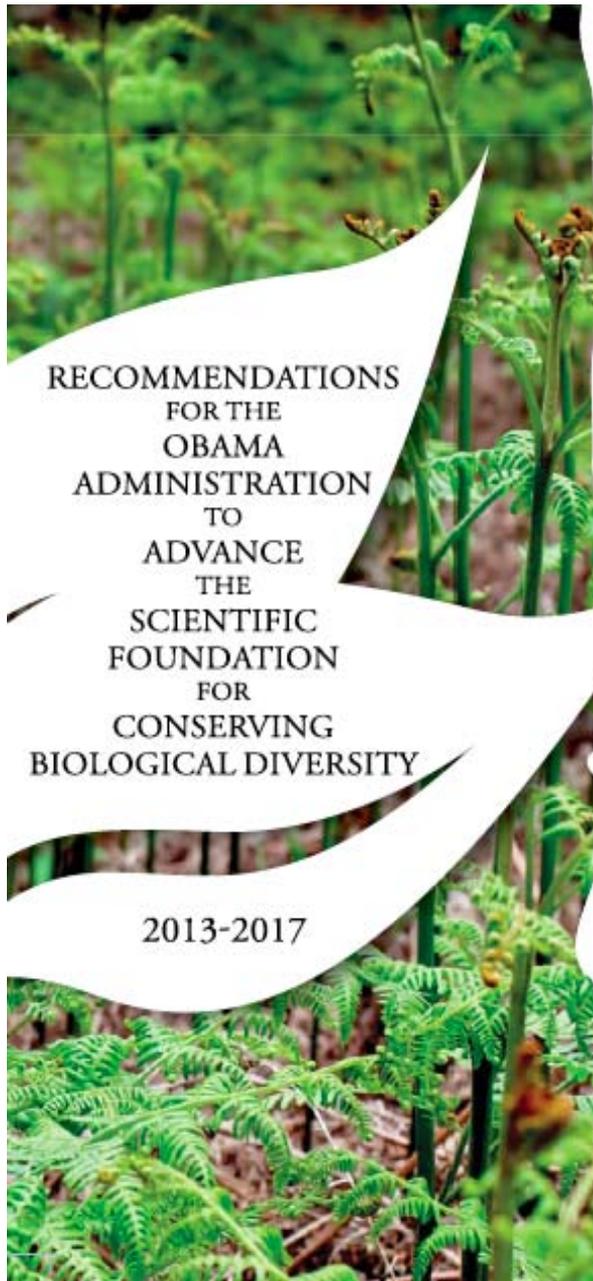




More Powerful Tools for Conservation Professionals

John MacKnight Fitzgerald, J.D.



SCB has presented and posted many recommendations for better policies since 2006. This talk touches on a few of our international and domestic successes and powerful options not yet fully implemented. For more, go to www.conbio.org/policy.



Mitigating and Preparing for Climate Change:
Eleven Conservation Principles
For Decision-Makers

November 17, 2009



Society for Conservation Biology
A global community of conservation professionals • www.conservationbiology.org

Poached, Parched & Punted

In recent weeks, with his second term secured, and his cabinet and team set, President Obama has responded to two of the great crises of the age by launching initiatives to control climate change and poaching. In both of these he asks for our help in filling in the details of what must be done and how to do it. Both are international in scope. I will describe some of the more powerful tools that can leverage better behavior domestically and internationally.

A third recent initiative of his Administration risks undermining the Endangered Species Act by delisting the gray wolf throughout its range and abandoning key legal and biological criteria in the process, not just for wolves but for every species.

From the United Nations to Local Governments and Back – Conservation Biology Can Provide Meaningful Standards for the Law

The rule of law has become possible at larger scales only as governments achieved control over the production and sale of goods and services – from the Articles of Confederation to the Supreme Court’s rediscovery in the 1930’s of the Interstate Commerce Clause to International Agreements setting the terms of trade. We must set and enforce biological limits on our actions from trade to climate change and poaching.



For example, the Endangered Species Act implements treaties, including the Western Hemisphere Convention, which says:

“The Contracting Governments agree to adopt, or to propose such adoption to their respective appropriate law-making bodies, suitable laws and regulations for the protection and preservation of flora and fauna within their national boundaries but not included in the national parks, national reserves, nature monuments, or strict wilderness reserves referred to in Article II hereof.”

-- What does this mean for the gray wolf? We have enacted the ESA that can protect and preserve it outside of parks and wilderness if it is implemented so as to give meaning to the definition of threatened, which includes “in any significant portion of its range”.

From the U.N. Security Council to action in the field to combat crimes against nature, if scientists use the law, then help is on the way --



Help is on the way!



But it is less like the cavalry and more like this:



But don't wait for the next meeting. Contact your decision-makers now. If you are an American citizen, for example, call 202-224-3121 and schedule a meeting to talk with your three members of Congress or their staffs to ask for their help and offer yours. Ask them to report to you on how they are doing. Do the same in any jurisdiction where you vote or work. Our cousins and great uncles died for this right. Do not let them down.



It was big news for most of the world when the stalemate of the 10th Conference of the Parties to the CBD was broken. An Access and Benefits Sharing Protocol, a Genetic Modification Protocol, The Strategic Plan for 2010-2020 and 44 other decisions were unveiled. SCB helped improve the Strategic Plan in several ways.

The Earth Negotiations Bulletin summary of COP 10:

“CBD COP 10 considered a series of strategic, substantive, administrative and budgetary issues, and adopted 47 decisions. Delegates also continued negotiations on an international ABS protocol; and considered: a new strategic plan, targets and a multi-year programme of work (MYPOW) for the Convention; issues related to cooperation with other conventions, organizations and initiatives; and substantive issues, including marine and coastal biodiversity, climate change, forest biodiversity, biofuels, and Article 8(j) (traditional knowledge). “

SCB's Delegation to the Convention on Biological Diversity's Conference of the Parties:

- 1) Prompted EU to insert Precautionary Principle into Lead Paragraph of Strategic Plan for 2020.
- 2) Helped require party reports on Green GDP
- 3) Enhanced reporting on parties' plans and laws
- 4) Helped make Marine Plan most comprehensive
- 5) Helped Keep CBD expertise involved in ensuring the REDD+ process complies with the CBD
- 6) Helped Secure Endorsement of IPBES

IPBES – an opportunity to do better

- A new body that SCB helped create is the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) (www.ipbes.net) -- SCB recommended that the scientific advice it gives to treaty bodies and governments not be only based on consensus but represent the majority of modern scientific opinion, and concurring and minority reports, as necessary, to convey transparently the state of the science.

IPBES – Starting with Policy Makers

The first and last tasks for IPBES, according to the Busan Agreement, are to discuss with policy makers and scientific organizations the policy questions that they need scientists to help them answer and then to provide the tools and mechanisms to do that. While several exercises have produced lists of questions, IPBES needs to start with the most powerful terms in existing treaties and help policy makers and the public know what they mean today and how to apply them, e.g.:

CITES Article IV

CBD Article 8 – restore ecosystems, regulate harmful activities, etc.

CBD Article 3 and 14.1 and 14.2 – assessment of effects on ecosystems and restoration costs, especially of transboundary harms.

How to incorporate the precautionary approach in Dispute Resolution systems in treaties and elsewhere.

Potential Contributions to IPBES or other Scientific Bodies to the Legislative/Negotiating Process:

Treaty Conferences could provide that the proposals on the agenda of a COP or Meeting of the Parties be evaluated by IPBES or others.

Proposed national legislation could be accompanied by a majority, concurring, and if necessary, dissenting analysis, each citing peer-reviewed science.

This would be the kind of precautionary procedure, of “look before you leap” that pre-decisional Environmental Assessments are designed to do.

- In the U.S., SCB led scientific societies in informing Congress that

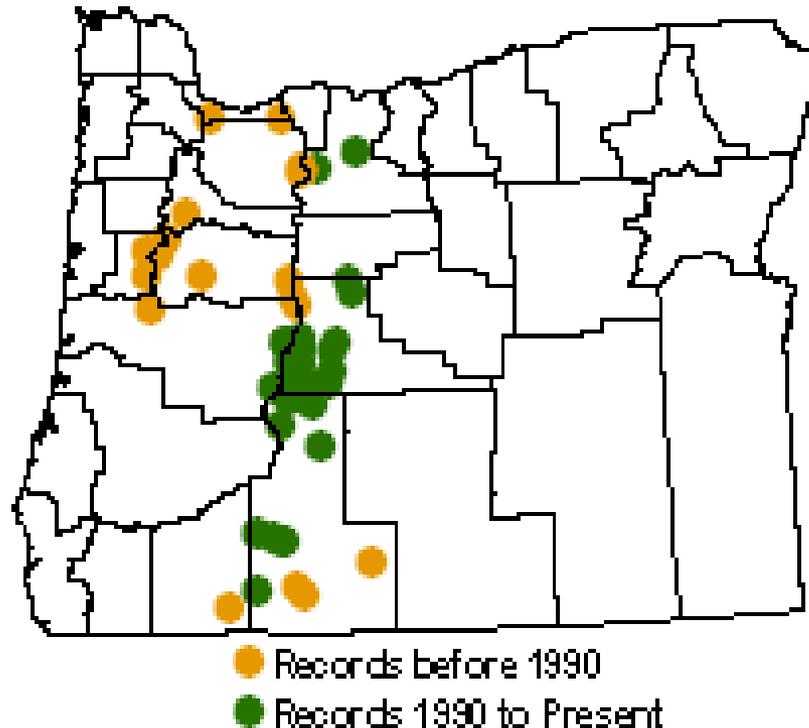
the Oregon Spotted Frog and many other rare species and humans

would benefit from listing, and recovery that would have been prevented by a Republican rider that was voted down on the House floor after our letter arrived along with others.

It has Peptides that could treat many infections resistant to antibiotics as well as fungal and viral infections



Oregon Spotted Frog Populations
The OS Frog was a Candidate for Listing –
Its protection would also protect us and marsh
ecosystems.



Key U.S. Laws Implementing Conservation Treaties and Principles

Endangered Species Act

The Pelly Amendment to the Fishermen's Protective Act
-- & Driftnets Resolution, etc.

The Lacey Act

The Alien Tort Claims Act – For torts committed by non-corporate persons with a US nexus or via blatant acts like piracy.

Like most effective laws, these allow individuals to trigger their application. The ESA and many others pay successful plaintiffs the costs of attorneys and other professionals incurred in bringing the suit.

SCB recommends that the government pay the costs of unique expert interveners in rulemakings.

Carrots, Sticks and Other Tools

- Aid
- Trade/Tariffs/Embargoes/Boycotts
- Foreign Direct Investment/Disinvestment
- Technical Assistance
- PR campaigns
- Cyber, satellite, in person and other interference and monitoring



Quick Guide to The Treaties

- CITES – e.g. elephants, mahogany
- CBD – comprehensive in theory
- WTO and the Dolphin & Sea Turtle Decisions

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

Countries subject to a recommendation to suspend trade under CITES

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

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.

Pelly Amendment: 22 USC 1978

- (2) When the Secretary of Commerce or the Secretary of the Interior finds that nationals of a foreign country, directly or indirectly, are engaging in trade or taking which diminishes the effectiveness of any international program for endangered or threatened species, the Secretary making such finding shall certify such fact to the President.

Triggering Trade Sanctions via The Pelly Amendment

(4) Upon receipt of any certification made under paragraph (1) or (2), the President may direct the Secretary of the Treasury to **prohibit the bringing or the importation into the United States of any products** from the offending country **for any duration as the President determines** appropriate and to the extent that such prohibition is sanctioned by the World Trade Organization (as defined in section [3501 \(8\)](#) of title [19](#)) or the multilateral trade agreements (as defined in section [3501 \(4\)](#) of title [19](#)).

Defining a Pelly Victory

- (d) Periodic review by Secretary of Commerce or Secretary of the Interior; termination of certification; notice

That is, define victory. When can the President safely lift sanctions? That is a scientific, legal and management question. Help answer it.

Key Duties of Parties to the CBD

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 the CBD, continued:

- 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 to first 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 Trade 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 reduce degradation of forests (REDD) 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 while protecting forest-dependent peoples (REDD+).

Tigers *and many others* need forests and other natural areas. SCB helped amend the Lacey Act in 2008 to ban US import or interstate trade in or possession of wood products whose production includes:

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.

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.

THE CHINESE TIMBER TRADE AND THE LOGGING OF PERUVIAN AMAZONIA

LOUIS PUTZEL,*† CHRISTINE PADOCH,† AND MIGUEL PINEDO-VASQUEZ‡

*Department of Biology, City University of New York, 365 5th Avenue, New York, NY 10016, U.S.A., email lputzel@nybg.org

†The New York Botanical Garden, Bronx, NY 10458, U.S.A.

‡Center for Environmental Research and Conservation, Columbia University, New York, NY 10027, U.S.A.

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

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 ex-

Old Bailey is a criminal court and her Statue of Justice is a powerful symbol.



International Criminal Court

Crimes covered include forced relocation. There is a fund to cover costs of aggrieved parties' investigating and litigating. Is there a bigger crime than intentionally putting half the human population at risk of disease, displacement, floods, storms, fires after the whole world in 1992 had acknowledged the risks and after a unanimous Supreme Court upheld the hazardous nature of GHGs? These were not decisions made in order to defend any country but in order to maximize corporate profit when alternatives were readily available. Dossiers are being prepared.



Many negotiations take place in rooms like this, and SCB was there for the CBD and IPBES.



- Again, you have to get in sideways and early.

So join a policy task force,
a chapter or section policy committee
or any good group before the negotiating room is full.
Get to it and
Accept the fanfare once you've won.

In this case, our recessional fanfare is by Gabrieli --

Canzone per Sonare #3 in G

Prepare your questions!

Additional Resources

- www.conbio.org/policy -- Biological Security & Treaties.
- 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