.htm or through the PAW Secretariat at :

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the Capacity-Building Unit.

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