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The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

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Summary

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) has been ratified by 183 nations, including the United States. It regulates the international trade in animals and plants that may be threatened by trade. CITES entered into force in 1975 and currently regulates the trade of approximately 30,000 species of plants and 5,600 species of animals. Many believe that CITES has been a success, noting that no species listed under CITES has gone extinct in the last 30 years. Others believe that CITES, although successful, has had implementation difficulties, such as a lack of enforcement and failures to enact laws that relate to the treaty in some nations.

Protected species are organized under CITES into three appendixes. Species in Appendix I are threatened with extinction due primarily to trade, and trade in Appendix I species is prohibited for commercial purposes. Appendix II contains species that are not necessarily threatened with extinction but require controlled trade to prevent population declines. Species under Appendix III are listed because at least one country has requested other countries to assist it in regulating trade of that species.

In the United States, the Endangered Species Act (ESA; P.L. 93-205, 87 Stat. 884. 16 U.S.C. §§1531-1544) implements CITES and contains separate provisions for protecting rare foreign species. Many species listed under the ESA are also listed under CITES. However, listings under the ESA are based on several criteria that may threaten the survival of the species. Species listed under CITES are evaluated solely on the threat of trade to a species' survival. CITES might allow for the trade in a listed species if trade is not detrimental to the survival of the species, whereas the ESA might allow imports of foreign endangered species if trade enhances the survival of the species in its native country.

In the United States, the implementation and enforcement of laws related to CITES is of potential interest for Congress due to constituent interest in the protection of foreign species and as the treaty relates to the global illegal wildlife trade. Further, wildlife protection under the ESA and CITES for the import and export of particular species and their products, such as trophies for sport-hunted animals, has been of interest to Congress.

Contents

Introduction 1
Background 1
Classification into Appendixes and the Permit System 2
Appendix I 3
Appendix II 3
Appendix III 3
Permit Regulations 4
Exemptions 5
Administration of CITES 6
Conference of the Parties 7
Enforcement of CITES 7
Implementation of CITES In the United States 8
CITES and the Endangered Species Act 9
Implementation of CITES: Successes and Problems 11
Reported Successes 11
Reported Problems with Implementation 11
Conclusion 13

Figures

Figure 1. Breakdown of Permit Applications for International Wildlife by Most Types 5
Figure 2. Top 10 Importers of Mammal Trophies 6

Contacts

Author Information 13

Introduction

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is an international agreement among national governments. It aims to ensure that the international trade in plants and animals does not threaten their survival. The United States, a signatory to CITES, is the largest importer and exporter of wildlife products in the estimated $300 billion global wildlife trade. CITES also provides a framework for addressing the illegal trade in wildlife. According to U.S. government estimates, illegal trade in endangered wildlife products, including elephant ivory, rhino horns, and turtle shells, is worth at least an estimated $7 billion-$10 billion annually.[1] This figure does not include illegal logging and illegal fishing, which can account, respectively, for roughly an additional $30 billion-$100 billion annually and $10 billion-$23 billion annually.[2] Such figures may place illegal wildlife trafficking among the top 10 most lucrative criminal activities worldwide, behind only narcotics, counterfeiting, and human trafficking.

The implementation and enforcement of CITES is of interest to Congress because of the prominence of the United States in the international wildlife trade. Congress provides oversight on U.S. activities related to CITES by holding hearings on U.S. recommendations for CITES, as well as by providing appropriations for conservation programs that aim to improve the populations and habitats of some species listed on CITES. The most recent Conference of the Parties (COP) for CITES was held March 2013. Several decisions regarding the listing of species were discussed, including the adoption of 55 new listing proposals on sharks, manta rays, turtles, and timber, among other species. The next COP will be held in South Africa starting on September 24, 2016.

This report provides background information on the structure of CITES, the enforcement of CITES in the United States, and implementing issues related to CITES.

Background

The origins of CITES can be traced to the 1960s, during international discussions about the world trade of wildlife and wildlife products and its effect on wildlife populations. In 1963, the International Union for Conservation of Nature and Natural Resources (IUCN) called for an international convention on the trade in animal species and their products. A first draft of the Convention was produced in 1964, and in 1973, CITES was signed by 21 nations in Washington, DC. CITES entered into force in 1975 after 10 countries ratified the agreement. As of 2016, there are 183 signatories to CITES.

CITES is applied to species whose populations may be significantly harmed by international trade. Species are first identified as needing protection and then assessed for the risk trade poses for the species survival. CITES regulates trade through a series of import and export permits corresponding to the degree of protection. There are approximately 5,600 species of animals and approximately 30,000 species of plants listed under CITES. The administrative bodies of CITES

[1] State Department, "Secretary Clinton Hosts Wildlife Trafficking and Conservation," media note, November 8, 2012. According to the National Intelligence Council, environmental crime, defined to include illegal wildlife trade, logging, trade in chlorofluorocarbons, and toxic waste dumping, generates an estimated $20 billion-$40 billion per year for transnational organized crime. See Office of the Director of National Intelligence, *Special Report: The Threat to U.S. National Security Posed by Transnational Organized Crime*, 2011.

[2] David J. Agnew et al., "Estimating the Worldwide Extent of Illegal Fishing," *PLoS ONE* 4(2), February 2009; Christian Nellemann, ed. (INTERPOL and United Nations Environment Programme [UNEP]), *Green Carbon, Black Trade*, 2012.

are the Secretariat, the Conference of the Parties (COP), and the Management and Scientific Authorities of each country. The parties (i.e., signatory countries) meet generally every two years at a COP to evaluate the implementation of the treaty and consider efforts which would improve CITES's success.

In the United States, the implementing legislation for CITES is the Endangered Species Act (ESA; 16 U.S.C. 1531ff). The Office of Management Authority (OMA) and the Office of Scientific Authority (OSA) of the Fish and Wildlife Service (FWS) in the Department of the Interior (DOI) exercise the responsibilities of the Management and Scientific Authorities. Enforcement responsibilities for CITES are shared in varying levels by the FWS (Division of Law Enforcement), and the Animal and Plant Health Inspection Service (APHIS) and the Customs Service in the Department of Homeland Security. The NOAA Fisheries in the Department of Commerce also has a small role in CITES's enforcement.

Classification into Appendixes and the Permit System

Under CITES, species that are thought to be in need of protection are identified by the parties, and then their trade is regulated through export and import permits. Among the criteria used to consider a species for listing under CITES are (1) trade in the species; (2) population size of the species; (3) quality of habitat used by the species; (4) extent of the area where the species is distributed; (5) number of subpopulations and their size; and (6) reproductive potential.[3]

When a party is interested in including, deleting, or changing the appendix of a species under CITES, the party must submit a proposal to propose a new listing or amend the existing listing based on a set of criteria. The information used in the proposal is based on the "best information available." To adopt an amendment based on a proposal, two-thirds of the parties voting must vote in favor. The set of criteria used to justify changes in the listings has evolved over the years. When CITES took effect in 1975, several species had already been identified for inclusion in the appendixes. At the first COP, criteria for including a species under CITES were promulgated and included the submission of data on population size and range of the species. In 1994, new criteria for listing a species under CITES were adopted. These criteria include parameters based on the level of international trade of the species, distribution and population size of the species, nature and intensity of threats facing the species (e.g., habitat loss, disease, and pollution), management of the species, conservation of the species in its range country, and consultations with other countries where the species are found.[4]

Three appendixes in CITES correspond to different levels of protection from international trade. Under CITES, any species, subspecies, or geographically separate population of a species can be listed. Once listed under CITES, species can be traded between countries only with the proper permits. Permits are given if trade is not expected to be detrimental to the survival of the species. Certificates of Exemption are granted when trade in a species meets a specified set of criteria for exemption.[5] (See "Exemptions," below, for further discussion.) Article II of the treaty provides conditions under which species are to be included in each Appendix.[6]

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[3] Government Accountability Office, *Protected Species: International Convention and U.S. Laws Protect Wildlife Differently*, Government Accountability Office, GAO-04-964, September 2004. Hereafter referred to as the *GAO Protected Species Report*.

[4] Criteria presented are based on a summary provided by the *GAO Protected Species Report*, pp. 21-22.

[5] W. Wijnstekers, *The Evolution of CITES, 7th Edition* (Geneva, CITES Secretariat, Switzerland: 2003). Hereafter referred to as *The Evolution of CITES*.

[6] To view the text of CITES, see http://www.cites.org/eng/disc/text.shtml.

Appendix I

The most stringent restrictions on trade are for species listed in Appendix I. For Appendix I, Article II states:

> Appendix I shall include all species threatened with extinction which are or may be affected by trade. Trade in specimens of these species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances.

CITES generally prohibits commercial international trade in specimens of these species. Circumstances under which these species can be traded include scientific exchange, breeding, or educational programs. Both an import and an export permit (or reexport certificate)[7] are required for the limited trade allowed for species in Appendix I. For example, in the past, countries agreed to allow Namibia and South Africa to kill and export five black rhinoceroses a year, with proceeds of the sale and hunt to be provided for black rhinoceros conservation programs. The black rhinoceros is an Appendix I species.

Appendix II

According to Article II, Appendix II species are:

> (a) all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival; and (b) other species which must be subject to regulation in order that trade in specimens of certain species referred to in sub-paragraph (a) of this paragraph may be brought under effective control.

Trade in Appendix II species is less restrictive than trade in Appendix I species, and exchange is permitted for commercial purposes if trade will not be detrimental to the species in the wild. For example, trade of Appendix II species requires only an export permit from the country of origin, unless the importing country has imposed additional requirements, which is allowed under CITES. In certain cases, CITES treats individuals or parts of Appendix I species as Appendix II species if they have been bred in captivity or artificially propagated. In addition, an introduction from-the-sea certificate is required for the import of Appendix I or II specimens taken from the high seas outside of any country's jurisdiction.

Appendix III

Appendix III species classified under CITES include:

> all species which any Party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the cooperation of other parties in the control of trade.

International trade of Appendix III species may require one of the following three documents: (1) export permit, granted for species coming from the country that listed it; (2) reexport permit, granted for Appendix III species being exported from a country that previously imported it; or (3) certificate of origin, for Appendix III specimens that are being exported from a country other than the listing country. For example, if the United States sought to allow the export of a turtle dove hatched in the United States, a certificate of origin would need to be issued because the species

[7] A reexport certificate is granted for Appendix I species being exported from a country that previously imported it. For example, if the United States imported a species from Kenya, where it was listed originally, then exported it, a reexport permit would be necessary. This would also include items subsequently converted to manufactured goods.

was originally listed by Ghana. A certificate of origin requires that the specimens were legally obtained from within the exporting country. There is no requirement to show that the trade in the specimen would not be detrimental to the species' survival since it was not from the listed population.

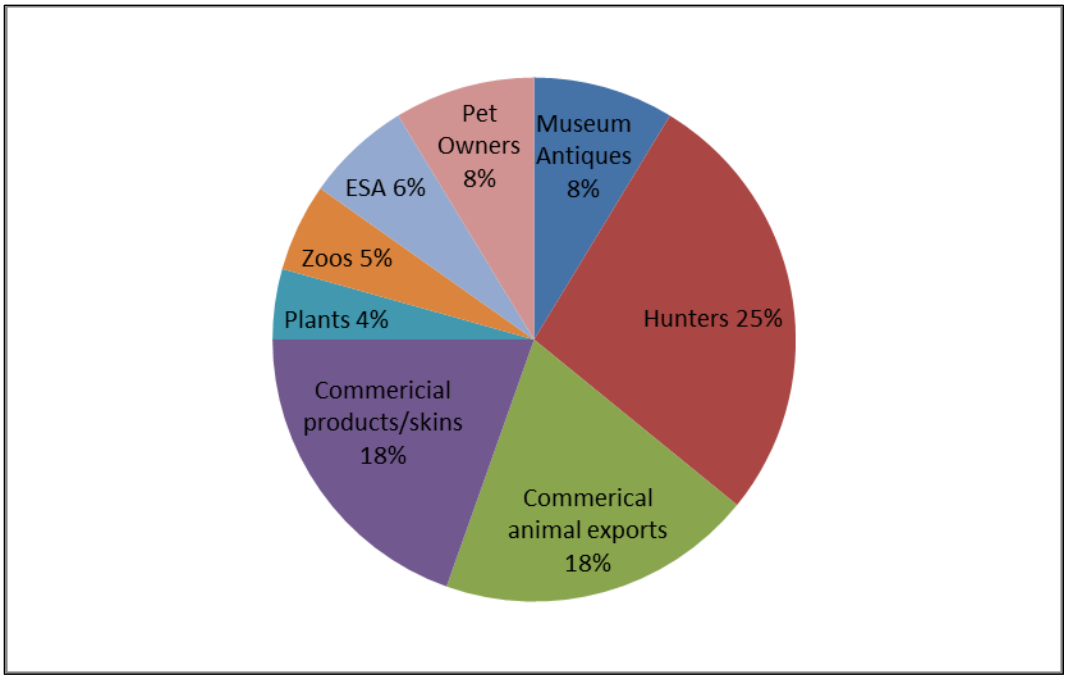
Permit Regulations

Appendix I specimens require both an import and export permit for trade between party nations. If a non-party nation is involved, the party nation must provide the appropriate import or export permit depending on the trade of the species. Appendix I specimens acquired abroad by individuals outside their country of usual residence may not be imported into the United States without CITES permits. A permit under CITES is not required for domestic trade within a party nation. Importing or exporting hunted animal trophies are the dominant use of wildlife according to permit applications. (See **Figure 1**.) The United States is the largest importer of animal trophies in the world (see **Figure 2**).

If a party enters a *reservation*, the transaction does not require a permit from or into the country taking the reservation, but would require a permit from the importing or exporting country if it is a CITES signatory. A reservation for a particular species can occur when a party detracts from the listing of a species in question because it finds the listing of the species unacceptable. The party is required to abide by the rules of the Convention with regard to every other species except for those on which it has taken a reservation. Until a reservation is removed, that party is treated as a non-party state by other signatories for trade in that species.

As of 2016, the country with the greatest number of reservations is Palau with 33. These reservations are for listed marine species. Iceland, Norway, and Japan also have several reservations for listed marine species. In addition, Switzerland, Saudi Arabia, and Liechtenstein have registered several reservations, primarily for bird species, amphibians, and some mammals. The United States has no reservations.

Figure 1. Breakdown of Permit Applications for International Wildlife by Most Types



Source: U.S. Fish and Wildlife Service Budget Justification, Fiscal Year 2017.

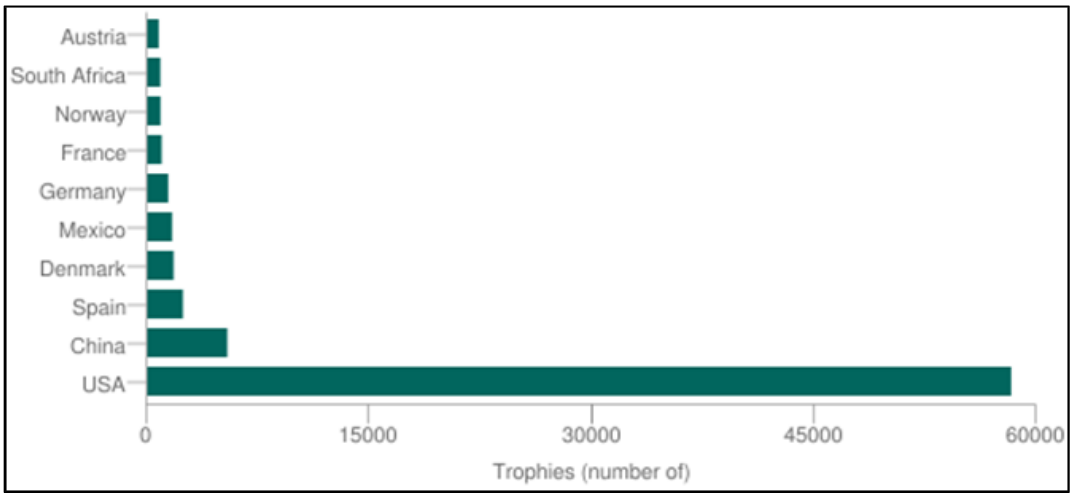
Notes: Percentage values do not add up to 100%, because other types of permits with smaller percentages are not included. These are permits for circuses, biomedical applications, marine mammal applications, and injurious wildlife applications. The category labeled ESA represents permit applications sought under the authority of the Endangered Species Act.

Exemptions

In some situations, Certificates of Exemption may be issued in lieu of permits. Certificates of Exemption are issued for pre-convention specimens or for species that are part of scientific exchanges. Pre-convention specimens are those specimens acquired before the species was listed under CITES. Scientific exchange is the noncommercial exchange of specimens between registered scientific institutions. Further, Management Authorities may waive the permit or certificate requirement for specimens that are part of a traveling zoo, circus, plant exhibition, or other traveling exhibition.

Figure 2. Top 10 Importers of Mammal Trophies

(2008-2013, as reported by importing country)



Source: CITES Trade Database at http://trade.cites.org/.

Administration of CITES

The administration of CITES is divided into the Secretariat, the Management and Scientific Authorities, and the Conference of the Parties. The Secretariat is housed within the United Nations Environment Programme in Geneva, Switzerland, and is funded by parties through a trust fund. The Secretariat has a broad range of duties that include organizing meetings of the Parties, preparing reports on the meetings, and publishing annual status reports. The Secretariat is also responsible for undertaking scientific and technical studies that will contribute toward implementing CITES.[8]

Each party to CITES is responsible for creating its own Management and Scientific Authorities. The Management Authorities have the responsibility to grant or deny CITES permits. In general, a Management Authority must determine whether

- The specimen was obtained through the violation of any domestic laws
- A living specimen will be prepared and shipped in a manner not detrimental to its health or welfare
- An import permit has been granted for Appendix I species before an export permit can be granted
- The import of specimens on Appendix I is primarily for noncommercial purposes
- The necessary advice from the Scientific Authority has been issued

Management Authorities also must keep records of trade, care for species in transit, and designate exit and entry points for trade, among other things.

The functions of Scientific Authorities are defined in part by CITES and the party. Among other things, Scientific Authorities are required to determine whether imports or exports of CITES species will have a harmful effect on the conservation status of a species; the intended facility for caring for an imported live specimen of a listed animal is adequately equipped; and import

[8] Rosalind Reeve, "Policing International Trade in Endangered Species, The CITES Treaty and Compliance" (The Royal Institute of International Affairs, London: 2002), 346 p. Hereafter referred to as *Policing International Trade*.

restrictions for a specimen to the country should be proposed because trade may have a negative effect on the status of the species in the wild, or because the introduction of the specimen into the country would present an ecological threat to native species.

Conference of the Parties

The Conference of the Parties (COP) convenes every two to three years. At these meetings, the parties vote on adopting amendments to Appendixes I and II, review the progress of the Convention in meeting its goals, and make recommendations for improving CITES. Taking actions on substantive proposals or making major procedural changes usually requires a two-thirds vote by the parties; however, many other decisions are made by consensus.[9] Attendance at the COP is not limited to party members. Observers are invited to attend and generally include non-parties to CITES, the United Nations and its agencies, non-governmental organizations, and any international or national body (government or not) that is "technically qualified in protection, conservation or management of wild fauna or flora."[10] While all present can participate, only party members can vote. There have been 16 COPs since the convention convened in 1973, the most recent in Thailand in June 2013. The next COP is scheduled for September 24, 2016, through October 5, 2016, in South Africa.

United States Proposals for COP17

The U.S. government is submitting several proposals for listing or changing the listing of species under CITES during COP17.[11] For example, the United States is proposing to change the listing of the African Grey Parrot (*Psittacus erithacus*) from Appendix II to Appendix I due to an increasing trade in China and population declines in Africa. Other species addressed by the United States include several species of pangolins and devil rays. The United States is also involved in proposals to address the implementation of CITES. For example, the United States is proposing that parties with substantial markets for illegal wildlife products research and develop demand-reduction campaigns. Under this proposal, these campaigns are to target specific species and to increase public awareness of how the illegal wildlife trade affects the environment and how violators of wildlife trafficking laws could be charged. A second proposal would address compliance and enforcement issues. The proposal would direct the Secretariat to commission outside consultants to examine domestic controls on consumer markets for products of CITES-listed species. African elephants are to be addressed at COP17 through proposals to eliminate domestic markets for ivory, to increase monitoring of elephant populations, and to list all African elephants under Appendix I. The intent behind these proposals is to lower demand for ivory and reduce poaching of elephants, according to the Fish and Wildlife Service.

Enforcement of CITES

The enforcement of CITES is primarily the responsibility of the party countries. CITES does not have any enforcement authority. Parties are required to enact and implement legislation that will prohibit trade that violates the treaty, as well as provide for penalties for violations and the confiscation and, where feasible, the return of illegally traded specimens. Under Article VIII, other enforcement activities are listed and include (1) designation of ports of entry and exit for species; (2) care for living specimens; (3) maintenance of detailed records on the import and export of listed species; and (4) preparation of a biennial report on the regulatory measures taken to enforce the provisions of the treaty. Party countries are also allowed to adopt stricter domestic measures than provided in the Convention (Article XVI of CITES). Several countries have done so, including countries within the European Union and the United States under the ESA.

[9] *GAO Protected Species Report*, p. 8.

[10] Article XI, §7 of CITES.

[11] For U.S. proposals for COP17, see https://www.fws.gov/international/cites/cop17/us-submissions.html.

Implementation of CITES In the United States

The Secretary of the Interior, through the Fish and Wildlife Service (FWS), has the primary responsibility for implementing CITES in the United States. The Secretary of the Interior is the Managing Authority and Scientific Authority for CITES, as authorized under the ESA. The FWS is responsible for issuing permits for the export, import, or reexport of protected species under the terms of CITES and domestic laws; monitoring trade and transport of listed species; enforcing permit regulations; and investigating cases of illegal trade.[12] All wildlife species that enter or exit the United States must be accompanied by a permit in compliance with U.S. laws.[13] The FWS also is responsible for coordinating and preparing U.S. proposals for the COP. The FWS generally coordinates with other federal agencies to prepare these proposals.

Other federal agencies are involved in implementing CITES in the United States. NOAA Fisheries provides scientific advice and assistance to the FWS for marine species. Although NOAA Fisheries does not have legal authority to implement the terms of the Convention, it does have enforcement and monitoring responsibilities over some marine species that are jointly covered by the ESA and CITES, such as great whales, Queen Conch, some species of hard coral, and dolphins. The Animal and Plant Health Inspection Service (APHIS) is responsible for inspecting all shipments of plants into the United States and assists the FWS in inspecting and detecting items that contain wildlife parts or products. Further, the Department of Agriculture assists the FWS on policies related to plants, and the Department of State is responsible for providing U.S. annual contributions to the Convention as well as assistance with international environmental agreements.

Wildlife trade involving the United States is also regulated by other laws such as the Marine Mammal Protection Act, Lacey Act, and the Fisherman's Protection Act.[14] A short summary of each of these laws follows:

- The Marine Mammal Protection Act (MMPA) of 1972 (P.L. 92-522, as amended; 16 U.S.C. §§1361 et seq.) aims to conserve marine mammal populations by establishing a moratorium on the killing of marine mammals in U.S. waters and by U.S. nationals on the high seas.
- The Lacey Act (16 U.S.C. §§3371-3378) implements enforcement mechanisms for the illegal trade of wildlife within the United States. Specifically, the Lacey Act makes it illegal to engage in the trade of fish and wildlife taken in violation of any U.S. or Indian tribal law, treaty, or regulation as well as the trade of any of these items acquired through violations of foreign law or treaties (this includes CITES). Plant species are subjected to the Lacey Act if they are taken in violation of a law or treaty of the United States or a law or regulation of any state. However, plants are defined as those indigenous to any state and either (1) listed under CITES or (2) listed pursuant to any state law that provides for the conservation of species threatened with extinction (16 U.S.C. §3371(f)). Therefore, a plant is not covered under the Lacey Act unless it is indigenous to a state. This definition, for example, precludes the application of the Lacey Act to many tropical timber species listed under CITES.

[12] *GAO Protected Species Report*, pp. 12-13.

[13] Note that CITES imposes no direct controls on shipments between U.S. States or territories.

[14] Other U.S. programs such as the Multinational Species Conservation Fund support conservation activities of specific foreign species under the authority of several laws. The Fund benefits tigers, rhinoceroses, elephants, great apes (e.g., chimpanzees and gorillas), and marine turtles, often in conjunction with efforts under CITES. For more information see CRS Report RS21157, *International Species Conservation Funds*, by Pervaze A. Sheikh and M. Lynne Corn.

- Under the Fisherman's Protective Act (22 U.S.C. §§1971-1979) there is a provision (Pelly Amendment) that authorizes the President to discontinue the importation of products from a country that allows fishing operations, takings, or trade that diminishes the effectiveness of an international fishing treaty or program in international endangered and threatened species (e.g., CITES).

Changes in the implementation of CITES in the United States were promulgated by the FWS on May 27, 2014.[15] (See 50 CFR Part 23.) The changes are intended to reflect current CITES provisions that have been modified or added by the parties from the inception of the treaty to COP-15. Many of the changes for new regulations explain procedures and requirements already in effect, specific requirements related to documentation and reporting of activities, and definitions of new terms, among other things, according to FWS.

CITES and the Endangered Species Act

The ESA implements CITES in the United States. Although the ESA and CITES have a legal distinction, many species are included in both the ESA and CITES lists, making these lists overlapping but not identical.

The ESA protects approximately 2,185 species, of which 628 species are in foreign countries. Under the ESA, the Secretary of the Interior is authorized to consider actions taken by foreign governments or agencies on species when determining if a foreign species should be listed. Further, the Secretary must make determinations for listing species based on the best available scientific and commercial data (which may include foreign sources) and taking into account efforts by foreign governments and agencies.[16] Currently, the FWS reviews foreign species under the ESA's listing criteria and goes through a required regulatory and public comment process before listing a foreign species under the ESA.

Although there are similarities between CITES and the ESA in listing and protecting species, several fundamental differences exist. The ESA and CITES have similar rationales for listing species; namely, that there is a threat to the survival of the species. However, under CITES, this threat is specifically associated with the harvesting of the species or their parts for international trade, although other parameters may be considered. Under the ESA, consideration of the threat to survival is broader, and includes factors such as habitat loss, disease, and predation, as well as trade and consumption. Many species fall under both these definitions of threat and consequently are listed under both the ESA and CITES. This does imply that species listed under both lists have equal levels of protection. For example, the Saiga antelope is listed under Appendix II in CITES, yet is listed as endangered under the ESA.[17] Thus, a U.S. hunter could legally hunt Saiga in Mongolia (if allowed by Mongolian law) but could not import his trophies into the United States without a permit from both the United States and Mongolia that meets CITES regulations and the exemptions under the ESA for importing endangered species.

Species that are not prohibited for trade under CITES, yet are listed as threatened or endangered under the ESA, can be imported to the United States if they meet requirements of Section 10 or

[15] U.S. Dept. of the Interior, Fish and Wildlife Service, "Revision of Regulations for the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)," *Federal Register* v. 79, no. 101 (May 27, 2014): 30399-30429.

[16] Section 4(b) of the ESA.

[17] A subspecies *Saiga tatarica* ssp. *mongolica* is listed as endangered under ESA. CITES does not distinguish this subspecies from the species *Saiga tatarica*.

Section 4(d) of the ESA. Section 10 of the ESA allows for the Secretary to issue a permit for the take of an endangered species when it (1) is incidental in conducting an otherwise lawful activity; (2) is shown to enhance the survival of the affected species in the wild; or (3) is for scientific purposes. For example, Section 10 permits have been issued for the import of endangered giant pandas, cheetahs, and Asian elephants for scientific research and generally not for incidental take.[18] Section 10 allows permit requests for importing sport hunting trophies; however, such requests are routinely denied, according to the FWS.[19] Under CITES, exceptions for sport-hunting trophies under a quota are sometimes granted for taking species listed under Appendix I and II, if it is determined to have no detriment to the population.

Section 4(d) under the ESA authorizes the creation of special rules for conserving *threatened* species. Under Section 4(d), the Secretary of the Interior may issue rules for threatened species that deviate from the protections given to endangered species, including rules which may permit some trade in the species or its products. Otherwise threatened species generally have all legal protections allocated to endangered species. Under this authority, the FWS has issued several rules pertaining to threatened species under the ESA that are also listed as Appendix II species under CITES. The FWS has lifted import bans, and in some cases, allowed the import of sport-hunted trophies of some threatened species when it was shown that regulated trade would be an incentive for developing conservation programs in the species' countries of origin.[20] For example, some species of saltwater crocodiles listed as threatened under the ESA have a Section 4(d) rule that allows for the import of body parts from managed populations. This rule was implemented under the premise that limited trade in crocodile body parts would encourage the development of conservation programs in their native country.[21]

The protection of species listed as endangered under the ESA and listed in Appendix I of CITES is not equivalent. CITES allows for the trade in endangered species, *if* trade is not detrimental to the survival of the species. The ESA requires that importing endangered species have a net result of enhancing the survival of the species. For example, cheetahs are Appendix I species under CITES and listed as endangered under the ESA. Under CITES, some countries have been allowed to participate in the limited trade of sport-hunted cheetahs, because it was shown that this trade would not be a detriment to the population. Under the ESA, however, the FWS has not issued permits for importing sport-hunted cheetah trophies, because their take has not been shown to enhance the survival of the species in their range country.[22] Limited take of endangered species under the ESA and CITES is allowed in some cases where the objective is scientific research, conservation, or education. Further, under the ESA, permits that allow *incidental take* during otherwise lawful actions may also be granted.[23] Many have suggested that these fundamental

[18] Note that the ESA protects foreign endangered species by regulating their importation into the country, but does not regulate take of foreign species in their country of origin by American citizens.

[19] U.S. Dept. of the Interior, Fish and Wildlife Service, "Draft Policy for Enhancement-of-Survival Permits for Foreign Species Listed Under the Endangered Species Act," *Federal Register*, v.68, no. 159 (Aug. 18, 2003): 49512. Hereafter referred to as the *Draft Policy*.

[20] *Draft Policy*.

[21] *Ibid.*

[22] For other examples, see the *GAO Endangered Species Report*, p. 34.

[23] Incidental take permits make it legal to take a listed species under certain circumstances. To obtain a permit, a landowner must prepare a habitat conservation plan (HCP) approved by the FWS to protect endangered species on the landowner's property. By entering into an HCP, landowners can receive an incidental take permit whereby they can take an endangered species, if they are engaged in otherwise lawful activity (e.g., such as land clearing).

differences between regulation under CITES and the ESA demonstrate that the ESA is stricter than CITES with regard to species protection.

The issue of whether or not to have stricter domestic ESA measures compared to CITES for foreign endangered species is an ongoing debate.[24] According to the GAO, some proponents of stricter domestic measures argue that CITES is focused only on the trade of endangered species, rather than the overall protection and conservation of the species (e.g., protecting habitat within the range country). Further, some argue that stricter domestic measures will facilitate enforcement and allow the United States to focus its protection efforts on species without seeking the consent of other parties. Others argue that stricter domestic enforcement discourages developing countries from creating conservation programs that would benefit from trade in protected wildlife species.

The FWS addressed this issue by proposing a policy that would allow limited trade in foreign endangered species, if funds used to obtain those species are invested in conservation programs to enhance the species' survival.[25] The proposed policy to issue enhancement-of-survival permits was met with controversy. Some supporters believed that the policy was one of the few ways the United States could provide incentives for conservation in developing countries. Others responded to the draft policy with skepticism of its possible benefits for endangered species and argued that the policy was too vague and would spur an increase in smuggling.[26] Further, some argued that the policy would place too much responsibility on the range country for operating and maintaining conservation programs. The policy was not implemented, although the authority to issue enhancement-of-survival permits exists.

Implementation of CITES: Successes and Problems

The implementation of CITES has generated several success stories along with controversy and problems. Arguably, the success of CITES can be summarized with the fact that no species listed under CITES within the last 30 years has gone extinct.

Reported Successes

CITES is one of the world's most widely accepted treaties, with 183 signatories. Many argue that it has significantly increased monitoring and control of international wildlife trade, and has played a part in the conservation of many species that may have gone extinct if freely traded. Another possible factor in the success of CITES is that the listings have steadily increased since its inception. Some attribute this increase to better monitoring and analysis of trade as well as more participating countries. Some claim that a success of CITES is its increased use of science-based criteria to consider listings.[27] Although it is difficult to attribute the conservation of a species solely to CITES, several species have noticeably improved since being listed on CITES.[28]

Reported Problems with Implementation

Although CITES has recorded some success, several issues with implementation remain. Some of these issues include insufficient enforcement in foreign countries, complex and controversial

[24] For a summary of the arguments for and against stricter domestic measures, see the *GAO Protected Species Report* pp. 36-41.

[25] *Draft Policy*.

[26] Ibid.

[27] *GAO Protected Species Report*.

[28] Ibid.

species and specimens to monitor, low penalties for violations, the use of reservations, and the persistence of the global illegal wildlife trade.

Although parties to the treaty are obligated to implement legislation upholding CITES and to establish Management and Scientific Authorities, some have failed to do so and consequently have not effectively enforced the treaty. For example, as of 2014, approximately 50% of the parties had not implemented legislation that would sufficiently cover the main responsibilities of CITES, including (1) establishment of Management and Scientific Authorities; (2) prohibition of trade in violation of CITES; (3) penalties for violations; and (4) protocols for confiscating illegally traded specimens.[29]

Some also argue that many countries lack the resources to police and monitor international wildlife trade through their country and consider violations of wildlife trade a low priority. In many countries, specialized wildlife law enforcement officials do not exist and enforcement of wildlife crimes is not a high priority. Barriers toward effective enforcement in range states include (1) corruption in government, which contributes to the inability of range states to monitor and control wildlife crime; (2) collusion between wildlife poachers and law enforcement officials; and (3) a low priority for conservation in federal or national governments.[30] Law enforcement officials also identified a lack of political support as a hindrance to their effectiveness against the illegal wildlife trade, a trend that if changed, some contend, could strengthen penalties, sentencing, and prosecution of wildlife crimes.[31]

Some believe that penalties for CITES violations in party nations are not adequate to prevent illegal wildlife trade. CITES does not provide guidance on the level or types of penalties to impose, and how the parties penalize violators varies widely. Several countries, for example, do not have penalties for illicit wildlife trade. CITES does, however, state that violations should at least result in the confiscation of the wildlife and products, which itself can be a costly penalty.

The use of reservations by countries to exempt themselves from the regulations associated with a species that the party objects to having listed is considered by many to be a significant threat to the implementation of CITES. Once a reservation is taken, the party is treated as a non-party with respect to that particular species, and can engage in unrestricted trade with other non-party nations or party nations that have the same reservations. A reservation can only be made when a country becomes a party or when an amendment is adopted, yet can be dropped at any time. Supporters of reservations argue that they provide a country with the opportunity to object to the listing of one species without having to withdraw from the entire Convention. Critics, however, argue that reservations are a loophole that can result in the depletion of an endangered species if trade is not controlled. Further, some argue, reservations decrease the ability of CITES to protect endangered species from excessive trade.

Several of these implementation problems are being addressed by the Secretariat. For example, in *CITES Strategic Vision: 2008-2020*, the Secretariat is aiming to increase the capacity of party nations to implement domestic legislation and policies to support CITES, particularly addressing the financial needs of these initiatives, as well as to increase the cooperation and communication among other international stakeholders regarding CITES enforcement.[32] The Secretariat is also

[29] CITES, Status of Legislative Progress for Implementing CITES at https://cites.org/eng/legislation.

[30] CITES, *Tiger Technical Mission Report* (Geneva, Switzerland: 1999).

[31] International Consortium on Combatting Wildlife Enforcement Crime (ICCWC), *First Global Meeting of the Wildlife Enforcement Networks,* 2013.

[32] CITES, *Cites Strategic Vision: 2008-2020* Available online at https://cites.org/sites/default/files/eng/res/16/E-Res-16-03.pdf.

striving to increase cooperation with organizations of other multilateral conventions, such as the Convention on Biological Diversity and the World Conservation Union.

Conclusion

CITES is an international treaty that is steadily gaining acceptance in the world and growing in terms of its application. Although most believe that the treaty has been effective in curbing the international trade of endangered and threatened species, some argue that many issues with implementation remain. The primary issue, according to some, is the lack of implementing legislation, and hence enforcement mechanisms, in several party nations. This lack compromises the effectiveness of the treaty and lowers the value of enforcement and monitoring activities in complying party nations. This aspect of CITES is to be addressed by the United States in the Implementation Plan for the U.S. National Strategy for Combating Wildlife Trafficking.[33] The plan calls for the United States to provide support and technical assistance to ensure that countries are implementing CITES and to hold accountable countries that fail to fulfill their CITES obligations. The plan also calls for the United States to clarify and enforce *use-after-import* provisions mandated by CITES. Use-after-import provisions under CITES allow party nations to specify how species or products derived from species may be used after they are imported.[34]

In the United States, the comparison between domestic regulations and CITES regulations for foreign endangered species may be an emerging issue. Although fundamental differences in protection and criteria for listing species exist between the ESA and CITES, there seems to be consensus that the ESA has stricter measures than CITES. However, there does not appear to be a consensus that stricter measures under the ESA would necessarily be more effective than CITES in protecting foreign endangered species.

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[33] President's Task Force on Combating Wildlife Trafficking, *National Strategy for Combating Wildlife Trafficking: Implementation Plan*, President's Task Force on Combating Wildlife Trafficking, February 11, 2015, http://www.state.gov/documents/organization/237592.pdf.

[34] Several species have restrictions on their use after import into the United States. For example, in many cases, uses are limited to noncommercial purposes.

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