

International and Domestic Laws Controlling Trade in Wildlife and Plants

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The Evolution of Wildlife Trade Law in One or Two Slides

Since at least the middle ages, societies and governments have put limits, cultural or legal, on the harvest and trade in wildlife and plants.

From the common law doctrine that wildlife belongs to the Crown, while plants belong to the land owner, to contending modern fisheries management regimes, these have had results ranging from rapid success to near-disasters.

Migratory Bird Treaties and Acts

The extinction of whole species of birds, and pressure from the Audubon Society, etc. led to Federal Governments limiting harvests together.

In order for Federal Governments like the U.S. and Canada to control the harvest of wildlife that was otherwise within the control of states competing for dwindling harvests, they concluded treaties, beginning with shared migratory birds and moving to endangered species in trade, trans-boundary migratory species, oceans, and finally, all biodiversity.

The Life of the Laws Flashing By in Seconds

- MBT's – US and UK, Russia, Japan.
- The Western Hemisphere Convention of 1940
- CITES – e.g. elephants, mahogany
- CMS
- UNCLOS (and older fisheries treaties).
- CBD – comprehensive in theory
- WTO and the Dolphin & Sea Turtle Decisions
(Forests and Climate Change *e.g.*, REDD and the Timber Thieves ?).

CITES

- Appendix I
- App. II & Article IV -- Ensure that Appendix II species are harvested legally and playing their role in their ecosystem throughout their ranges. (Article IV).
- App. III – Listing by range states to secure help from parties trading in the App. III-listed species.
- Reports on Trade and Legislation & Reviews

CITES, Continued

CITES -- <http://www.cites.org/eng/disc/sec/index.shtml>

Hufty, M. , 2009-02-15 "The CITES Secretariat : A Discreet but Effective Bureaucratic Leadership" Paper presented at the annual meeting of the ISA's 50th ANNUAL CONVENTION "EXPLORING THE PAST, ANTICIPATING THE FUTURE", New York Marriott Marquis, NEW YORK CITY, NY, USA <Not Available>. 2009-05-22 from http://www.allacademic.com/meta/p314069_index.html

Key Terms in Existing Law

Convention on Biological Diversity

- Restore Degraded Ecosystems
- Designate Protected and Multiple Use Areas
- Assess the Impact of Proposed Projects and Alternatives
- List and Protect Endangered Species
- Limit uses to sustainable levels
- Regulate Activities Threatening the Conservation of Biodiversity

Key Terms in Law, CBD, Cont'.

- The duty in international customary or common law and in Article 3 of the CBD, of one country not to harm the natural resources of another country, and
- The duty in US law and in article 14 of the CBD to assess the likely impact(s) of any major government action or project or program, and alternatives, including when issuing permits for private parties to carry out projects or programs.

Key Terms, CBD, Cont.

- The duty to warn and help others avoid harm and ...
- Remedies -- In most legal systems it is first to stop the harm if possible and then to pay to help make up for the losses suffered by the innocent party if stopping the harm is not possible. Article 14.2 of the CBD asks the Conference of the Parties who should pay and how for cross boundary harm to biodiversity.

Key Terms in the Law

WTO/General Agreement on Tariffs and Trade

- Parties can ban the importation of goods produced with methods that are not allowed domestically in order to protect natural resources or human health (Article XX (B) and (g), and the Shrimp and Sea Turtle Appellate Decision of 1993.)
- The U.S. Pelly Amendment uses this principle.

UNFCCC, REDD & Copenhagen

The next climate agreement will include provisions to help protect forests and other ecosystems that mitigate or help us adapt to climate change.

That agreement could provide that it would be implemented through CITES, CBD, and related conventions first.

Countries currently subject to a recommendation to suspend trade

- [Volumes/Untitled/Wildlife%20Trade%20Law/trade_suspension.shtml](#)

As CITES uses trade measures for its implementation, one recommendation for improving the effectiveness of the Convention is a temporary suspension of trade. Recommendations to suspend trade in specimens of CITES-listed species are made by the Conference of the Parties and the Standing Committee. A recommendation to suspend trade provides a period of time during which the relevant country can move from non-compliance to compliance by inter alia making progress in the enactment of adequate legislation, combating and reducing illegal trade, submitting missing annual reports or responding to specific recommendations of the Standing Committee concerning the implementation of Article IV of the Convention in the context of the Review of Significant Trade. Recommendations to suspend trade are withdrawn immediately upon a country's return to compliance.

At the request of CITES Parties and to assist implementation of the Convention, the Secretariat has developed a table of recommendations to suspend trade that are currently in force. The table shows the country affected by the recommendation, the Notification to the Parties containing the recommendation, the basis for the recommendation and scope of trade involved in the recommendation. Where appropriate, explanatory comments are provided.

CITES CBD Collaboration

Annex

Sustainable Use of Biodiversity Addis Ababa Principles and Guidelines

Summary

The Addis Ababa Principles and Guidelines for the Sustainable use of Biodiversity consist of 14 interdependent practical principles, operational guidelines and a few instruments for their implementation that govern the uses of components of biodiversity to ensure the sustainability of such uses. The principles provide a framework to assist Governments, resource managers, indigenous and local communities, the private sector and other stakeholders on how to ensure that their use of the components of biodiversity will not lead to the long-term decline of biological diversity. The principles are intended to be of general relevance, although not all principles will apply equally to all situations, nor will they apply with equal rigour. Their application will vary according to the biodiversity being used, the conditions under which they are being used, and the institutional and cultural context in which the use is taking place.

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Key U.S. Laws Implementing These Treaties and Principles

- Endangered Species Act
- Migratory Bird Treaty Act
- National Environmental Policy Act
- Clean Water and Air Acts
- The Pelly Amendment to the Fishermen's Protective Act -- & Driftnets Resolution, etc.
- The Lacey Act
- The Alien Tort Claims Act

U.S. Laws, Continued

Trust Doctrines

State Law

MBTA

NEPA

APA

Lacey Act II: Injurious Wildlife, Quarantines, Invasives Controls
Protecting Ourselves from Invasion and Disease --

The Lacey Act Bans US import or interstate trade in or possession of wood products whose production included:

1. theft of plants
2. taking plants from an officially protected area, such as a park or reserve;
3. taking plants from other types of “officially designated areas” that are recognized by a country’s laws and regulations;
4. taking plants without, or contrary to, the required authorization;
5. failure to pay appropriate royalties, taxes or fees associated with the plant’s harvest, transport or commerce;
6. violations of laws governing export or trans-shipment, such as a log-export ban.

Environmental Investigation Agency, an NGO --

Early impacts of the 2008 Lacey Act Plant Amendments

On May 22, amendments to the Lacey Act passed as Section 8204 of the Food, Conservation and Energy Act of 2008. Prior to this law, the United States—as the world’s largest consumer of wood products—had played a key role in driving the trade in illegally sourced timber. Now, the Lacey Act establishes strong incentives for companies to ask the right questions about their wood sources. The Lacey Act is already leading to a systemic shift in the practices of retailers, importers, manufacturers and logging companies. Companies and governments have expressed support of the U.S.’s new ban on trade in illegally sourced plants and plant products and are gearing up to comply.

The private sector: getting serious about legality and due care

Companies’ responses to the Lacey Act have made clear that the amendment will necessitate change in their practices. When 48 NGOs and industry associations join together in a statement about pragmatic Lacey implementation, “united in our strong belief that more needs to be done to address illegal logging, a problem which has serious global environmental and economic consequences,” it’s clear that this law matters.¹

The Chinese Timber Trade and the Logging of Peruvian Amazonia

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China has replaced Japan as the world's largest importer of tropical timber and Italy as the largest exporter of processed wood products (ITTO 2005; Liu & Diamond 2005; White et al. 2006; Wang et al. 2007). Now, a debate has ignited regarding China's responsibility for illegal logging of forests around the world (Laurance 2008; Wang et al. 2008) and reports in the popular press have proliferated that directly implicate Chinese logging companies, notably in Asia and Africa. For example, in January 2008, Sierra Leone banned timber exports due to alleged forest destruction by Chinese companies (BBC 2008) and, more recently, the Kachin News Group reported that Chinese loggers were exploiting Burmese children in the process of removing timber belonging to local people in northern Shan state (KNG 2008). Little has been reported on

ing timber from Peru and examined digital customs declarations (SUNAT 2008) for all of their shipments in 2006. These declarations show that at least 56,425 m³ of sawn wood was shipped to China, 63% of which (or 35,559 m³) was separated by species. Of this quantity, 95% belonged to three ecologically important, but not endangered, rain-forest hardwoods: *Dipteryx* spp., *Miroxylon balsamum*, and *Manilkara bidentata*. For comparison, mahogany (*Swietenia macrophylla*) and tropical cedar (*Cedrela odorata*), both listed as endangered and often mentioned in the context of illegal logging, remain high-volume exports to the United States. Without minimizing the potential impact of China's huge timber demand, it is significant to note that China imports negligible quantities of these two protected species.

Photos from *The Washington Post* article on International Trade in Illegally Harvested Wood April 1, 2007



These satellite images of a mountainside in Burma near the Chinese border are believed to show the impact of recent logging. The image at left, from 2001, shows largely intact forest cover. The 2005 image at right shows multiple clear-cuts of large forest patches. The reasons for the clear-cuts can't be ascertained without visiting them, which is difficult in authoritarian Burma, but they took place in a region where environmental groups have reported rampant illegal logging.

Additional Resources

- www.conbio.org/resources/policy -- Biological Security;
- Malone, Linda A., and Scott Pasternack. Defending the Environment: Civil Society Strategies to Enforce International Environmental Law. Washington, D.C.: Island Press, 2006.
- Websites of CITES, CBD, EIA, WWF, HSUS