

REGULATION OF INTERNATIONAL TRADE IN ENDANGERED WILDLIFE

I. INTRODUCTION

International trade in endangered wildlife is an enormous industry which contributes greatly to the depletion of wildlife populations around the world.¹ This trade, combined with the increasing deforestation taking place in many Third World countries, has placed hundreds of species in danger of extinction.² The Department of the Interior estimates that every ten years twenty species become extinct in the United States and an even greater number become endangered. Assuming a constant rate around the world, the Department estimates that 300 species become extinct each decade.³

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)⁴ imposes restrictions on trade in endangered

1. *Amending the Black Bass and Lacey Acts: Hearings on S. 1882 Before the Subcomm. on Resource Protection of the Senate Comm. on the Environment and Public Works*, 96th Cong., 1st Sess. 1 (1979) (statement of Sen. John H. Chafee) [hereinafter cited as *Hearings on S. 1882*]; *id.* at 3 (statement of Lynn A. Greenwalt, Director, U.S. Fish and Wildlife Service); 50 Fed. Reg. 10,462 at 10,463 (1977).

2. *Hearings on S. 1882*, *supra* note 1 (statement of Sen. John H. Chafee); *id.* at 57 (statement of Lynn A. Greenwalt, Director, U.S. Fish and Wildlife Service); S. REP. NO. 739, 96th Cong., 2d Sess. 1 (1980); NAT'L GEOGRAPHIC, March 1981, at 294; Washington Post, July 8, 1979 (Magazine) at 20.

3. H.R. REP. NO. 167, 96th Cong., 2d Sess. 3, *reprinted in* 1979 U.S. CODE CONG. & AD. NEWS 2557, 2559. "Of approximately 13,200 mammal and bird species estimated to be living in 1600, over 130 have already become extinct. About 240 more are today in danger of extinction. Large numbers of reptiles, amphibians, fish and invertebrates are also endangered, and there are an estimated 20,000-25,000 endangered plants." T. INSKIPP & S. WELLS, INTERNATIONAL TRADE IN WILDLIFE i (1979) [hereinafter cited as INSKIPP & WELLS].

4. Mar. 3, 1973, 27 U.S.T. 1087, T.I.A.S. No. 8249 (effective upon ratification by ten nations) [hereinafter cited as CITES]. Ratification by the President: Sept. 13, 1973, 69 DEP'T STATE BULL. 467 (1973). Instrument of ratification deposited: Jan. 14, 1974, 70 *id.* 136 (1974). For legislative history see PRESIDENT OF THE UNITED STATES, MESSAGE TO THE SENATE TRANSMITTING THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA, S. EXEC. H. 93d Cong., 1st Sess. (1973); S. EXEC. REP. NO. 14, 93d Cong., 1st Sess. (1973), Advice and Consent of the Senate: 119 CONG. REC. S15, 801.

wildlife to ensure its survival.⁵ This convention has successfully reduced the trade in many species of wildlife,⁶ but much illegal trade persists.⁷ This Note begins by discussing the endangered wildlife trade and the effects it has on many species, and then examines the efficiency of certain provisions of the Convention and the degree of international participation in CITES. Finally, this Note discusses the sufficiency of United States regulations promulgated in response to the Convention and recently enacted Congressional legislation designed to improve protection of endangered wildlife.

II. THE ENDANGERED WILDLIFE TRADE

A. *Wildlife Exports*

Wildlife is usually exported from the developing nations of Africa, Asia and Latin America.⁸ Farmers and tribesmen in these countries capture or kill endangered wildlife and sell it or its products to dealers for large sums. Depending on the species captured, the profits from the sale of one animal can support these farmers for the rest of their lives.⁹ Dealers in turn either sell the animals to smugglers or smuggle them out of the country of origin themselves.¹⁰ Although the revenue raised by local dealers contributes to the economies of these nations, the trade seriously endangers the survival of many species.¹¹ This exploitation also conflicts with the long-range advantages of protecting wildlife in countries of origin. Wildlife attracts tourists,¹² supports local industries¹³ and serves educational and cultural purposes. Preservation of wildlife will ensure that animal populations remain healthy forever.

5. See CITES, *supra* note 4, arts. III, IV and V. For a discussion of the role of international conservation efforts and the principles upon which they are based, see Bleicher, *An Overview of International Environmental Regulation*, 2 *ECOLOGY L.Q.* 1 (1972); Falk, *Environmental Policy as a World Order Problem*, 12 *NAT. RESOURCES J.* 161 (1972).

6. *NAT'L GEOGRAPHIC*, *supra* note 2, at 296.

7. S. REP. NO. 739, 96th Cong., 2d Sess. 1 (1980).

8. INSKIPP & WELLS, *supra* note 3, at 5.

9. *INT'L WILDLIFE*, May-June, 1981, at 19.

10. INSKIPP & WELLS, *supra* note 3, at 5.

11. *Hearings on S. 1882*, *supra* note 1, at 1 (statement of Sen. John H. Chafee); *id.* at 3 (statement of Lynn A. Greenwalt, Director, U.S. Fish and Wildlife Service).

12. The greatest source of foreign exchange in Kenya is tourism. *International Wildlife Conservation: Hearings Before the Subcomm. on Resource Protection of the Senate Comm. on Environment and Public Works*, 96th Cong., 1st Sess. 9 (1979) (statement of Thomas Lovejoy, Vice President, Science, World Wildlife Fund) [hereinafter cited as *Hearings*].

13. INSKIPP & WELLS, *supra* note 3, at 5.

The author believes that wildlife has a right to be free from commercial exploitation, but a discussion of wildlife rights would be beyond the scope of this Note. For the views of authors on this subject, see Favre, *Wildlife Rights: The Ever-Widening Circle*, 9 *ENV'T L.* 241 (1979); Stone, *Should Trees Have Standing?*, 45 *S. CAL. L. REV.* 450 (1972); Note, *Toward Legal Rights for Animals*, 4 *ENV. AFF.* 205 (1975).

B. *Wildlife Imports*

Wildlife is imported into the wealthier industrialized nations of North America, Europe and Japan.¹⁴ Wildlife and its products are purchased for zoos,¹⁵ research,¹⁶ household pets,¹⁷ private collections,¹⁸ food delicacies¹⁹ and for their medicinal value.²⁰ In 1980, the United States imported over 5 million dollars worth of live mammals, reptiles and amphibians, 750,249 live birds, and over 18.5 million dollars worth of live fish and shellfish.²¹ The wholesale value of these legal imports exceeded 31.8 million dollars.²²

While the trade in live wildlife is considerable, the trade in wildlife products is even greater. In the same year, the United States imported almost 11 million animal hides and reptile skins, 717,940 mounted or stuf-

14. INSKIPP & WELLS, *supra* note 3, at 5.

15. *Id.* Wildlife in many zoos are mistreated and kept in inadequate facilities. For a description of the problems facing animals in zoos and legislation designed to deal with these problems, see Note, *Federal Regulation of Zoos*, 5 ENV. AFF. 381 (1976).

16. INSKIPP & WELLS, *supra* note 3, at 31.

17. *Hearings on S. 1882*, *supra* note 1, at 165 (statement of John H. Gottschalk, Executive Vice President, International Association of Fish and Wildlife Agencies). The cockatoo has become especially popular since the television show "Baretta," tempting dealers to violate United States and Australian wildlife trade laws because of the profitability of the trade. *Id.*, at 93 (statement of Christine Stevens, Secretary, Society for Animal Protection Legislation).

18. NAT'L GEOGRAPHIC, *supra* note 2, at 302. "Bird loving Belgians flock each week to the Sunday market in Brussels' Grand Place to ogle exotic species from the tropics. 'Belgians are enthusiastic bird collectors,' said a distinguished-looking gray-haired gentleman there, who added that he keeps a backyard aviary of some 50 birds. 'Most of these birds are common waxbills and finches, but it is possible to buy others that are very rare, nearly extinct.' " *Id.* " 'Bird collectors in Europe and the United States will pay \$12,000 for a pair of [endangered] golden shouldered parakeets, . . . [endangered] Brown parakeets and [endangered] Naretha bluebonnet parakeets go for \$8,000 to \$10,000.' " *Id.* at 300.

19. The sea turtle is such a food delicacy. The United States imported more turtle meat than any other nation before the trade ban imposed by the Endangered Species Act of 1973. (16 U.S.C. §§ 1531-1543 (1976)). Of the seven species of sea turtles, six are now endangered due to commercial exploitation. OCEANS, July 1980, at 59-62.

Some wildlife are used for food in their native countries. Seven and a half million monkeys were killed for food in Peru between 1964 and 1974. INSKIPP & WELLS, *supra* note 3, at 34.

In Kruger National Park in South Africa, about 600 of the 7,000 to 8,000 African elephants living there must be culled each year to keep the elephant population at an ecologically efficient level. The meat from these elephants is sold in local markets. *Elephants: Hearings on H.R. 4685 Before the House Comm. on Merchant Marine and Fisheries*, 96th Cong., 1st Sess., 44 (1979) (statement of Dr. Aubrey D. Venter, Counselor, (Agricultural-Scientific) Embassy of the Republic of South Africa).

20. The demand in Asia for animal parts for their medicinal value has reached an all time high, and represents a serious threat to many wildlife populations. Some examples of animal remedies: crocodile scales cooked in butter for toothaches and boils, monkey bones for rheumatism and circulation, and rhinoceros urine to preserve youth. These remedies are generally scoffed at by western doctors. For other remedies and an interesting account of the cure of a critically burned shipyard worker, see INT'L WILDLIFE, *supra* note 9, at 14-15.

21. Telephone interview with David Mack, Assistant Director, TRAFFIC (USA), Washington, D.C. (Jan. 27, 1982).

22. *Id.*

fed animals, over 5,175 pounds of ivory tusks and over 8.1 million dollars worth of ivory articles.²³ The wholesale value of these products exceeded 198 million dollars.²⁴ The retail value of all wildlife and wildlife products legally imported in 1980 totaled close to one billion dollars.²⁵

The volume of illegal imports of endangered wildlife entering the United States equals ten to forty percent of the above legal trade.²⁶ The United States Department of Justice places the value of this trade at 50 to 100 million dollars a year.²⁷

Many consumers pay high prices for live animals and wildlife products because of the status associated with them.²⁸ For example, a lynx fur coat may cost as much as \$100,000.²⁹ As the wildlife from which these products are derived become endangered, the supply diminishes and the price increases. This makes it even more fashionable to own the products and more profitable for smugglers to trade in them.³⁰

C. Brutalities

Hunters frequently use inhumane methods to capture and kill animals. For example, a great demand exists for live primates, and smugglers often shoot a mother to capture her baby.³¹ Because chimpanzees are difficult and dangerous to catch, as many as four or five adult chimpanzees may be killed to capture one offspring.³² Hunters wanting ivory mow down herds of elephants with automatic weapons.³³ Birds also face these dangers. "En-

23. *Id.*

24. *Id.*

25. TRAFFIC (USA), Vol. 3, No. 2, 1981, at 5.

26. NAT'L GEOGRAPHIC, *supra* note 2, at 293. Others put this figure at ten to twenty-five percent. *Hearings on S. 1882*, *supra* note 1, at 3 (statement of Lynn A. Greenwalt, Director, U.S. Fish and Wildlife Service).

27. NAT'L GEOGRAPHIC, *supra* note 2, at 293.

28. INSKIPP & WELLS, *supra* note 3, at 28.

29. NAT'L GEOGRAPHIC, *supra* note 2, at 291.

30. *Hearings on S. 1882*, *supra* note 1, at 4 (statement of Lynn A. Greenwalt, Director, U.S. Fish and Wildlife Service); INSKIPP & WELLS, *supra* note 3, at 5.

31. *Endangered Species Authorization and Oversight: Hearings on H.R. 2218 Before the Subcomm. on Fisheries and Wildlife Conservation and the Environment of the House Comm. on Merchant Marine and Fisheries*, 96th Cong., 1st Sess., 46 (1979) (statement of Shirley McGreal, International Primate Protection League) [hereinafter cited as *Hearings on H.R. 2218*].

32. INSKIPP & WELLS, *supra* note 3, at 31.

33. NAT'L GEOGRAPHIC, *supra* note 2, at 303-04. Wildlife is not the only thing shot at. "There is often virtual warfare between poachers and wardens in East Africa. There are documented accounts of armed poachers using surplus military equipment, helicopters and automatic weapons. Firefights between these gangs and government troops have occurred with increasing frequency." *Hearings on S. 1882*, *supra* note 1, at 64 (statement of Lynn A. Greenwalt, Director, U.S. Fish and Wildlife Service). In Thailand in 1979, two game wardens were killed and five were seriously wounded in a skirmish with poachers. In Kenya, two park rangers and twenty poachers have been killed. NAT'L GEOGRAPHIC, *supra* note 2, at 305.

tire nesting areas are destroyed by the common practice of cutting down trees and shooting adult birds to harvest the more profitable young birds."³⁴

Once a specimen is captured it is likely to face additional ordeals during shipment. "It is estimated that during transportation as many as ninety percent of captured animals die lingering and painful deaths from freezing, over heating, thirst, starvation, or . . . suffocation."³⁵ Once birds are captured, smugglers often transport them by boat and tie rocks to their cages so they may dump them overboard quickly if the smugglers are in danger of apprehension.³⁶ Some smugglers conceal monkeys in false gas tanks of trucks and smuggle them through Africa and Asia to Singapore and the United States.³⁷ Others lock them in small boxes labeled 'poisonous snakes' so customs officials will not inspect the contents.³⁸ Consequently, animals are not given food and water for long periods of time.

D. Disease

Some wildlife carry diseases which customs officials do not detect because smugglers evade the quarantine processes required by trade regulations. These diseases threaten the health of animals in the country of import. For instance, exotic birds transmit Newcastle disease to domestic pet birds and poultry.³⁹ In 1971, the United States government was forced to kill 12 million fowl exposed to the disease because of the danger to the poultry industry.⁴⁰ In 1979, 14,000 pet birds were destroyed for the same

34. *Hearings on S. 1882*, *supra* note 1, at 30 (statement of James W. Moorman, Assistant Attorney General, Land and Natural Resources Division, Department of Justice).

35. *Id.* Some experts put this figure somewhat lower, however, at seventy-five to ninety percent. *Id.* at 35 (statement of Thomas E. Mellon, Jr., Assistant U.S. Attorney, Chief, Criminal Division, Philadelphia, PA). The former wildlife smuggler Jean-Yves Domalain has estimated that because of the fragility of gibbons, up to twenty mother and baby gibbons die for every gibbon that successfully enters captivity. *Hearings on H.R. 2218*, *supra* note 31, at 47 (statement of Shirley McGreal, International Primate Protection League).

36. NAT'L GEOGRAPHIC, *supra* note 2, at 300.

37. *Hearings on H.R. 2218*, *supra* note 31, at 47 (statement of Shirley McGreal, International Primate Protection League).

38. *Id.* at 49 (statement of Shirley McGreal, International Primate Protection League). Other examples of brutalities abound. For instance, there was a "shipment of monkeys from Indonesia . . . in which 625 were shipped and over two-thirds perished. They were so tightly packed that many of them screamed until their throats swelled and halted their breathing. Others died directly from suffocation, their eyes bulging from their sockets and they had bitten off their tongues." *Hearings on S. 1882*, *supra* note 1, at 108 (statement of Henry L. Heymann, Washington Representative, International Primate Protection League). Parrots are sometimes smuggled across the Mexican border by putting them inside hubcaps. *Id.* at 93 (statement of Christine Stevens, Secretary, Society for Animal Protection Legislation).

39. *Hearings on S. 1882*, *supra* note 1, at 30 (statement of James W. Moorman, Assistant Attorney General, Land and Natural Resources Division, Department of Justice).

40. *Id.*

reason.⁴¹ This disease has cost United States taxpayers 56 million dollars,⁴² and if the disease ever establishes itself in this country annual losses could amount to 230 million dollars.⁴³

Countries of origin also worry about the possibility of disease. Sometimes exporting nations will not take back birds confiscated by customs officials because they fear that the birds have contracted foreign diseases while out of the country.⁴⁴ These foreign diseases could decimate local wildlife populations.

III. THE CONVENTION

CITES establishes international controls over trade in endangered wildlife and wildlife products to stop commercial exploitation of those species.⁴⁵ The Convention contains three appendices which list protected species and restrict their trade according to the amount of protection they need to survive. Appendix I contains "all species threatened with extinction which are or may be affected by trade."⁴⁶ Appendix II contains "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. . . ."⁴⁷ This appendix also protects species which must be subject to regulation so that trade in them may be controlled.⁴⁸ Appendix III includes species which require regulation to prevent exploitation.⁴⁹

The export regulations for specimens listed in Appendix I require the exporter to obtain an export permit from the appropriate national agency. The agency may grant this permit only if: the shipment will not endanger the survival of the species; the specimen was not obtained illegally and will be transported humanely; and an import permit has been granted for the

41. *Id.*

42. *Id.* The cost of dealing with all diseases stemming from the importation of exotic birds exceeds 100 million dollars. *Id.* at 93 (statement of Christine Stevens, Secretary, Society for Animal Protection Legislation). "[A]n outbreak of major proportions could cost a quarter of a billion dollars to eradicate." NAT'L GEOGRAPHIC, *supra* note 2, at 294.

43. *Hearings on S. 1882, supra* note 1, at 30 (statement of James W. Moorman, Assistant Attorney General, Land and Natural Resources Division, Department of Justice); S. REP. NO. 739, 96th Cong., 2d Sess. 1 (1980).

44. For instance, in late 1977 and early 1978, an American and two French Polynesians were arrested for illegally importing 18 rare, almost extinct, Tahitian Lories into the United States. The birds were captured alive, but since the French were afraid that their exposure to U.S. diseases not present in Polynesia might have an adverse effect on native birds, they were never returned and reside in the San Diego Zoo. Although they are breeding in captivity, they will never be able to contribute to their natural populations in Polynesia. *Hearings on S. 1882, supra* note 1, at 29 (statement of William Green, Director, Office of Investigations, U.S. Customs Service, Department of the Treasury).

45. CITES, *supra* note 4, Preamble.

46. *Id.* art. II § 1.

47. *Id.* § 2(a).

48. *Id.* § 2(b).

49. *Id.* § 3.

shipment.⁵⁰ The export regulations for species listed in Appendix II are identical to those for species listed in Appendix I, except that they do not require prior grant of an import permit.⁵¹ Appendix III requires an export permit which the State of export may grant only when satisfied that the specimen involved was not obtained illegally and will be transported humanely.⁵²

Import regulations for species listed in Appendix I require prior issuance of an import permit and either an export permit or re-export certificate.⁵³ The appropriate agency of the importing state may grant an import permit only if: the import is for purposes nondetrimental to the species' survival; the recipient of the specimen is capable of adequately caring for it; and the specimen will not be used primarily for commercial purposes.⁵⁴ Import regulations of species listed in Appendix II require only that an export permit or re-export certificate has been granted before the shipment takes place.⁵⁵ Import of species listed in Appendix III requires a certificate of origin and, if the shipment originated in a state that has listed the species in Appendix III, an export permit.⁵⁶

Re-export of species listed in Appendix I requires issuance of a re-export certificate which may be granted only if the import of the specimen did not violate CITES, the specimen will be transported humanely and an export permit has been granted for the shipment.⁵⁷ The regulations for re-export of species contained in Appendix II are identical to the regulations for species listed in Appendix I, except they do not require an import permit.⁵⁸ The regulations for re-export of species contained in Appendix III require the state of re-export to issue a certificate stating that the specimen was processed in that state or is being re-exported.⁵⁹

Problems exist with certain provisions of CITES which reduce the Convention's effectiveness in preventing illegal trade. Other problems arise in determining what is to be done with specimens confiscated by customs officials.

50. *Id.* art. III § 2.

51. *Id.* art. IV § 2.

52. *Id.* art. V § 2.

53. *Id.* art. III § 3. "Re-export means export of any specimen that has previously been imported" *Id.* art. I (d).

54. *Id.* art. III § 3.

55. *Id.* art. IV § 4.

56. *Id.* art. V § 3. States may enter reservations concerning the listing of species on an appendix, so some may not recognize some species as listed on Appendix III. *Id.* art. XVI. For an analysis of the problems this reservation clause presents in effectively controlling the endangered wildlife trade, and proposed responses to these problems see Note *Enforcement Problems in the Endangered Species Convention Reservations Regarding the Reservation Clause* 14 CORNELL INT'L L.J. 429 (1981)

57. *Id.* art. III § 4.

58. *Id.* art. IV §

59. *Id.* art. V § 4.

A Exemption From Inspection

Article VII provides exemptions from regulations and other provisions relating to the wildlife trade covered by CITES. Section one of that article exempts specimens in transit "through or in the territory of a Party"⁶⁰ from any regulatory provisions of the Convention "while the specimens remain in custom's control."⁶¹ Member states are not required to inspect these shipments while they wait to pass on. Smugglers benefit from this exemption when transporting endangered wildlife from Africa and Asia to the markets in Europe and North America. After smuggling a wildlife shipment out of a country, smugglers ship it to a 'laundering' nation to receive an export permit stating inaccurate information from lax and unscrupulous officials.⁶² Singapore and Barranquilla, Colombia are two of the most used 'laundering' ports in the wildlife trade.⁶³ From these 'laundering' ports the shipment is transported via ports of member states to its destination. The destination is often a signatory country known to exercise little enforcement of CITES, or a nation like Belgium which has not ratified CITES and serves as a temporary depository for shipments destined for the rest of Europe.⁶⁴ Since member states are not required to inspect shipments passing through their ports, the inaccuracies contained in the 'laundered' permits are not discovered and much endangered wildlife passes undetected.

This exemption should be stricken and host states should be required to inspect all shipments in transit through their ports. This mandatory inspection will help ensure that customs officials will intercept illegally shipped endangered wildlife. Also, shipments routed to their destination through many member states will be required to undergo numerous inspections by customs officials. This will ensure interception of an even greater number of illegal shipments.

The success such a provision would have in intercepting illegally shipped wildlife is evidenced by the success of domestic legislation enacted in The Netherlands. That legislation requires inspection of all wildlife shipments passing through Dutch ports. An example of wildlife confiscated under this legislation includes a shipment of ten chimpanzees imported from Sierra Leone and destined for Spain.⁶⁵

60. *Id.* art. VII § 1.

61. *Id.*

62. INSKIPP & WELLS, *supra* note 3, at 24.

63. *Id.* Colon, Panama was also a large 'laundering' port but this may have changed when Panama ratified the Convention in August, 1978. *Id.*

64. *See id.* at 23-25; Kurlansky, *Belgian Traffic in Wildlife*, ENVIRONMENT, Nov 1980, at 2-3. For an explanation of why Belgium has not ratified CITES, *see infra* text accompanying notes 93-97.

65. INSKIPP & WELLS, *supra* note 3, at 32. "Since 1973, 220-270 chimpanzees have been exported annually from Sierra Leone by two dealers, about 50% going to the U.S.A. 20% to Japan and the rest

B. *Exemptions Depending on the Time of Acquisition*

Article VII also allows dealers to deal in regulated species of wildlife acquired before the provisions of the Convention applied to that species.⁶⁶ When species are added to an appendix or the Convention is ratified by a nation, dealers may still deal in protected species acquired before the new law was enacted. Dealers have abused this exemption.⁶⁷ They have often stockpiled certain species and their products in anticipation that trade in the particular species will become restricted. For example, before CITES was implemented in Great Britain, dealers stockpiled ocelot skins in apprehension of the effect CITES would have on its trade. In 1974 and 1975, about 27,000 skins were imported each year. This number rose to 50,000 between October and December 1975, immediately before Great Britain implemented the Convention on January 1, 1976.⁶⁸ Since the skins were acquired before CITES went into effect in Great Britain, dealers could continue unrestricted trade in them after CITES' implementation. Such concentrated exploitation of a species can be fatal to its survival.

No simple solution to this problem exists. While unlimited trade in wildlife acquired before the changes in the law might endanger a species' survival, an absolute ban on this trade could be unfair to dealers who purchased stock while it was legal and expected to make a return on their investment. A middle ground seems necessary to ensure fairness to the wildlife and to the dealers. Yet, pitfalls exist with any middle ground. For instance, if instead of allowing dealers to trade entire inventories of wildlife acquired before the change in the law, the Convention allowed them to trade only the amount equivalent to their inventory one or two years before the change, dealers might start stockpiling well in advance in order to take advantage of the exemption. While some dealers may be caught off guard, most are well aware of the activities of conservationists and could plan their inventories accordingly. Similarly, if dealers were allowed to trade only half the stock owned at the time of the change in the Convention, they would work twice as hard to stockpile twice as much wildlife. This would result in an even greater danger to wildlife populations than the present exemption presents.

In light of the problems with the exemption and dealer oriented solutions to this problem, it is necessary to eliminate this exemption altogether. While some dealers will suffer economic hardship if trade is restricted immediately upon CITES' implementation, the possible damage

to Europe and the U.S.S.R.... The chimpanzee population in Sierra Leone has recently been estimated at 7,500-12,000, and there are fears that the real figures may be lower. A temporary ban was put on export in 1978, but there has been little attempt to enforce it." *Id.* at 31.

66. CITES, *supra* note 4, art. VII § 2.

67. INSKIPP & WELLS, *supra* note 3, at 23.

68. *Id.*

to the dealers is not as great as the potential damage to the wildlife. Elimination of Article VII's exemption would also encourage dealers to acquire less wildlife inventory, reducing the danger of commercial exploitation to wildlife populations.

C. Trade with Non-Member States

Article X presents another problem with CITES. This article allows trade in wildlife between member states and states not party to CITES.⁶⁹ All CITES requires for such trade is that documentation issued by non-member states be comparable to that required by CITES for member states.⁷⁰ The problem created by allowing this trade is that many nations which have not ratified the Convention do not share the same commitment to wildlife conservation as nations which have ratified it. In fact, some countries do not have any conservation commitment at all. These nations exercise little control over the documentation issued to dealers and do not ensure that authorization for shipments of wildlife will not endanger the species involved.⁷¹

Smugglers making use of this loophole in the Convention often receive "comparable documentation"⁷² from customs officials in non-member states stating inaccurate information.⁷³ Member states honor this documentation believing it to be accurate. For example, endangered wildlife is frequently routed through Singapore because of its relative lack of wildlife trade laws.⁷⁴ Legal documentation indicating Singapore as the country of origin is easily obtained and is accepted by other nations despite the fact that most of Singapore's wildlife is now extinct and that the wildlife being shipped is not indigenous to that country.⁷⁵

Article X frustrates the goals of CITES. Customs officials in member states are unable to verify documentation issued by non-member states without conducting a lengthy and costly investigation. The frequent occurrence of inaccurate information on permits necessitates a change in the Convention. Trade should be allowed only with member states. Although this prohibition will not ensure that all wildlife is traded legally,⁷⁶ it will at

69. CITES, *supra* note 4, art. X.

70. *Id.*

71. For instance, "Singapore, which has refused to participate in international efforts to regulate traffic in animal parts, has become a clearing house for uncounted wildlife obtained illegally throughout Asia and Africa." INT'L WILDLIFE, *supra* note 9, at 14.

72. This is the language of CITES, *supra* note 4, art. X.

73. INSKIP & WELLS, *supra* note 3, at 24.

74. *See id.*

75. *Id.*

76. *See infra* text accompanying notes 104-46.

least guarantee that the country from which it is being shipped has some commitment to the protection of endangered wildlife. This conservation commitment will in turn help ensure that documentation approving a shipment of wildlife will only be issued when the shipment will not be detrimental to the species involved.

D. *Confiscated Wildlife*

Article VIII requires customs officials to return confiscated animals to their country of origin or place them in rescue centers where they will be cared for.⁷⁷ This provision creates practical problems. The cost of returning live wildlife to distant continents can be prohibitively expensive, especially for underdeveloped countries.⁷⁸ For instance, sending a chimpanzee from Boston to Africa costs approximately \$4,500 in airfare alone.⁷⁹ Also, as mentioned above, countries may not want to receive returned wildlife for fear it has been contaminated by disease while abroad.⁸⁰ Moreover, few nations have set up rescue centers because of the expense of maintaining them.⁸¹ It can cost more than sixty-five dollars per week to feed one leopard.⁸² The cost of space, medicine and personnel to care for the animal push the cost of maintenance much higher.

Delegations from member states have suggested solutions to these problems but they have not been unanimously approved. Hong Kong has suggested that all confiscated specimens be turned over to the Convention Secretariat⁸³ for use in training national customs inspectors.⁸⁴ While a need for such training exists, this plan would not eliminate the cost problem which the Secretariat would have to shoulder.⁸⁵ Also, if customs officials

77. CITES, *supra* note 4, art. VIII § 4(a)(b). In the United States, animals are usually taken to zoos which serve as rescue centers. However, while some zoos have borne the cost themselves, there are indications that they want some remuneration for their expenses. *Hearings on S. 1882, supra* note 1, at 20 (statement of Clark Bavin, Chief, Division of Law Enforcement, U.S. Fish and Wildlife Service).

78. INSKIPP & WELLS, *supra* note 3, at 20.

79. This airfare is based on the cost of shipping a 200 lb., 6' x 5' x 5' crate containing wildlife from Boston to Nigeria. Telephone interview with Jack Lampinski, Swissair, in Boston, MA (Jan. 20, 1982).

80. See *supra* text accompanying notes 39-44.

81. See generally: INSKIPP & WELLS, *supra* note 3, at 20.

82. Telephone interview with Charlie Vittorini, Supt., Franklin Park Zoo, Dorchester, MA (Jan. 20, 1982).

83. The official Secretariat to the Convention is the United Nations Environment Programme (UNEP). However, the UNEP has contracted its duties to the International Union for Conservation of Nature and Natural Resources, located in Switzerland. INSKIPP & WELLS, *supra* note 3, at 15.

84. *Id.* at 20.

85. In 1978, the UNEP decided to gradually reduce its funding of the Secretariat, and to shift the financial responsibilities to the parties by 1983. The parties will contribute to the Secretariat on the same percentage basis as they contribute to the United Nations. Thus, the parties would actually shoulder this cost in 1983. *Amendment to the Convention on International Trade in Endangered*

need to observe specimens to become familiar with various species, they are usually able to visit a national or local zoo. Even if no local zoos existed, a single Secretariat center would not be any closer than other zoos for most countries.

Peru has suggested a better solution whereby confiscated animals are sold to scientific, cultural or educational institutions. The proceeds of the sales would help finance programs designed to further the goals of the Convention.⁸⁶ Under this plan, cultural or educational institutions would care for the animals and member states would not have to bear the cost of maintenance. The animals would also have the opportunity to live with others of their kind and possibly reproduce. The species would benefit from any offspring produced. Thus far, Peru's plan is consistent with the goals of CITES. However, sending wildlife to a research center to be tested and sacrificed would be inconsistent with the purpose of CITES. The purpose of the Convention is to protect endangered animals so they may contribute to the perpetuation of their species,⁸⁷ not to allow them to become victims in scientific research.

Peru's plan should be adopted to ensure that wildlife are adequately cared for when a country of origin will not take the animal back or it is too expensive to return. However, for the reasons stated above, animals should not be sold to a scientific institution for research.

IV. INTERNATIONAL PARTICIPATION IN CITES

By February 19, 1982, only 75 nations had ratified the Convention;⁸⁸ less than half of the 168 nations in the world. Most of the large industrialized nations, such as the United States, Great Britain, West Germany and Japan have ratified CITES,⁸⁹ but even their ratification does not indicate a total commitment to the Convention.⁹⁰ Other nations, such as Belgium⁹¹

Species of Wild Fauna and Flora, Message from the President of the United States, Transmitting an Amendment to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, April 2, 1980, 96th Cong., 2d Sess. v (1980).

86. INSKIPP & WELLS, *supra* note 3, at 20.

87. See CITES, *supra* note 4, Preamble.

88. Telephone interview with Dick Jackowski, Chief, Office of Scientific Authority, Washington, D.C. (Feb. 19, 1982).

89. *Id.*

90. See *infra* text accompanying notes 104-46.

Article XIII of the Convention states that member states may complain to the Secretariat when they feel that CITES is not being adequately enforced by another state. The information must then be "reviewed by the next Conference of the Parties which may make whatever recommendations it deems appropriate." During 1979 and 1980 a total of 274 complaints of noncompliance involving 39 states were filed with the Secretariat. CITES contains no provision for actually forcing nations to comply with their obligations. However, due to the absence of practical remedies, the inclusion of such a provision would probably be ineffective anyway.

For the above and other statistics of noncompliance by member states, see THIRD MEETING OF CONFERENCE OF THE PARTIES. Report of the Secretariat, Doc. 3.6 at § 5(a), Feb. 25 to Mar. 8, 1981. [hereinafter cited as Report of the Secretariat].- 1 B.U. Int'l L. J. 260 1982

91. "When a non-signatory nation is a country like Belgium with practically unguarded customs-

and Singapore,⁹² have not ratified CITES and have contributed greatly to the smuggling of endangered wildlife into other countries.

A. *Non-Member States*

Belgium is "Europe's trading center"⁹³ for endangered wildlife. More than 44 million dollars worth of wildlife was imported into Belgium and more than 38 million dollars worth was exported in 1980 alone.⁹⁴ Much of this trade represents trade in endangered species.⁹⁵ Although Belgium signed the Convention in 1973, it has never ratified it.⁹⁶ Conflicting reasons are given for this. A spokesperson for the Belgian Water and Forest Administration says the delay is caused by bureaucracy, while the Belgian Minister of Health and Environment claims that Belgium is waiting for The Netherlands and Luxembourg to ratify it.⁹⁷

On the other side of the world, Singapore acts as a conduit for wildlife shipped illegally from Africa, Australia, and Asia. Singapore refuses to take an active part in international regulatory efforts to curb trade in endangered wildlife, and remains a haven for smugglers.⁹⁸ Wildlife is frequently smuggled in small boats from Australia to Singapore where it is traded through the use of forged legal documents or no documents at all.⁹⁹ Once in Singapore, smugglers obtain documents which enable the shipments to enter consumer countries. From Singapore animals are shipped to North America, Europe and Japan.¹⁰⁰

Belgium and Singapore represent major problems to conservation efforts protecting endangered wildlife, but they are not the only nations to do so. Other countries such as Vietnam and El Salvadore pose similar threats.¹⁰¹ As long as industrialized nations present a market, non-participant nations will continue to profit from the trade in endangered wildlife.¹⁰² Since it is

free roads to most of Western Europe, this constitutes a leak that seriously threatens the effectiveness of the entire system." ENVIRONMENT, *supra* note 64, at 3.

92. See *Hearings on S. 1882*, *supra* note 1, at 1 (statement of Sen. John H. Chafee).

93. ENVIRONMENT, *supra* note 64, at 2. See also INSKIP & WELLS, *supra* note 3, at 23.

94. ENVIRONMENT, *supra* note 64, at 2.

95. *Id.*

96. *Id.*

97. *Id.* "Luxembourg claims to be waiting for Belgium; while the Dutch gave up waiting and passed their own laws which are in some cases more stringent than the provisions of CITES." *Id.*

98. *Hearings on S. 1882*, *supra* note 1, at 26 (statement of Henry L. Heymann, Washington Representative, International Primate Protection League); INT'L WILDLIFE, *supra* note 9, at 14.

99. NAT'L GEOGRAPHIC, *supra* note 2, at 300.

100. *Hearings on S. 1882*, *supra* note 1, at 26 (statement of Henry L. Heymann, Washington Representative, International Primate Protection League).

101. Telephone interview with Mary Monihan, Special Agent, Law Enforcement Division, U.S. Fish and Wildlife Service, Washington, D.C. (Feb. 23, 1982). Smugglers frequently choose countries like El Salvadore where domestic turmoil makes it easier to evade the wildlife trade laws extant in that nation. *Id.*

102. See *Hearings on S. 1882*, *supra* note 1, at 65 (statement of Lynn A. Greenwalt, Director, U.S. Fish and Wildlife Service).

unlikely that many of the non-ratifying nations will join CITES, it is important that its provisions be strictly enforced in signatory countries in order to stop this trade. As will be seen below,¹⁰³ many impediments to this goal exist.

B. Member States

Many members do not take their obligations under CITES seriously. For instance, the sea turtle industry in Italy and France continues and West Germany remains Europe's largest dealer in endangered cactus.¹⁰⁴ Both the sea turtle and the cactus are listed in Appendix I of CITES, and all three countries have ratified the Convention and adopted appropriate legislation.¹⁰⁵ Dealers simply sidestep the laws while government officials pay little attention.

1. National Reports

Other evidence exists of a general lack of commitment to abide by the Convention. CITES requires each party to file an annual report containing detailed information on the wildlife traded in that country.¹⁰⁶ A biennial report containing information on legislative, regulatory and administrative measures taken to enforce CITES' provisions is also required.¹⁰⁷ These reports are necessary to measure the amount of trade occurring, to update the appendices and to gauge the effectiveness of the Convention.¹⁰⁸ Reports for any year are due by October of the following year.¹⁰⁹ Yet, by March 1, 1979, only twenty-six of the thirty-four parties had filed reports due in 1977. Of the twenty-six reports, three were substantially incomplete, seven had important data missing and only seven were substantially complete.¹¹⁰ Some of the data contained in these reports also conflicted with the nation's customs reports. For instance, West Germany listed in its annual report only twenty-one percent of the cat skins that its national customs report listed as imported or exported.¹¹¹ This type of misleading information hinders the effectiveness of the Convention.

A frustrated Secretariat has reminded the Parties of their obligation to submit these reports on time, but the situation has not improved.¹¹² As of

103. See *infra* text accompanying notes 104-06.

104. ENVIRONMENT, *supra* note 64, at 3.

105. *Id.*

106. CITES, *supra* note 4, art. VIII § 7(a).

107. *Id.* § 7(b).

108. INSKIPP & WELLS, *supra* note 3, at 21.

109. Report of the Secretariat, *supra* note 90, at § 4.

110. INSKIPP & WELLS, *supra* note 3, at 22.

111. *Id.* at 21.

112. Report of the Secretariat, *supra* note 90, at § 4.

March 8, 1981, only twenty-two of the forty-seven countries which had ratified the Convention before January 1979 had filed their reports for 1979.¹¹³

While some of the tardy nations have a valid excuse for not submitting reports on time,¹¹⁴ some of the parties have not submitted any reports since 1976.¹¹⁵ This indicates a lack of commitment to abide by the duties imposed by CITES. In order to ensure that the Convention operates effectively, more of these reports must be filed with the Secretariat on time.

2. Enforcement by Customs Officials

Adequate enforcement of CITES requires assurance that customs officials are aware of the regulations of the Convention and are able to identify the wildlife they are supposed to protect. Investigations by TRAFFIC,¹¹⁶ a private organization monitoring international trade in wild animals and plants, have indicated that customs officers in many signatory countries have little knowledge or ability to spot endangered wildlife and, in some cases, total disregard for their duty to intercept protected wildlife. For example, TRAFFIC took a nonendangered species of cactus (almost all species of cactus are controlled by CITES) through customs in the United States, the Soviet Union, Great Britain, Switzerland, West Germany, Sweden, Denmark, Panama, Costa Rica and Guatemala. Although the cactus was displayed openly or declared, no customs officials asked any questions about the cactus or its origin. "In most cases, customs officers appeared to be ignorant of *any* endangered species legislation, even when the importer himself suggested that the specimen might be controlled."¹¹⁷ The only exceptions occurred in the Soviet Union and the United States where the "plant was either confiscated or the importer was told that it

113. *Id.* The nations which had not filed reports were Botswana, Costa Rica, Cyprus, Denmark, Ecuador, Egypt, Gambia, German Democratic Republic, Guyana, Iran, Malaysia, Mauritius, Monaco, Morocco, Nicaragua, Niger, Nigeria, Pakistan, Paraguay, Senegal, Seychelles, United Arab Emirates, United Kingdom, United States and Venezuela. *Id.*

114. The United States cites technical difficulties as it switched to a new computer system. Telephone interview with Dick Mitchell, Office of Scientific Authority, Washington, D.C. (Jan. 20, 1982).

115. Report of the Secretariat, *supra* note 90, at § 4. The nations are Morocco, Nigeria and the United Arab Emirates. Guyana, Paraguay and Nicaragua have not submitted any reports since 1978. *Id.*

116. TRAFFIC (USA) is a scientific organization monitoring the trade in endangered and other wild fauna and flora. Funded by the World Wildlife Fund-U.S., it is a specialist group of the Survival Service Commission of the International Union for Conservation of Nature and Natural Resources which assists the United Nations Environment Programme in running the Convention Secretariat. See INSKIPP & WELLS, *supra* note 4, at 16-17.

117. *Id.* at 19 (emphasis in original).

should be confiscated on account of health regulations."¹¹⁸ The most flagrant abuse occurred in Great Britain, where a customs officer was explicitly told that the product sought to be imported was banned and he let it in anyway.¹¹⁹ These nations must impress upon their officials the importance of enforcing the Convention.

While some nations have taken steps to educate customs officers in the identification of endangered wildlife, no adequate international coordination of this effort has taken place. For instance, Switzerland has reference books for customs officers and Canada provides a videotaped television program,¹²⁰ but no system exists for distribution of these materials to other nations.¹²¹ The Convention Secretariat should devise a system whereby each nation sends its material to the Secretariat for distribution to signatory governments.

An identification manual is also needed. It is not possible for customs officers to be able to identify on sight and by memory the over 700¹²² species listed in the appendices to the Convention. Accurate identification often requires minute differentiation of skin patterns and bones, especially when dealing with subspecies.¹²³ The signatories are preparing an identification manual, but only sections on tortoises, owls and marsupials have been completed.¹²⁴ Again, the Convention Secretariat should make a greater effort to gather the required information and make it available to member states. Signatories should also make their materials available to the Secretariat and other nations.

3. Sanctions

Penalties imposed by domestic laws for violations of CITES' trade regulations are very low and indicate a lack of commitment by member states to enforce protective regulations.¹²⁵ Profit margins of wildlife smugglers are comparable to those of drug dealers.¹²⁶ For instance, Psittacin birds such as macaws and parrots may be bought abroad for twenty-five dollars and sold

118. *Id.* Ports of entry in the United States differ in their effectiveness in preventing illegal wildlife trade. "For example, Wayne King of the New York Zoological Society says that New York City . . . has strict controls. 'But I could drive a herd of elephants through Los Angeles and the Fish and Wildlife Service director there wouldn't give a damn.'" Washington Post, July 8, 1979 (Magazine) at 20.

119. INSKIPP & WELLS, *supra* note 4, at 16-17.

120. *Id.*

121. Telephone interview with Mary Monihan, Special Agent, Law Enforcement Division, U.S. Fish and Wildlife Service, Washington, D.C. (Feb. 23, 1982).

122. See CITES, *supra* note 4, appendices I, II, III.

123. INSKIPP & WELLS, *supra* note 3, at 20.

124. TRAFFIC (USA), Vol. 3, No. 1, 1981, at 2. Additional chapters on prosimians, otters, pheasants, cranes, orchids, fur skins, crocodile hides and snake skins are presently being prepared. Chapters on island iguanas, monitor lizard skin identification and cacti will be started soon. *Id.*

125. See *infra* text accompanying notes 130-31.

126. *Hearings on H.R. 2218, supra* note 31, at 49 (statement of Shirley McGreal, International Primate Protection League). In fact, many drug dealers are engaged in the illegal wildlife trade. *Hear-*

in the United States for hundreds and sometimes thousands of dollars.¹²⁷ Profits are just as high for wildlife products. One ounce of ground rhinoceros horn costs over \$500.¹²⁸

Convicted smugglers generally receive fines which are by no means comparable to the value of illegal shipments. For example, in January 1979, Hong Kong fined a dealer \$1,540 for illegally importing 319 cheetah skins from Ethiopia. The skins were worth \$43,900.¹²⁹ At the same time, a dealer in Great Britain was fined \$1,200 for trying to sell three leopard skins valued at \$8,500.¹³⁰ If the endangered wildlife trade is to be effectively controlled, penalties exacted for these crimes must be much stiffer in order to lower the incentive for smugglers to continue their business.

Fines are a practical solution only for small-time dealers. However, the amounts of these fines must be raised because, as seen above,¹³¹ even these offenders can earn large profits. Smugglers operating large businesses which consistently reap high profits, on the other hand, have sufficient funds from previous shipments to justify the risk of capture. Instead of being fined, these smugglers should receive jail sentences of a year or more. This would keep them out of the trade for awhile and deter other smugglers.

The author recommends the following penalty structure. Dealers illegally trading endangered wildlife shipments valued up to \$1,000 should receive a civil fine of up to \$20,000 for each violation. While this fine may seem large compared to the value of the merchandise traded, the size of the fine would deter dealers from viewing it as a simple business expense to be defrayed by profits from other shipments.

Dealers trading wildlife shipments valued at over \$1,000 should be subjected to a criminal fine of up to \$40,000 or a prison sentence of up to five years, or both. The criminal nature of the penalty would deter some dealers due to the stigma attached to being labeled a 'convicted criminal.' The

ings on S. 1882, supra note 1, at 4 (statement of Lynn A. Greenwalt, Director, U.S. Fish and Wildlife Service).

127. *Id.* at 11 (statement of Nicole Duplaix, Director, TRAFFIC (USA)). During the last three years, 15,000 macaws have been imported into the United States. They are becoming increasingly popular as exotic and decorative pet birds. FOCUS, WORLD WILDLIFE FUND-US, Vol. 2, No. 2, 1980, at 1.

128. INT'L WILDLIFE, *supra* note 9, at 15. Horns range in weight from three to twelve pounds, depending on the age and type of the rhinoceros. For a description of the trade in rhinoceros horns, see E. Robins, THE EBONY ARK 90-97 (1970).

129. INSKIPP & WELLS, *supra* note 3, at 26. In addition to the commercial demand for cheetah fur, other problems such as habitat destruction and hunting to protect livestock have drastically reduced the cheetah population in Africa. For a thorough description of the threats to cheetahs and conservation measures designed to protect them, see Note, *The Cheetah in Africa Under Threat*, 5 ENV. AFF. 617 (1976). Also see R. EATON, THE CHEETAH: THE BIOLOGY AND BEHAVIOR OF AN ENDANGERED SPECIES (1974).

130. INSKIPP & WELLS, *supra* note 3, at 26.

131. See *supra* text accompanying notes 128-31. Int'l L. J. 265 1982

possibility of a fine instead of mandatory jail sentences would give prosecutors and courts discretion to consider the seriousness of the violation and other factors, such as whether the dealer is a first time offender. The prison sentence, on the other hand, would give courts the ability to place recidivists and offenders engaged in large amounts of trade in jail. The possibility of such a prison term is likely to deter many smugglers. Also, once in jail, these dealers will not be able to endanger wildlife protected by the Convention.

4. Permits and Certificates

The certificates and permits specified by CITES for import, export and re-export of wildlife are supposed to be of a uniform nature and include the appendix number, scientific name, type and quantity of the specimen, the exporter's name and address, the name and stamp of the Authority granting the permit, and the permit expiration date.¹³² Appendix IV of the Convention provides a model permit, use of which would make identification and validation of permits easier. However, permits issued by many countries are by no means uniform.¹³³ This variety of permits "presents considerable problems for customs officers in recognizing a genuine permit."¹³⁴ This results in the rejection of valid permits and the acceptance of forged or inadequate documents tendered by smugglers.¹³⁵

The Secretariat has requested all parties to submit sample copies of their permits and certificates for distribution to other parties to aid in verification by customs officials at ports of entry.¹³⁶ Only twenty-eight nations have submitted samples.¹³⁷ But even if all parties cooperated, this solution has drawbacks. First, customs officials would have to become experts on 75¹³⁸ different types of forms since national permits and certificates tend to be highly individualized. Second, if a customs officer is unable to verify a permit or certificate with certainty, it is necessary to send it back to the country it came from for authentication.¹³⁹ This takes time and money and may be detrimental to the wildlife being shipped.

132. CITES, *supra* note 4, art. VI, and art. VIII § 6.

133. INSKIPP & WELLS, *supra* note 3, at 18.

134. *Id.*

135. *Id.*

136. Report of the Secretariat, *supra* note 90, at § 4.

137. *Id.*

138. There are seventy-five nations which have ratified CITES.

139. This was necessary during an investigation by the Secretariat into the illegal shipment of 9,473 otter skins, 10,819 ocelot skins, and 50,975 other types of skins and hides from Paraguay to West Germany. After examining available samples of Paraguayan forms, the Secretariat sent the suspicious permits used to import the illegal shipment into West Germany back to Paraguay for further investigation, where nine of eleven were found to be forgeries. Report of the Secretariat, *supra* note 90, at Annex 3 § 8.

A better solution is to require use of the form provided in Appendix IV. This would enable all signatories to identify authentic permits and certificates themselves. At the third meeting of the parties to CITES in New Delhi in 1981, this solution was considered but not agreed upon. The parties could not assent to a uniform format or system of using forgery proof paper for permits.¹⁴⁰ In order for CITES to be adequately enforced, these permits and certificates must be standardized.

5. Developing Nations

Unlike many western nations which are capable of enforcing CITES but choose not to, many developing nations wish to enforce the Convention but are unable to devote sufficient financial and technological resources to its enforcement.¹⁴¹ These countries lack the funds to run the Management and Scientific Authorities required by CITES.¹⁴² The technological assistance needed ranges from basic information about the importance of wildlife management, to sophisticated mechanisms for obtaining information on wildlife populations. Officials in developing countries must know the importance of wildlife in terms of economic, educational and cultural benefits in order to have the incentive to perform their jobs. There have been instances where officials directly responsible for protecting endangered animals have illegally taken advantage of their position to kill them for profit.¹⁴³ If the officials had known of the consequences of their actions perhaps they would not have abused their trust.

140. TRAFFIC (USA), Vol. 3, No. 1, 1981, at 1. However, a special stamp will be used by Management Authorities to help prevent fraud. Also, in addition to the information already required by CITES, the country of origin and whether the animal or plant was captively bred or farmed must be included on the permit. *Id.* This new information is relevant in determining whether exemptions should be granted under CITES, art. VII § 4.

141. *Hearings, supra* note 12, at 9 (statement of Thomas Lovejoy, Vice President, Science, World Wildlife Fund); *id.* at 49 (statement of William Alston Hayne, Deputy Assistant Secretary, Bureau of Oceans and International Environmental and Scientific Affairs).

142. *See id.* at 66 (statement of Lynn A. Greenwalt, Director, U.S. Fish and Wildlife Service). Pakistan and the Seychelles are two such countries. In order to adhere to CITES they need international assistance. OCEANS, *supra* note 19, at 61.

143. In Kenya, wardens killed a rhinoceros for the value of its horn while the chief warden was temporarily away. *Hearings, supra* note 12, at 32 (statement of Marlin Perkins, Director Emeritus, St. Louis Zoological Gardens).

In 1979, Kenya estimated that its population of black rhinoceros would be wiped out in twelve months. Ten years ago, there were 6,000-9,000 black rhinoceros in Kenya National Park. Today, 80-200 remain. *Hearings on S. 1882, supra* note 1, at 2 (statement of Sen. John H. Chafee).

There is no real demand for rhinoceros horn in Africa, but an extensive market exists in Asia because of the belief that it has medicinal value, and in the Middle East where it is carved into dagger handles. For instance, in 1978 Japan imported over 1,880 pounds of the horn mostly from Kenya and South Africa. There has been serious talk of cutting off horns from live rhinoceros to help ensure their survival. INSKIPP & WELLS, *supra* note 3, at 52.

Officials in these countries also need technological training to gather biological data to ensure that species are listed in the appropriate appendices. If trade in some species is restricted too severely, domestic support for trade restrictions will subside.¹⁴⁴ On the other hand, if species in need of protection are not included on the appendices, their populations may be reduced to levels dangerously close to extinction.

Nations like the United States, which have advanced wildlife management and scientific establishments,¹⁴⁵ should help train foreign nationals interested in protecting their domestic wildlife. Conservation of wildlife is an international responsibility which all nations share. Nations that possess sufficient resources to devote to conservation should share them with developing nations.

V. EFFECTIVENESS OF UNITED STATES LEGISLATION

Congress has passed two acts that deal with international trade in wildlife and its products. The Endangered Species Act of 1973¹⁴⁶ complies with Article VIII of CITES which requires member states to promulgate regulations to enforce its provisions.¹⁴⁷ The Act imposes restrictions on the importation and exportation of endangered wildlife and wildlife products.¹⁴⁸ The Lacey Act¹⁴⁹ forbids the trade of wildlife and its products in violation of federal, state or foreign law.¹⁵⁰ Thus, if a nation enacts wildlife protection laws more stringent than those required by CITES,¹⁵¹ the Act prohibits violation of these laws. These two Acts have successfully protected much endangered wildlife, but their implementation has not stemmed much of the remaining illegal trade.¹⁵²

144. *Hearings*, *supra* note 12, at 62 (statement of Lynn A. Greenwalt, Director, U.S. Fish and Wildlife Service).

145. The U.S. has the most advanced such establishments in the world. *Id.* at 9 (statement of Thomas Lovejoy, Vice President, Science, World Wildlife Fund).

146. 16 U.S.C. §§ 1531-1543 (1976). For a review of early wildlife law in the United States, see Lund, *Early American Wildlife Law*, 51 N.Y.U. L. REV. 703 (1976). For a review of more recent wildlife protection statutes, see Note, *Endangered Species Protection: A History of Congressional Action*, 4 ENV. AFF. 255 (1975).

147. For other treaties pursuant to which the Act was promulgated, see *id.* § 1531(4).

148. *Id.* § 1538.

149. 18 U.S.C. §§ 41-44 (1969).

150. *Id.* § 1538.

151. "The provisions of the present Convention shall in no way affect the right of the Parties to adopt:

(a) stricter domestic measures regarding the conditions for trade, taking, possession or transport of specimens of species included in Appendices I, II and III, or the complete prohibition thereof; or

(b) domestic measures restricting or prohibiting trade, taking, possession, or transport of species not included in Appendices I, II or III.

CITES, *supra* note 4, art. XIV § 1.

152. See *supra* text accompanying notes 26-27.

A. *United States Inspection Capabilities*

Enforcement of the Endangered Species Act and the Lacey Act is the primary responsibility of the United States Fish and Wildlife Service. The United States Customs Service inspects wildlife shipments only when a Fish and Wildlife Service officer is unavailable.¹⁵³ The inspection capabilities of these two Services are inadequate.¹⁵⁴ For instance, in July 1978, federal regulations went into effect allowing the importation of elephant ivory into the United States only from countries that are a party to CITES.¹⁵⁵ But between January and August of 1979, 2,918 pounds of ivory tusks were imported from Zambia, and 43,122 pounds of ivory articles were imported from the Phillipines, mainland China, Taiwan, Korea and New Zealand.¹⁵⁶ None of these countries were a party to CITES at the time.¹⁵⁷

One cause of ineffective enforcement is that the Fish and Wildlife Service is not adequately staffed to properly inspect incoming shipments of wildlife in all ports of entry.¹⁵⁸ Federal regulations designate thirty-nine ports of entry in the United States for various classifications of wildlife.¹⁵⁹ Eight ports of entry may receive both endangered and nonendangered wildlife from anywhere in the world,¹⁶⁰ twenty-four ports may receive nonendangered wildlife only from Canada¹⁶¹ and seven ports may receive nonendangered wildlife only from Mexico.¹⁶² There are only thirty-six officers to inspect over 40,000 wildlife shipments each year.¹⁶³ Each shipment usually contains many specimens to be inspected.¹⁶⁴

The great number of ports available for imports encourages smugglers to route their shipments through Canada or Mexico so they may land at

153. See 50 C.F.R. §§ 14.52, 14.54.

154. *Hearings on H.R. 2218, supra* note 31, at 35 (statement of Rep. Edwin B. Forsythe).

155. 50 C.F.R. § 17.40(e).

156. *Hearings on S. 1882, supra* note 1, at 12 (statement of Nicole Duplaix, Director, TRAFFIC (USA)).

157. *Id.*

158. *Hearings on H.R. 2218, supra* note 31, at 49 (statement of Shirley McGreal, International Primate Protection League); *Hearings on S. 1882, supra* note 1, at 60 (statement of Lynn A. Greenwalt, Director, U.S. Fish and Wildlife Service); 206 SCIENCE 1383 (1980).

159. 50 C.F.R. §§ 14.12, 14.16.

160. *Id.* § 14.12.

161. *Id.* § 14.16(a).

162. *Id.* § 14.16(b).

163. TRAFFIC (USA), Vol. 3, No. 2, 1981, at 5.

164. For instance, both "fresh and marine fish are brought into the United States in water-filled containers with up to 300 fish per plastic bag. The Federal inspectors can only spot check these shipments at best, but cannot count the numbers or identify the species listed on import permits. For this reason, it is easy for endangered fish or species protected by source countries to be included in those shipments." *Hearings on S. 1882, supra* note 1, at 13 (statement of Nicole Duplaix, Director, TRAFFIC (USA)).

remote and understaffed ports. To solve this problem, the Fish and Wildlife Service must hire additional officers to inspect incoming wildlife shipments. A surplus of trained personnel exists in the field of wildlife management, many of whom would probably be willing to work for the Fish and Wildlife Service.¹⁶⁵ In light of the spending cuts imposed by the Reagan administration,¹⁶⁶ however, it is unlikely that the Service will hire additional officers. It is therefore necessary to reduce the number of ports of entry available for wildlife shipments until the Service has adequate personnel to properly inspect the shipments. If the thirty-six available officers work at fewer ports they can inspect imports more effectively. Even though the number of shipments passing through each port will increase, officers working together can handle more shipments than they could working at separate ports.

B. *Post-Clearance Inspection*

A problem related to the inadequate staffing of entry ports is the allowance of clearance of wildlife shipments by a Customs officer if a Fish and Wildlife Service officer "is not available within a reasonable time."¹⁶⁷ This clearance is subject to a post-clearance inspection and investigation by the Fish and Wildlife Service when an officer is available.¹⁶⁸ However, Customs officers are not qualified to make such a clearance.¹⁶⁹ As discussed above,¹⁷⁰ identification of wildlife may be complex, and without adequate training and information customs officers may clear illegally imported animals. Until a Fish and Wildlife Service officer makes an inspection, it is not possible to determine with certainty whether the wildlife has been traded legally.

A post-clearance inspection by Fish and Wildlife Service officers is not sufficient to ensure that mistakes made by Customs officials will be corrected. Some illegal shipments contain both legally and illegally imported

165. *Hearings, supra* note 12, at 20-21 (statement of Lynn A. Greenwalt, Director, U.S. Fish and Wildlife Service).

166. President Reagan's spending cuts in the 1982 federal budget prompted Senator John H. Chafee to decide not to reintroduce conservation legislation which would have required additional funding from Congress. Telephone interview with Steve Shimberg, Counsel to the Senate Subcomm. on Environmental Pollution, Washington, D.C. (Jan. 18, 1982).

167. 50 C.F.R. § 14.54. Clearance of wildlife shipments is done by Fish and Wildlife officers upon being summoned to the shipment by Customs officers. Telephone interview with Ron Varey, Wildlife Inspector for New England Region, U.S. Fish and Wildlife Service, Boston, MA (Feb. 18, 1982).

168. 50 C.F.R. § 14.54.

169. Customs officers are not trained to identify wildlife. Telephone interview with Ron Varey, Wildlife Inspector for New England Region, U.S. Fish and Wildlife Service, Boston, MA (Feb. 8, 1982).

170. *See supra* text accompanying note 123.

wildlife.¹⁷¹ Upon clearance of a shipment, a smuggler can hide regulated wildlife and present unregulated wildlife to inspectors. Inspectors may not notice the absence of a few specimens in a large shipment. A smuggler may also switch the smuggled wildlife with other animals that may be imported. Officers might not be aware of the switch, especially if the wildlife substituted bears a resemblance to the new wildlife.

This provision should be stricken. Importers should be forced to wait for a Fish and Wildlife Service officer to inspect each shipment before it is cleared. If this frequently results in long delays detrimental to the health of the specimen being shipped, more Service officers should be hired or ports closed to wildlife shipments. Closing some ports of entry and transferring officers from these ports would help eliminate the need for post-clearance inspections because it would lessen the number of occasions that a Service officer would be unavailable.

C. *Service Officer Discretion*

Federal regulations leave to Service officers' discretion whether to refuse clearance of imported wildlife. Because the decision whether to refuse clearance of a shipment is left to officers' discretion, they are not *required* to refuse clearance even if they have "reasonable grounds to believe" that: (1) federal regulations governing the trade of wildlife have been violated, (2) documentation required for clearance is either not available or not authentic, (3) the correct identity of the wildlife has not been established, or (4) the importer has not filed a proper declaration for importation.¹⁷² Since there are not enough officers at ports of entry to adequately inspect the great number of shipments entering the United States,¹⁷³ officers under time constraints may abuse this discretion. They may elect to clear a shipment marginally suspected of being unlawful in favor of inspecting a shipment more greatly suspected of being imported illegally. Thus, endangered wildlife may pass through customs without being intercepted.

Instead of having discretion, Service officers should be required to refuse clearance of all shipments until they have satisfied themselves fully that the shipment is legal. Once again, such a change in the federal regulations would require the Service to hire additional agents or reduce the number of ports of entry available to receive wildlife shipments. The enormous amount of illegal trade taking place in the United States necessitates this change.

171. *Hearings on S. 1882, supra* note 1, at 13 (statement of Nicole Duplax, Director of TRAFFIC (USA)); *see supra* note 164.

172. 50 C.F.R. § 14.53(d).

173. *See supra* text accompanying notes 158-64.

D. Undue Hardship Exemptions

Federal regulations allow the Director of the Fish and Wildlife Service to exempt dealers from regulations which would cause them undue economic hardship.¹⁷⁴ The Director may issue a permit exempting a dealer from regulations after considering, *inter alia*, the effect granting the permit will have on the traded species' population,¹⁷⁵ the severity of the applicant's economic hardship¹⁷⁶ and the purpose of the permit.¹⁷⁷ Exemption permits are valid for no longer than a year.¹⁷⁸

Economic hardship is an inappropriate factor to consider when granting an exemption from regulations governing the trade in endangered species. The potential damage such exemptions can have on a species' population far outweigh any damage to individual dealers.

The economic considerations utilized in granting this exemption are similar to those weighed by the Secretary of the Interior when determining a species' critical habitat under the Endangered Species Act.¹⁷⁹ A species' critical habitat is an area containing physical or biological features "essential to the conservation of the species and . . . which may require special management consideration or protection. . . ."¹⁸⁰ A critical habitat may not be destroyed or adversely affected by any projects funded, authorized or carried out by a federal agency.¹⁸¹ However, in delineating such an area the Secretary must "consider the economic impact and any other relevant impact" of declaring the area a critical habitat.¹⁸² Thus, if the Secretary determines that the economic benefits of proceeding with the project outweigh possible ecological damage to the habitat, he may authorize the project to proceed.

Before Congress added these economic considerations to the Endangered Species Act, the Supreme Court enjoined construction of the Tellico Dam on a site determined to be the critical habitat of a species of fish called the snail darter.¹⁸³ The dam would have provided electrical power, recreation and flood control for thousands of homes.¹⁸⁴ In response to this and several

174. 16 U.S.C. § 1539(b)(1).

175. 50 C.F.R. § 17.23(b)(2).

176. *Id.* § 17.23(b)(5).

177. *Id.* § 17.23(b)(1).

178. *Id.* § 17.23(d).

179. 16 U.S.C. § 1533(b)(4).

180. *Id.* § 1532(5)(A).

181. *Id.* § 1536(a)(2).

182. *Id.* § 1533(b)(4).

183. *Tennessee Valley Auth. v. Hill*, 437 U.S. 153 (1978).

184. *Id.* at 157. The Endangered Species Committee listed the benefits of the Tellico Dam as power production, flood control, recreation, navigation, and water supply. Endangered Species Committee, U.S. Dep't of the Interior, Report on Application for Exemption for Tellico Dam and Reservoir Project (Feb. 7, 1979) (copy on file in Annual Survey of American Law office).

other rulings enjoining construction projects, a non-environmentally minded Congress added the economic considerations to the Act to give it enough flexibility to avoid future conflicts with federal actions which would benefit many people.¹⁸⁵

A great difference exists between considering economic factors when granting exemptions from regulations governing trade in endangered wildlife and when determining a critical habitat. This difference can best be described in terms of private versus public interests. Consideration of economic factors in determining a species' critical habitat will usually implicate public interests. In a case such as the Tellico Dam Project, which would have benefited thousands of people, the public interest may justify consideration of economic factors. The economic hardship of an individual wildlife dealer, on the other hand, does not affect many people. The interest implicated here is private in nature. When this individual's loss of business or profit is weighed against the potential damage to an endangered species, no exemption is justified.

E. *Sanctions*

Federal regulations governing international trade in endangered wildlife lack tough sanctions for violations of the law. Sanctions may be levied under the Endangered Species Act¹⁸⁶ or the Lacey Act,¹⁸⁷ but the penalties imposed by courts for violations of these Acts have not deterred smugglers from reaping high profits.¹⁸⁸

The Endangered Species Act prescribes a civil penalty of not more than \$10,000¹⁸⁹ and a criminal penalty of \$20,000 or up to a year imprisonment, or both,¹⁹⁰ for shipping or taking wildlife illegally. A maximum civil penalty of \$5,000,¹⁹¹ and a criminal penalty of \$10,000 or a prison term of not more than six months¹⁹² is provided for lesser violations such as failure to file declarations of shipment required by the Secretary of the Interior. Each offense is deemed separate for civil penalty purposes.¹⁹³

The penalties provided under the Act are inadequate for three reasons. First, the endangered wildlife trade offers smugglers in the United States

185. H.R. REP. NO. 1625, 95th Cong., 2d Sess. 10-13, *reprinted in* 1978 U.S. CODE CONG. & AD. NEWS 9460-63.

Two other rulings were important in Congress' decision: *Sierra Club v. Froehlke*, 534 F.2d 1289 (8th Cir. 1976); *Nat'l Wildlife Federation v. Coleman*, 529 F.2d 359 (5th Cir. 1976). *Id.*

186. 16 U.S.C. § 1540.

187. 18 U.S.C. § 43.

188. *Hearings on S. 1882, supra* note 1, at 61 (statement of Lynn A. Greenwalt, Director, U.S. Fish and Wildlife Service).

189. 16 U.S.C. § 1540(a)(1).

190. *Id.* § 1540(b)(1).

191. *Id.* § 1540(a)(1).

192. *Id.* § 1540(b)(1).

193. *Id.* § 1540(a)(1).

profit margins of 100 to 3,000%.¹⁹⁴ Some shipments may earn a smuggler over a million dollars.¹⁹⁵ The low penalties provided by the Endangered Species Act do not deter dealers involved in a large amount of illegal trade and earning high profits.¹⁹⁶ Second, federal prosecutors do not prosecute or give much attention to an offense if Congress has relegated it to the level of a mere misdemeanor.¹⁹⁷ The limited resources of the United States Attorneys Office make it necessary to concentrate on prosecuting offenses which Congress has indicated a priority by making them felonies.¹⁹⁸ Finally, courts do not attach a great deal of importance to crimes unless Congress has elevated them to the level of a felony.¹⁹⁹

Congress recently amended the Lacey Act to include stiffer penalties for violations of wildlife trade laws.²⁰⁰ The amendments subject to a \$10,000 civil fine any person who violates any federal, state or foreign wildlife trade laws, "and in the exercise of due care should" have known that his conduct was illegal.²⁰¹ Similarly, the Amendments provide criminal penalties of up to \$20,000 or a prison term of not more than five years, or both, for any person who "knowingly" violates the Act.²⁰² A lesser criminal penalty of \$10,000 or up to one year in jail, or both, is provided for any person who "knowingly engages" in conduct prohibited by the Act "and in the exercise of due care" should have known that this conduct was illegal.²⁰³

While the pecuniary penalties under the Amendments suffer from the same deficiency as those under the Endangered Species Act, the possibility of a five year prison term will probably deter many dealers engaged in large amounts as well as small amounts of illegal wildlife trade. Also, the magnitude of this jail sentence will impress upon federal prosecutors and judges the seriousness with which Congress views these offenses, and will encourage them to more strenuously prosecute and punish violators.

194. *Hearings on S. 1882, supra* note 1, at 62 (statement of Lynn A. Greenwalt, Director, U.S. Fish and Wildlife Service).

195. NAT'L GEOGRAPHIC, *supra* note 2, at 300.

196. *Hearings on S. 1882, supra* note 1, at 66-67 (statement of Lynn A. Greenwalt, Director, U.S. Fish and Wildlife Service).

197. *Id.* at 34 (statement of Thomas E. Mellon, Jr., Assistant U.S. Attorney, Chief, Criminal Division, Philadelphia, PA).

198. *Id.* Federal prosecutors are more concerned with prosecuting criminals involved in organized crime and drug dealing than those involved in wildlife smuggling. *Washington Post*, July 9, 1979 (Magazine) at 20.

199. *Id.*

200. Lacey Act Amendments of 1981, Pub. L. No. 97-79, 95 Stat. 1073 (codified as amended at 16 U.S.C §§ 3371-3378 (1976)).

201. *Id.* § 4(a) (33373(a)).

202. *Id.* § 4(b) (33373(b)).

203. *Id.*

VI. CONCLUSION

CITES has effectively protected much endangered wildlife from commercial exploitation. Several problems exist with the Convention, however, and they must be corrected for member states to adequately enforce its provisions. Inspection of wildlife shipments in transit through member states must be required. The exemption allowing these shipments to pass through ports uninspected has provided a loophole for smugglers shipping endangered animals from nations with lax enforcement. Because of the danger presented to wildlife populations when dealers stockpile wildlife and its products, the Convention should not allow dealers to trade inventories acquired before CITES applied to the wildlife sought to be traded. The exemption allowing this trade should be stricken. Wildlife trade should be forbidden with countries not party to the Convention because of the abuses this allowance has caused. Finally, wildlife confiscated by customs officers and not desired in its home country because of the fear of disease or the prohibitive expense of transportation, should be auctioned off to cultural or educational centers where it will be cared for.

International participation in CITES has not been sufficient to ensure the attainment of its goals. Non-member nations should be encouraged to join this conservation effort. Member states should make a greater effort to submit annual and biennial reports, and educate customs officials in the identification and importance of protecting endangered wildlife. Penalties imposed by member states for violations of CITES must be increased, and forms and certificates must be standardized to aid in their verification. Finally, the western industrialized nations should contribute financial and technological resources to underdeveloped nations to help them enforce the regulations imposed by CITES.

In the United States, the inspection capabilities of the Fish and Wildlife Service are inadequate. Congress must allow the Service to hire and train additional officers as port inspectors. The availability of post-clearance inspections must be eliminated because of the potential abuses this provision creates. Discretion to clear wildlife shipments when officers may reasonably suspect that the shipments have been imported illegally must also be eliminated. Instead, Fish and Wildlife Service officers should be required to detain all shipments until they are certain that the shipments have been imported legally. Exemptions from wildlife trade regulations due to economic hardship should not be allowed. The damage to endangered wildlife populations caused by such exemptions far outweighs the possible damage to individual wildlife dealers. Finally, civil penalties for violations of the Endangered Species Act and the Lacey Act must be increased.

JEFFREY C. MELICK

