

# CRS Report for Congress

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

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## Summary

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) has been ratified by 167 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 28,000 species of plants and 5,000 species of animals. Many believe that CITES has been a success, citing 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 the lack of enforcement and implementation regulations in some party nations.

Protected species are organized under CITES into three appendices. Species in Appendix I are threatened with extinction and trade in these species is prohibited for commercial purposes. Appendix II contains species not necessarily threatened with extinction, but which require controlled trade to prevent population declines. For species protected in Appendix III, at least one country has requested other countries to assist in regulating trade originating in that country.

The Endangered Species Act (ESA) implements CITES in the United States and contains provisions for protecting rare foreign species. The ESA, however, protects species based on several criteria that may threaten their survival; CITES focuses solely on the threat of trade to a species's survival. Further, CITES allows for the trade in species if trade is not detrimental to the survival of the species; the ESA may allow imports of foreign endangered species if trade enhances the survival of the species in their native country.

In the United States, comparisons of wildlife protection under the ESA and CITES may be an emerging issue for Congress. Some argue that the ESA regulations on importing some foreign species may inhibit conservation efforts in foreign countries that rely on funds generated from wildlife trade. Others respond by noting that CITES is focused only on the trade in endangered species, rather than the overall protection and conservation of the species such as in the ESA. Issues regarding the effectiveness of enforcing CITES and the implementation of CITES may also emerge.

CITES signatories are expected to hold a meeting, Conference of the Parties — 14, in June 2007. This report will be updated as warranted.

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

## 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 \$5 billion world wildlife trade industry. The United States' share of the world wildlife trade is between \$1 billion and \$2 billion per year.<sup>1</sup>

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, 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 concluded October 14, 2004. Several issues were discussed, including the sport hunting of rhinos, African elephant ivory and trade, and harvesting and trade of Indonesian ramin timber species. COP — 14 will be held in June 2007 in the Netherlands. 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 January 2007, there are 169 signatories to CITES.

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<sup>1</sup> U.S. Government Accountability Office, *Protected Species, International Convention and U.S. Laws Protect Wildlife Differently*, GAO-04-964 (Washington, DC: Sept. 2004). Hereafter referred to as *GAO Protected Species Report*.

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 5,000 species of animals and approximately 28,000 species of plants listed under CITES. The administrative bodies of CITES 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' 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' enforcement.

## **Classification into Appendices 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.<sup>2</sup>

When a party is interested in including, deleting, or changing the Appendix of a species under CITES, it must submit a proposal to amend the listing based on a set of criteria. 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 have evolved over the years. When CITES took effect in 1975, several species had already been identified for inclusion in the Appendices. 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.<sup>3</sup>

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<sup>2</sup> *GAO Protected Species Report*, p. 9.

<sup>3</sup> Criteria presented are based on a summary provided by the *GAO Protected Species Report*, pp. 21-22.

There are three appendices in CITES that 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.<sup>4</sup> (See “exemptions” below for further discussion.) Article II of the treaty provides conditions under which species are to be included in each Appendix.<sup>5</sup>

**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 re-export certificate<sup>6</sup>) are required for the limited trade allowed for species in Appendix I. For example, in the recent COP, 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,

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<sup>4</sup> W. Wijnstekers, *The Evolution of CITES*, 7<sup>th</sup> Edition (Geneva, CITES Secretariat, Switzerland: 2003). Hereafter referred to as *The Evolution of CITES*.

<sup>5</sup> To view the text of CITES, see [<http://www.cites.org/eng/disc/text.shtml>], accessed November 1, 2004.

<sup>6</sup> A re-export 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 re-export permit would be necessary. This would also include items subsequently converted to manufactured goods.

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.

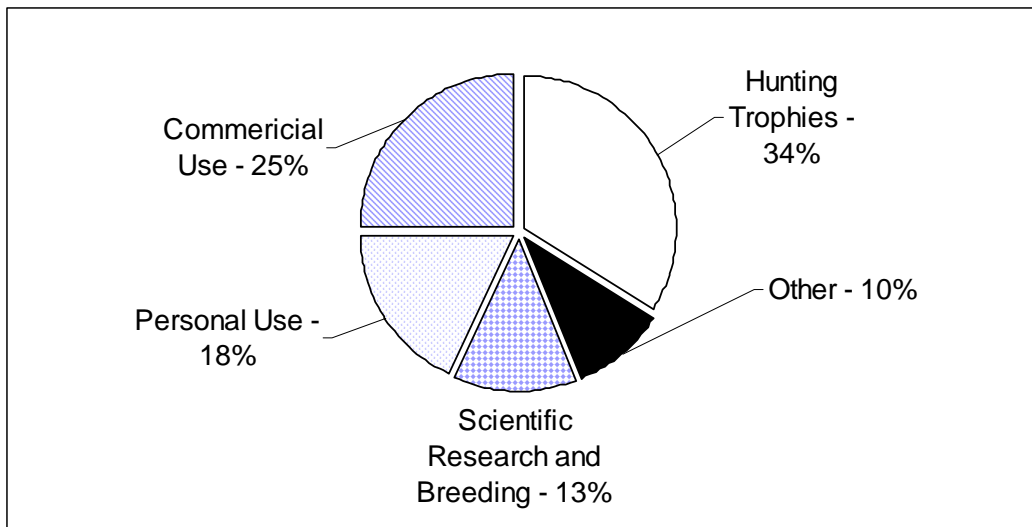
International trade of Appendix III species may require one of the following three documents: 1) export permit, granted for species coming from the country that listed it; 2) re-export permit, granted for Appendix III species being exported from a country that previously imported it; or 3) certificate of origin, for Appendix III specimens that are being exported from a country other than the listing country. For example, if the United States wished to allow the export of a turtle dove hatched in the U.S., a certificate of origin would be issued because the species 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 issued in 2003. (See **Figure 1**.)

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.

Switzerland and Liechtenstein have registered the most reservations, 53 and 45 respectively. These reservations are primarily for bird species, amphibians, and some mammals. Iceland, Norway, Japan, and Palau have listed reservations for several marine species. The United States has no reservations as of August 2004.

**Figure 1. Intended Use of Wildlife According to Import/Export Permit Applications in 2003**



**Source:** GAO Protected Species Report.

**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 non-commercial 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.

## 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.<sup>7</sup>

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:

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<sup>7</sup> 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*.



- 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 non-commercial purposes; and
- the necessary advice from the Scientific Authority has been issued.

Management Authorities must also 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 an imported live specimen of listed animal is adequately equipped to conserve and care for it; and import 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 Appendices 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.<sup>8</sup> 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.”<sup>9</sup> While all present can participate, only party members can vote. There have been 13 COPs since the Convention convened in 1973, the most recent in Bangkok, Thailand in October 2004. The next COP is scheduled for June 2007 in the Netherlands.

**Summary of Proceedings from COP-13.** COP-13 concluded on October 14, 2004, with several changes to species listings under CITES. This is a summary of some significant changes.

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<sup>8</sup> *GAO Protected Species Report*, p. 8.

<sup>9</sup> Article XI, §7 of CITES.

- A U.S. proposal to downlist the bald eagle from Appendix I to Appendix II status was accepted, reflecting the improved status of bald eagles in the contiguous United States.<sup>10</sup> According to the Department of the Interior, Appendix II status will make it less burdensome for Native American tribes in the United States and Canada to exchange eagle feathers.<sup>11</sup>
- Party nations rejected proposals to reopen the commercial ivory trade in Africa and instead adopted an action plan to monitor unregulated domestic ivory markets. However, Namibia, Botswana, and South Africa gained support for a one-time sale of their existing ivory stocks, only the second such sale during the 15-year ban on ivory trading.
- A limited hunt of black rhinoceroses (an Appendix I species) was approved. This allows Namibia and South Africa to each allow the killing and export of five black rhinoceros a year.
- Marine species were discussed extensively at COP-13. The Great White Shark was given Appendix II status based on reports of threatened populations due to game fishing and commercial harvests of fins for shark fin soup. A proposal by Japan to downlist the minke whale from Appendix I to Appendix II was rejected. This will keep in place an 18-year moratorium on commercial whaling. Further, export quotas of caviar from Caspian sturgeon were lowered, amidst opposition from environmental groups which argued that sturgeon stocks are not sustainable at the prescribed level of harvest. In 2006, the Secretariat did not release caviar export quotas due to poor reporting efforts, resulting in a nearly complete ban on exports. In January 2007, however, caviar quotas were released, and allow about 82 tons for export.<sup>12</sup>

## Enforcement of CITES

The enforcement of CITES is primarily the responsibility of the party countries. 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

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<sup>10</sup> The bald eagle is currently listed as a threatened species under the ESA, but there is a proposal for delisting the species.

<sup>11</sup> U.S. Dept. of the Interior, Office of the Secretary, *International Trade Restrictions Eased for Bald Eagles* (Washington, DC: Oct. 13, 2004).

<sup>12</sup> There are no export quotas for beluga caviar.

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.

**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 FWS is responsible for issuing permits for the export, import, or re-export 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.<sup>13</sup> All wildlife species that enter or exit the United States must be accompanied by a permit in compliance with U.S. laws.<sup>14</sup> 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.<sup>15</sup> 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 *taking* of marine mammals in U.S. waters and by U.S. nationals on the high seas.

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<sup>13</sup> *GAO Protected Species Report*, pp. 12-13.

<sup>14</sup> Note that CITES imposes no direct controls on shipments between U.S. States or territories.

<sup>15</sup> 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, *Multinational Species Conservation Fund*, by Pervaze Sheikh and M. Lynne Corn.

- 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, wildlife, or plants 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).
- 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).

Proposed changes in the implementation of CITES in the United States have been promulgated by the FWS. The FWS published a proposed rule in April 2006 that contains several revisions to current regulations concerning CITES.<sup>16</sup> (See 50 CFR Part 23.) The proposed changes are intended to reflect current CITES provisions that have been modified or added by the parties since the inception of the treaty. Much of the proposal for new regulations explains procedures and requirements already in effect, specific requirements related to documentation and reporting of activities, and definitions of new terms, among other things. The comment period for these proposed policies ended July 28, 2006, and final action is still pending.

## **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 1,830 species, of which 560 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.<sup>17</sup> 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

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<sup>16</sup> 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. 71, no. 75 (April 19, 2006): 20168-20260.

<sup>17</sup> Section 4(b) of the ESA.

the species. 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 Canadian wood bison is listed under Appendix II in CITES, yet is listed as endangered under the ESA. Thus, a U.S. hunter could legally hunt wood bison in Canada, but not import his trophies into the United States without a permit from both the United States and Canada.

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 §10 or §4(d) of the ESA, and have CITES permits if they are listed under CITES. 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, §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.<sup>18</sup> Section 10 allows permit requests for importing sport hunting trophies; however, such requests are routinely denied, according to the FWS.<sup>19</sup> 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 §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.<sup>20</sup> For example, some species of saltwater crocodiles listed as threatened under the ESA have a §4(d) rule that allows for the import of body parts from managed populations. This rule was implemented under the premise

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<sup>18</sup> 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.

<sup>19</sup> 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*.

<sup>20</sup> *Draft Policy*.

that limited trade in crocodile body parts would encourage the development of conservation programs in their native country.<sup>21</sup>

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.<sup>22</sup> 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.<sup>23</sup> Many have suggested that these fundamental differences between regulation under CITES and the ESA demonstrate that the ESA is *stricter* than CITES with regards to species protection.

The issue of whether or not to have stricter domestic ESA measures compared to CITES for foreign endangered species is an on-going debate.<sup>24</sup> 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 has 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.<sup>25</sup> The proposed policy to issue enhancement of survival permits has been met with controversy. Some supporters believe that the policy is one of the few ways the United States can

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<sup>21</sup> *Ibid.*

<sup>22</sup> For other examples, see the *GAO Endangered Species Report*, p. 34.

<sup>23</sup> 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).

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

<sup>25</sup> *Draft Policy.*

provide incentives for conservation in developing countries. Others have responded to the Draft Policy with skepticism of its possible benefits for endangered species, and argue that the policy is too vague and may spur an increase in smuggling.<sup>26</sup> Further, some argue that the policy places too much responsibility in the range country for operating and maintaining conservation programs. The Department of the Interior (DOI) has stated that permits will only be given if a substantive conservation program is in place and is enhancing the survival of the species. A final decision on the proposed policy is still pending.

## 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.

**Successes.** CITES is one of the world's most widely accepted treaties, with over 167 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.<sup>27</sup> Although it is difficult to attribute the conservation of a species solely to CITES, several species have noticeably improved since being listed on CITES.<sup>28</sup> For example, in 1989, CITES banned international trade in ivory, which was considered the major cause of declining elephant populations (a 50% population decline from 1979-1989). Since the ban on ivory, some major ivory markets have closed, poaching has been reduced, and some elephant populations have steadily recovered.

**Problems with Implementation.** Although CITES has recorded some success, several problems with implementation remain. Some of these problems include insufficient enforcement in foreign countries, complex and controversial species and specimens to monitor, low penalties for violations, and the use of reservations.

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 2002, nearly 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

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<sup>26</sup> Ibid.

<sup>27</sup> *GAO Protected Species Report*.

<sup>28</sup> Ibid.

CITES; (3) penalties for violations; and (4) protocols for confiscating illegally traded specimens.<sup>29</sup>

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 their federal or national governments.<sup>30</sup>

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 it provides 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 the “Strategic Vision of CITES through 2005,” the Secretariat is aiming to increase the capacity of party nations to implement domestic legislation and policies to support CITES, as well as increase the cooperation and communication among other international stakeholders regarding CITES enforcement.<sup>31</sup> The Secretariat is also striving to increase cooperation with organizations of other multilateral conventions such as the Convention on Biological Diversity and the World Conservation Union.

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<sup>29</sup> *Policing International Trade*.

<sup>30</sup> CITES, *Tiger Technical Mission Report* (Geneva, Switzerland: 1999).

<sup>31</sup> CITES Secretariat, *Strategic Vision Through 2005* (Geneva, Switzerland: 2000). Available online at [<http://www.cites.org/eng/news/English%20strategies.pdf>], accessed January 22, 2007.



## Conclusion

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is an international treaty that is steadily gaining acceptance in the world and growing in terms of its application. While most believe that the treaty has been effective in curbing the international trade of endangered and threatened species, some argue that there are still many issues and problems with the implementation of the treaty. The biggest problem, according to some, is the lack of implementing legislation, and hence enforcement mechanisms, in several party nations. This compromises the effectiveness of the treaty and lowers the value of enforcement and monitoring activities in complying party nations. 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 Endangered Species Act (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. Attempts to reconcile the programs in some aspects are pending, as the FWS is reviewing a proposed policy to grant *enhancement of survival* permits under the ESA that would follow similar practices already conducted under CITES.