

# **A REVIEW OF CITES'S IMPACT AND SUGGESTIONS FOR INCREMENTAL IMPROVEMENT**

*Jeremiah D. Clark\**

The Convention on the International Trade in Endangered Species (CITES) governs commerce in wildlife among signatory nations. The agreement went into effect in 1973 with the intention to mitigate extinction of endangered species affected by the international wildlife trade. While CITES has contributed to some successes in wildlife conservation since its passage, there is plenty of room for improvement. This Comment will outline some suggestions for improving the CITES regime based on the available literature on its successes and shortcomings.

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\* J.D., Temple University James E. Beasley School of Law, 2023; M.Ed., St. Joseph's University, 2017; B.A., University of Pittsburgh, 2015. Thank you to Professor Jeffrey Dunoff for your guidance and feedback as I worked through my research and drafting. Thank you to J.J. Larkins, Sarah Hampton, Maya Lucyshyn, and all the TICLJ staff for the countless hours spent preparing this piece for publication. And, most of all, thank you Maura Daddario Clark for your unceasing love and support throughout law school. I couldn't have done it without you.

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*“The assumption that animals are without rights and the illusion that our treatment of them has no moral significance is a positively outrageous example of Western crudity and barbarity. Universal compassion is the only guarantee of morality.”<sup>1</sup>*

I. INTRODUCTION

One could assume an easy cynicism and guffaw at Schopenhauer’s line as another authoritative indictment of Western immorality. Yet both the West and the international community have taken steps to work within the framework of our globalized international trading system to protect wildlife. From the United Nations (U.N.) to the World Trade Organization (WTO), and in nations across the world, lawmakers have taken positive steps to protect wildlife.<sup>2</sup> In the area of international trade, the most significant agreement to date has been the Convention on International Trade of Endangered Species of Flora and Fauna (CITES).<sup>3</sup> Though CITES has achieved successes in wildlife protection—as evidenced by the United States and Canada—its limitations are real, but addressable through improvements to aspects of its system.<sup>4</sup>

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1. *Arthur Schopenhauer (1788-1860)*, INT’L VEGETARIAN UNION, <https://ivu.org/history/europe19b/schopenhauer.html> (last visited Sept. 15, 2022).

2. See WTO SECRETARIAT & CITES SECRETARIAT, CITES AND THE WTO: ENHANCING COOPERATION FOR SUSTAINABLE DEVELOPMENT, 2–4 (2015) [hereinafter CITES AND THE WTO] (providing history of international cooperation in protecting wildlife and discussing creation and actions of CITES).

3. *Id.*

4. See Tanya Wyatt, *Canada and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES): Lessons Learned on Implementation and Compliance*, 42 LIVERPOOL L. REV. 143, 149 (2021) (describing success of CITES implementation in Canada

CITES has helped spur action to regulate international wildlife trade since it was enacted in the 1970s.<sup>5</sup> While CITES has had some success, especially in developed countries like Canada with high degrees of legislative buy-in,<sup>6</sup> CITES must make some changes to achieve its goals.<sup>7</sup> For one thing, CITES does little in the way of arbitrating conflicts; the provided research and guidance for member nations is insufficient.<sup>8</sup> The Secretariat is weak, and CITES has given up a good amount of its moral capital.<sup>9</sup> Through arbitral engagement, research incentives, definitive guidance to member nations, a stronger Secretariat, and robust moral leadership, CITES could more effectively protect the world's flora and fauna.

Current conditions threaten extinction for many plant and animal species.<sup>10</sup> Of the eight million species on the planet, the U.N. estimates that one million face the threat of extinction.<sup>11</sup> Included in this number are over 40% of amphibious species, over 30% of reef-forming coral species, over 30% of marine mammal species, and 10% of insect species.<sup>12</sup> Roughly 1,000 domesticated mammal species may join the 680 vertebrae species which have gone extinct since the 16th century.<sup>13</sup> Such extinction could destabilize lives and livelihoods globally.<sup>14</sup> Much of this can be traced to human activity.<sup>15</sup> According to the U.N., global goals for conservation and sustainability cannot be met by 2030 without transformative economic, social, political, and technological change.<sup>16</sup> Action is needed on several fronts to address

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and the United States, but pointing out lessons for improvement in Canada) [hereinafter Wyatt, *Canada and CITES*].

5. See Peter H. Sand, *International Protection of Endangered Species in the Face of Wildlife Trade: Whither Conservation Diplomacy?*, 20 ASIA PAC. J. ENV'T L. 5, 7 (2017) (recounting creation of CITES and documenting that some regard it as most successful international wildlife treaty).

6. See Wyatt, *Canada and CITES*, *supra* note 4, at 147 (describing Canadian implementation of CITES through Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act).

7. See UN Report: *Nature's Dangerous Decline 'Unprecedented'; Species Extinction Rates 'Accelerating'*, SUSTAINABLE DEV. BLOG (May 6, 2019), <https://www.un.org/sustainabledevelopment/blog/2019/05/nature-decline-unprecedented-report/> [hereinafter *Species Extinction Rates*] (explaining organizations will need to adapt to rising challenges that environmental changes pose).

8. See Rachel Nuwer, *How Well Does CITES Really Prevent Wildlife Trafficking and Illegal Trade?*, ENSIA (Oct. 4, 2018), <https://ensia.com/features/cites/> (investigating shortcomings of CITES, including that data on sustainability levels is lackluster and enforcement is difficult).

9. See *id.* (describing frustration with CITES Secretariat, which experiences corruption and struggles to carry out its function of enforcing party obligations).

10. *Species Extinction Rates*, *supra* note 7.

11. *Id.*

12. *Id.*

13. *Id.*

14. See *id.* (describing evidence from global wildlife assessment revealing deterioration of ecosystems which lie at foundation of economies, livelihoods, food security, health, and quality of life).

15. See *id.* (ranking five most impactful drivers of ecological change: land and sea use, exploitation of organisms, climate change, pollution, and invasive species).

16. *Id.*

mass extinction.

Habitat destruction is to blame for most of the threat of extinction.<sup>17</sup> About 75% of land-based environment and 66% of marine environment have been “severely altered” by human activity.<sup>18</sup> Since 1992, urban areas have doubled in space, further encroaching on native habitats.<sup>19</sup> Climate change and pollution also play a role.<sup>20</sup> Greenhouse gas emissions have doubled since 1980, resulting in a rise of average global temperatures by 0.7 degrees Celsius. This rise, in turn, impacts habitats worldwide.<sup>21</sup>

One suggestion for improvement includes continued work with international organizations.<sup>22</sup> International trade organizations, while flawed, have been effective organs in facilitating communication and enforcement of wildlife protection laws.<sup>23</sup> CITES should also adopt some centralization measures itself to ensure that it is capable of enforcing and arbitrating between contracting parties;<sup>24</sup> indeed, the challenges of international treaty obligation enforcement and cross-cultural species identification remain.<sup>25</sup> Granted, CITES has had some success in facilitating enforcement in the past.<sup>26</sup> Additionally, international criminal law organizations could learn from the international trade organizations to implement more effective measures for conserving and enforcing wildlife law.<sup>27</sup>

17. *See id.* (showcasing massive scale of habitat destruction with statistical data and associated rates of extinction).

18. *Id.* In addition, about one-third of the land in the world and 75% of its freshwater are used for agricultural products. *Id.* While agriculture is not bad in and of itself, such land use reduces the space that many species need to thrive. *See id.* (showing increase in agricultural use of natural environments coincides with wildlife instability).

19. *Id.*

20. *Id.*

21. *Id.*

22. Katie Sykes, *Globalization and the Animal Turn: How International Trade Law Contributes to Global Norms of Animal Protection*, 5 TRANSNAT'L ENV'T L. 55, 56 (2016) (suggesting WTO can contribute to international animal protection through developments in international trade).

23. *See, e.g., CITES and the WTO*, *supra* note 2, at 9–10 (outlining accomplishments from cooperation of two international organizations); *see also* Andrew Lurié & Maria Kalinina, *Protecting Animals in International Trade: A Study of the Recent Successes at the WTO and in Free Trade Agreements*, 30 AM. U. INT'L L. REV. 431, 434–35 (2015) (highlighting successes in stopping international wildlife trade); Sykes, *supra* note 22 (highlighting positive effects from EC-Seals decision and from international communication and cooperation).

24. *See* Kimberley Graham, *International Intent and Domestic Application of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES): The Case of the Ocelot (Leopardus Pardalis)*, 20 J. INT'L WILDLIFE L. & POL'Y 253, 288–89 (2017) (discussing challenges faced by system without centralized enforcement mechanisms).

25. *See id.* at 286–89 (discussing challenges due to absence of enforcement mechanisms and variance in classification of ocelot species as endangered across their range, spanning various nation-states in Americas).

26. *Wildlife Treaty Comes of Age – CITES Celebrates 30 Years of Achievement*, CONVENTION ON INT'L TRADE IN ENDANGERED SPECIES OF WILD FAUNA & FLORA, [https://cites.org/eng/news/pr/2005/050630\\_30cites.shtml](https://cites.org/eng/news/pr/2005/050630_30cites.shtml) (Jan. 12, 2021) [hereinafter *Wildlife Treaty Comes of Age*].

27. *See infra* Part IV.A for a discussion of WTO cases which can serve as a model for

CITES certainly tries to address the “crudity and barbarity” that Schopenhauer disparaged.<sup>28</sup> However, its framework of appendices permits *some* trade of wildlife, even endangered wildlife, implying an acceptance of the commodification of animals and plants.<sup>29</sup> To address CITES's shortcomings, Part II of this paper begins by reviewing the current mass extinction and the role of international wildlife trade. Part II also introduces CITES and briefly discusses other sources of international wildlife law. It shows how CITES has been implemented in the past at the domestic level through national legislative programs and transnational efforts to save particular species. Part III addresses how CITES has worked with and relied upon other international organizations. Part IV then offers some suggestions for how CITES may become more effective by amending some of its provisions, centralizing some functions, and more forcefully making its case for its brand of conservation.

## II. INTERNATIONAL WILDLIFE TRAFFICKING AND MASS EXTINCTION

While land use and climate change harm species and habitats, direct exploitation also has a significant effect on species decline.<sup>30</sup> The legal trade in wildlife is valued at \$350 billion, with illegal trade accounting for \$20 billion of that value.<sup>31</sup> In 2015, the U.N. recorded that 33% of marine fish stocks were being harvested at unsustainable levels and that global forest coverage was at 68% of preindustrial levels.<sup>32</sup> Many species are endangered as a result of an international trade in their wares; for example, elephant tusks and pangolin scales are traded due to their unique physical properties.<sup>33</sup>

To address the threat to species the world over, the international community has formed international wildlife treaties.<sup>34</sup> In addition to CITES, these agreements include the Ramsar Convention, the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, the Convention on the Conservation of Migratory Species of Wild Animals (CMS), and the Convention on Biological Diversity (CBD).<sup>35</sup> The overarching goal of these treaties is to protect the world's wildlife.<sup>36</sup> Such protection requires international cooperation,

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enforcement of wildlife law.

28. Schopenhauer, *supra* note 1.

29. Nuwer, *supra* note 8.

30. *Species Extinction Rates*, *supra* note 7.

31. Monique C. Sosnowski et al., *Global Ivory Market Prices Since the 1989 CITES Ban*, 237 BIOLOGICAL CONSERVATION 392, 392 (2019).

32. *Species Extinction Rates*, *supra* note 7.

33. See U.N. OFF. OF DRUGS & CRIME, WORLD WILDLIFE CRIME REPORT 14–15 (2020) (describing trends in illicit trade of elephant tusks and pangolin scales) [hereinafter WORLD WILDLIFE CRIME REPORT].

34. See Arie Trouwborst et al., *International Wildlife Law: Understanding and Enhancing Its Role in Conservation*, 67 BIOSCIENCE 784, 784 (2017) (listing some of the more well-known international wildlife treaties) [hereinafter Trouwborst, *International Wildlife Law*].

35. *Id.* at 785.

36. See *id.* (listing overview of international wildlife treaties which show breadth of agreements designed to conserve nature by way of protecting various kinds of habitats, flora, fauna, and more).

as cranes and caterpillars do not pay heed to national borders.<sup>37</sup>

The effectiveness of such treaties has been debated.<sup>38</sup> Different national priorities limit their effectiveness; some countries, for example, do not fully comply with Bern Convention obligations regarding wolves.<sup>39</sup> Additionally, obligations are sometimes compromised by other international treaties, including trade agreements, the provisions of which may be politically popular.<sup>40</sup> Yet these treaties form the body of international wildlife law which limits and defines appropriate action towards wildlife.<sup>41</sup>

One problem addressed by international wildlife law is the regulation of legal marketplaces.<sup>42</sup> According to CITES, the permissible quantity of trade in a species varies from nation to nation.<sup>43</sup> Trade in species *X* may be allowed in Country *A* because Country *A* has a stable population of species *X*.<sup>44</sup> But, trade might be wholly banned in Country *B* because the population of species *X* is dangerously low in Country *B*.<sup>45</sup> However, animals do not always respect borders; several members of species *X* may move back and forth between Countries *A* and *B*.<sup>46</sup> So, trade in Country *A* may exacerbate the problem in Country *B*.<sup>47</sup>

For example, there are legal markets for European eels and rosewood trees, but not every procurement or sale of eel or log is legal.<sup>48</sup> In some cases, the determination of whether a product is legal or illegal can turn on such particulars as whether a tusk came from a particular region in Botswana or another region in Namibia.<sup>49</sup> In other cases, international wildlife regulators must determine whether

37. See Arie Trouwborst, *Global Large Carnivore Conservation and International Law*, 24 BIODIVERSITY & CONSERVATION 1567, 1568 (2015) (showing that animal species, in particular large carnivores, can have a range that crosses national borders) [hereinafter Trouwborst, *Carnivore Conservation*].

38. See Trouwborst, *International Wildlife Law*, *supra* note 34, at 784 (describing differing opinions on what international wildlife law agreements can accomplish).

39. *Id.* The Bern Convention “is a binding international legal instrument in the field of nature conservation, covering most of the natural heritage of the European continent and extending to some States in Africa.” *Presentation of the Bern Convention*, COUNCIL OF EUR.: CONVENTION ON THE CONSERVATION OF EUR. WILDLIFE AND NAT. HABITATS, <https://www.coe.int/en/web/bern-convention/presentation> (last visited Mar. 24, 2023).

40. See *id.* at 784–87 (describing reluctance of some countries to impose burdensome economic restraints in name of international wildlife law).

41. See *id.* at 785–86 (showing table of various wildlife treaties which comprise basis of international wildlife law).

42. See CITES AND THE WTO, *supra* note 2, at 5–8 (describing various ways in which CITES regulates legal markets).

43. Cf. *id.* at 7 (describing how quotas are used to regulate trade of Appendix II listed species within their own ranges).

44. *Id.*

45. *Id.*

46. Trouwborst, *Carnivore Conservation*, *supra* note 37, at 1568.

47. Cf. CITES AND THE WTO, *supra* note 2, at 7 (describing how quotas are used to regulate trade of Appendix II species).

48. WORLD WILDLIFE CRIME REPORT, *supra* note 33, at 12.

49. See *id.* (describing how criminal wildlife trading groups will select their base of operations and procurement based on differing policies in place in various countries and locales).

the supply to a legal market was provided by transnational criminal organizations.<sup>50</sup> Balancing respect for legal trade with restrictions on illegal supply can cause headaches for officials tasked with enforcement.<sup>51</sup>

Moreover, sometimes markets are simply illegal.<sup>52</sup> This is the case for the horn of a black rhinoceros or scales of a pangolin.<sup>53</sup> Transnational criminal organizations happily provide a black market.<sup>54</sup> One of the main problems is that strong regulations on commerce restrict the supply; restricted supply results in high prices, which incentivizes criminal groups to capture the position of supplier.<sup>55</sup> Black markets also often change their location undetected.<sup>56</sup> In the past, the main hub for export of illegal ivory was Mombasa, Kenya; today, the hub is in Nigeria.<sup>57</sup> And where China was once the dominant importer of ivory, now it is Vietnam.<sup>58</sup> Such facts make enforcement quite challenging.<sup>59</sup>

The potential consequences of allowing illicit wildlife trade markets to thrive make adequate enforcement worthwhile. A mass extinction event would have unforeseeable and destabilizing consequences.<sup>60</sup> To mitigate a potential mass extinction event, nations have signed on to CITES and other international wildlife treaties to control international wildlife trade and protect ecosystems.<sup>61</sup> However, enforcement of international wildlife law is difficult.<sup>62</sup> In legal markets, the legality of a trade is based on fluctuating factors like local population of an animal.<sup>63</sup> Illegal markets are difficult to track, often changing their location, and they require cooperation across borders.<sup>64</sup> As a result, international wildlife enforcement must hit literal and figurative moving targets.

50. *Id.*

51. *See, e.g., id.* at 37–102 (showing difficulty authorities can face in navigating illicit sourcing industry which bleeds into legal mercantile industry in seven different wildlife product trades).

52. *Id.* at 12.

53. *Id.*

54. *Id.*

55. *See id.* (stating when strong regulations in one market do not affect both supply and demand, criminal organizations can simply shift location of their enterprise or use replacement species).

56. *See id.* at 14–15 (discussing export data on ivory tracking which reveals movement of a main exporter of ivory from Mombasa, Kenya, to Nigeria).

57. *Id.* at 15.

58. *Id.*

59. *See, e.g., id.* at 54 (showing difficulty in enforcement of ivory trade given long-term statistical change in destination of illicit ivory shipments).

60. *See Species Extinction Rates, supra* note 7 (describing loss of biodiversity across globe as threat to human well-being everywhere).

61. *See* Trouwborst, *International Wildlife Law, supra* note 34, at 785 (listing wildlife treaties signed by international community).

62. *See* Graham, *supra* note 24, at 288–89 (describing challenges faced by CITES in enforcing international wildlife law).

63. *See* CITES AND THE WTO, *supra* note 2, at 7 (describing how CITES can use quotas to regulate trade in species based on range of their habitats).

64. *See, e.g.,* WORLD WILDLIFE CRIME REPORT, *supra* note 33, at 37–102 (giving seven examples of difficulty involved in tracking illegal wildlife markets).

### III. HOW CITES WORKS

The landmark treaty in international wildlife law is the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).<sup>65</sup> The treaty was signed in 1973 in Washington, D.C. by twenty-one nations.<sup>66</sup> Today, there are 184 parties to the agreement.<sup>67</sup> The preamble reads as follows:

*Recognizing* that wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for this and the generations to come;

*Conscious* of the ever-growing value of wild fauna and flora from aesthetic, scientific, cultural, recreational and economic points of view;

*Recognizing* that peoples and States are and should be the best protectors of their own wild fauna and flora;

*Recognizing*, in addition, that international co-operation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade;

*Convinced* of the urgency of taking appropriate measures to this end . . . .<sup>68</sup>

The preamble demonstrates the underlying principles of the Convention: respect for wild flora and fauna in natural ecosystems, the value of the same to human life, the need for local stewardship, and the need for protection of species.<sup>69</sup> The treaty seems well-intentioned and well-positioned to take on the problem of direct exploitation of species and to help prevent mass extinction.<sup>70</sup> However, as one commentator put it, "CITES is not unlike other international institutions: it is inherently weak, and its legitimacy is both crucial and on permanent probation."<sup>71</sup>

To achieve the goals of preventing species exploitation and mass extinction, CITES regulates the global international wildlife trade through a licensing system.<sup>72</sup> Party governments issue licenses or permits based on research to determine the amount which can be traded while maintaining the health of the species.<sup>73</sup> CITES Member States put in enabling legislation to incorporate the relevant provisions into domestic law;<sup>74</sup> for example, the United States amended

65. Convention on International Trade in Endangered Species of Wild Fauna and Flora, *opened for signature* Mar. 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 243 [hereinafter CITES].

66. CITES AND THE WTO, *supra* note 2, at 2.

67. *List of Parties to the Convention*, CITES, <https://cites.org/eng/disc/parties/index.php> (last visited Oct. 4, 2022).

68. CITES, *supra* note 65, pmbl.

69. *Id.*

70. *See id.* (affirming state-parties' respect for wildlife as well as their agreement to cooperate for its benefit).

71. Peter Stoett, *To Trade or Not to Trade? The African Elephant and CITES*, 52 INT'L J. 567, 570 (1997).

72. Radha Ivory, *Corruption Gone Wild: Transnational Criminal Law and the International Trade in Endangered Species*, 111 AJIL UNBOUND 413, 413 (2017).

73. *Id.*

74. *Id.*



the Endangered Species Act (ESA) in part to codify their CITES obligations.<sup>75</sup> In order to manage its operations, CITES established an Office of the Secretariat, which would, among other duties, conduct research and make recommendations to the parties in order to further the goals of the Convention.<sup>76</sup>

To trade any species listed on an appendix, certain procedures must be followed.<sup>77</sup> The convention established three appendices which list species based on their endangered status.<sup>78</sup> Trading species on any of the lists must conform to CITES regulations, but the extent of those regulations vary—this might mean one is entirely prohibited from trading a species, or that one is allowed to trade that species only in a certain amount.<sup>79</sup> In order to obtain a permit to trade on Appendix I, for example, the applicant must meet the following conditions:

- (a) a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species;
- (b) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora;
- (c) a Management Authority of the State of export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment; and
- (d) a Management Authority of the State of export is satisfied that an import permit has been granted for the specimen.<sup>80</sup>

Appendix I has the most rigorous requirements,<sup>81</sup> compared to the less stringent standards of Appendices II and III.<sup>82</sup> But for all its regulation and enforcement, CITES relies upon its Member States.<sup>83</sup> While this level of autonomy is helpful in achieving political buy-in, local enforcement creates problems of interpretation, namely species identification, which will be addressed below.<sup>84</sup>

The governing body of CITES is the Conference of Parties (COP), which meets every three years.<sup>85</sup> In the interim, a Standing Committee conducts business related to CITES.<sup>86</sup> This body can make legally binding resolutions on its Member

75. Endangered Species Act of 1973 § 2(a)(4)(F), 16 U.S.C. § 1531.

76. CITES, *supra* note 65, art. XII, ¶ 2(a)–(h).

77. *Id.* art. II, ¶¶ 1–4.

78. *Id.*

79. *Id.* art. II, ¶ 4.

80. *Id.* art. III, ¶ 2(a)–(d).

81. *Id.*

82. *See id.* art. IV–V (detailing requirements to trade in species listed under Appendices II and III).

83. *See Sand, supra* note 5, at 16–17 (recounting development of criteria for party state's domestic legislation required to meet CITES requirements).

84. *See Rachel L. Jacobs & Barry W. Baker, The Species Dilemma and Its Potential Impact on Enforcing Wildlife Trade Laws*, 27 *EVOLUTIONARY ANTHROPOLOGY* 261, 261 (2018) (discussing challenges to protect species from illegal trade due to difficulties in identifying such species).

85. *Sand, supra* note 5, at 11.

86. *Id.*

States, generally decided by consensus or a two-thirds majority.<sup>87</sup> Some Standing Committee resolutions have been struck down by challenges by Member States in international courts.<sup>88</sup> So, while CITES does not have as complex a bureaucratic structure as, for example, the U.N. or the WTO, it does have a “quasi-legislative” process.<sup>89</sup>

Under CITES, Member States have several domestic obligations.<sup>90</sup> First, each party must designate a Management Authority, competent to issue the permits connected with wildlife trade, and a Scientific Authority.<sup>91</sup> The parties pledge to pass laws criminalizing illegal trade in endangered species and restoring confiscated plants and animals to their natural habitat.<sup>92</sup> A confiscated specimen must be given to the Management Authority, which oversees the protection and possible return of the specimen to its native habitat.<sup>93</sup> There are also record-keeping and reporting obligations.<sup>94</sup> Since 2017, CITES members have had to submit data regarding seizures to the Secretariat for reporting and analytics.<sup>95</sup>

Disputes between CITES Member States are also governed by the agreement.<sup>96</sup> The agreement first asks that disputing parties try to resolve their differences through negotiation.<sup>97</sup> If that fails, the dispute should be submitted to arbitration, preferably the International Court of Arbitration at The Hague, and the parties are thereby bound to the decision of that court.<sup>98</sup>

CITES relies on its Member States to implement its provisions.<sup>99</sup> In doing so, it asks each Member State to implement domestic legislation which conforms to the following requirements: “(i) designation of national CITES management and scientific authorities; (ii) prohibition of trade in violation of the Convention; (iii) penalization of such trade; and (iv) confiscation of illegally traded or illegally possessed specimens.”<sup>100</sup> While each Member State’s experience is unique, one common problem with implementation is customs enforcement.<sup>101</sup> As a

87. *Id.* at 12.

88. *See id.* (discussing instances where governments have contested COP resolutions).

89. *Id.* at 13.

90. *See infra* notes 91–95 and accompanying text for an enumeration of the domestic obligations of CITES Member States.

91. *See* CITES, *supra* note 65, art. IX (outlining steps for implementation of management authorities).

92. *Id.* art. VIII, ¶ 1.

93. *Id.* art. VIII, ¶ 4.

94. *See id.* art. VIII, ¶¶ 6–7 (outlining convention obligations to maintain records and prepare periodic reports).

95. WORLD WILDLIFE CRIME REPORT, *supra* note 33, at 9.

96. *See* CITES, *supra* note 65, art. XVIII (outlining procedure for dispute resolution).

97. *Id.* ¶ 1.

98. *Id.* ¶ 2.

99. *See* Sand, *supra* note 5, at 16–17 (explaining that Member States must implement domestic legislation to satisfy treaty demands).

100. *Id.* at 17.

101. *See id.* at 15 (discussing anecdote of custom officials’ lack of familiarity with CITES); *see also* Wyatt, *Canada and Cites*, *supra* note 4 (discussing limitations and best practices of implementing CITES in Canada).

demonstration of this problem, a CITES researcher wrote about his experience testing the efficacy of the CITES system in the 1970s and 1980s and described how comically easy it was to bring endangered plant species through customs in many Member States.<sup>102</sup>

To ensure compliance among Member States, CITES implemented a three-step embargo mechanism through Resolution 14.3.<sup>103</sup> First, the CITES Secretariat is informed of a complaint of noncompliance.<sup>104</sup> It then notifies the party accused of noncompliance of the complaint.<sup>105</sup> The second step is contingent on the party's actions.<sup>106</sup> If the party fails to take sufficient remedial action in a reasonable amount of time, then the issue goes to the Standing Committee.<sup>107</sup> The Standing Committee may issue an official warning to the party, as well as recommend other measures.<sup>108</sup> Finally, as a last resort, the Standing Committee may recommend an embargo.<sup>109</sup>

A general embargo prohibits the exportation of species on Appendix II of CITES by the targeted party state.<sup>110</sup> Absent an embargo, some qualified trade is allowed of species listed on Appendix II.<sup>111</sup> The embargos seem to be effective in restoring compliance in about 80% of cases.<sup>112</sup> Notably, threatened sanctions in 2013 inspired Thailand to crack down on its illegal ivory market, and domestic trade in ivory fell by about 96%.<sup>113</sup>

However, scholars have noted that this mechanism is often implemented against developing nation-states in the southern hemisphere, while more powerful nation-states are exempted.<sup>114</sup> One example is Japan's noncompliance regarding sei whales in the North Pacific, which are currently listed on Appendix I and afforded the most protection under CITES.<sup>115</sup> While Japan claims such hunting is only done for research purposes, it has not followed the proper CITES protocols, including verification by a scientific authority.<sup>116</sup> Japan is also a member of the CITES

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102. See Sand, *supra* note 5, at 16 ("One obvious risk was to hit upon the same embarrassed customs inspector twice in a row – as happened to me at my hometown airport in Munich: What that Bavarian customs officer asked me to do with that cactus (in the native Bavarian dialect) is unfit for print, and therefore could not be fully included in my report to the national CITES authority.").

103. *Id.* at 17–18.

104. *Id.* at 17.

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.* at 17–18.

109. *Id.* at 18.

110. *Id.*

111. *Id.*

112. *Id.*

113. Nuwer, *supra* note 8.

114. See Sand, *supra* note 5, at 22 (stating roughly 95% of states targeted by embargoes were developing countries).

115. *Id.* at 23.

116. *Id.*

Standing Committee and the second-largest financier of the convention budget.<sup>117</sup> Although the United Kingdom raised concerns with the Japanese practice in 2007, proceedings against Japan were deferred until 2016.<sup>118</sup> This suggests that CITES provisions are not always enforced equitably.<sup>119</sup>

CITES relies on Member State enforcement; these states, in turn, rely in part on their regional or otherwise subnational governments to enforce CITES's provisions.<sup>120</sup> Jonathan Liljeblad analogizes this to the devolution of power in the United States.<sup>121</sup> Devolution is a systematic transfer of authority from national governments to subnational governments, a primary example being the distribution of authority between the American federal government and the fifty states.<sup>122</sup> In the CITES context, this involves reliance on national and subnational governments to carry out the day-to-day work of enforcing international wildlife law.<sup>123</sup> While this reflects CITES's declared preference for local enforcement, the reality has been lackluster local participation and enforcement.<sup>124</sup> Not all of this is the fault of Member States; in fact, much of the ineffectiveness comes from confusion regarding jurisdiction and operational shortfalls.<sup>125</sup> As a result, noncompliance is rather rampant.<sup>126</sup>

Some countries have not even enacted the enabling legislation that is required for them to comply.<sup>127</sup> Countries regularly fail to turn in the data required by CITES, impairing the CITES Secretariat's ability to operate and keep appendices up to date.<sup>128</sup> Corruption is common too.<sup>129</sup> "Some countries will sell you a CITES permit for pretty much anything you want," said Tim Steele, the U.N. Office on Drugs and Crime's global anticorruption advisor.<sup>130</sup>

CITES tries to stay within its purpose of regulating international wildlife

117. *Id.* at 26.

118. *Id.* at 27.

119. *See id.* (noting that Japanese hunting of sei whales demonstrates double standard of CITES implementation, favoring prominent states).

120. Jonathan Liljeblad, *Finding Another Link in the Chain: International Treaties and Devolution to Local Law Enforcement in the Case of the Convention on the International Trade in Endangered Species*, 18 S. CAL. INTERDISC. L.J. 527, 529 (2009).

121. *Id.* at 530.

122. *Id.* at 531.

123. *See generally id.* (describing implementation of CITES and ESA in United States and difficulties encountered in coordination).

124. *See id.* at 541 (explaining local government provides a low level of participation in regulating endangered species trade).

125. *See id.* at 542 (highlighting tension between consistency of federal regulation and local expertise when administering CITES and ESA).

126. *See* Nuwer, *supra* note 8 (detailing both intentional and unintentional noncompliance with CITES, including reporting issues, corrupt CITES representatives, and lack of legislation implementing CITES domestically).

127. *Id.*

128. *Id.*

129. *See id.* (explaining some CITES representatives are negligent or abusive of the system).

130. *Id.*

trade.<sup>131</sup> John Scanlon, the former CITES Secretary-General, said, "CITES has enjoyed keeping its rather narrow focus" on trade, avoiding getting involved with animal welfare, control of invasive species, and climate impacts.<sup>132</sup> For example, after the outbreak of COVID-19, speculation over whether it was caused by wildlife trade emerged.<sup>133</sup> CITES issued a statement which read, "[m]atters regarding zoonotic diseases are outside of CITES's mandate and therefore the CITES Secretariat does not have the competence to make comments regarding the recent news on the possible links between human consumption of wild animals and Covid-19."<sup>134</sup> This narrow focus is justified by the existence of other treaties and international organizations addressing other areas of concern to international wildlife law.<sup>135</sup>

Buy-in and implementation by national governments can lead and has led to great successes in saving endangered species threatened by wildlife trade.<sup>136</sup> As a direct or indirect result of CITES implementation at the national level, certain species have been brought back from the brink of extinction, including the American alligator,<sup>137</sup> the Nile crocodile,<sup>138</sup> and the South American vicuña.<sup>139</sup> The United States and Canada serve as good examples of the successes and limitations of CITES given their well-documented efforts and clear cooperation with the Convention.<sup>140</sup>

This paper relies upon these two countries because they are two of the best-documented case studies available and also have achieved some success in implementing wildlife protections.<sup>141</sup> Their experiences also show some of the

131. See Malavika Vyawahare, *As Covid-19 Pandemic Deepens, Global Wildlife Treaty Faces Scrutiny*, ECO-BUSINESS (May 18, 2020), <https://www.eco-business.com/news/as-covid-19-pandemic-deepens-global-wildlife-treaty-faces-scrutiny> (discussing CITES's narrow focus).

132. *Id.*

133. *See id.* (discussing speculation over whether COVID-19 was linked to wildlife trade).

134. *Id.*

135. *See id.* (discussing collaboration between CITES and other agencies, such as INTERPOL and World Customs Organization, due to complexity of global wildlife trade).

136. *See Wildlife Treaty Comes of Age*, *supra* note 26 (emphasizing significance of national conservation efforts in cooperation with sustainable international trade in recovery of endangered species).

137. Clif Horton & Bruce Weissgold, *A CITES Sustainable Trade Success Story: American Alligator Recovery and Trade*, U.S. FISH & WILDLIFE SERV. INT'L AFFS. (Feb. 28, 2020), <https://web.archive.org/web/20210522174747/https://fws.gov/international/articles/a-cites-sustainable-trade-success-story-alligator-recovery-and-trade.html>.

138. *Wildlife Treaty Comes of Age*, *supra* note 26.

139. *Id.*

140. *See* Catherine M. Foley et al., *Listing Foreign Species Under the Endangered Species Act: A Primer for Conservation Biologists*, 67 BIOSCIENCE 627, 635 (2017) (analyzing effectiveness of U.S. CITES implementation on protected domestic and foreign species); *see also* Wyatt, *Canada and CITES*, *supra* note 4 (providing background about Canada's implementation of CITES and discussing potential changes to increase conservation efficacy).

141. *See* Foley et al., *supra* note 140, at 628 (noting comprehensive nature of U.S. conservation laws); *see also* Wyatt, *Canada and CITES*, *supra* note 4, at 154–55 (highlighting successful conservation efforts such as agency cooperation, clear standards for enforcement agencies, and coordination with local communities).

difficulties of implementing CITES.<sup>142</sup> It is harder to find data on other countries, but Arie Trouwborst has compiled existing data to examine the impact CITES has had on large animals, especially in Africa.<sup>143</sup> All these examples aim to illustrate CITES's partial effectiveness in staving off the extinctions of these species, while also drawing attention to CITES's serious limitations.<sup>144</sup>

The next few sections will elaborate on specific problems with CITES implementation: first, a discussion of the American and Canadian experience,<sup>145</sup> followed by an exploration of the difficulties of conservation of certain categories of species.<sup>146</sup> Few studies have been able to systematize the total net effect of CITES on all implicated flora and fauna because of CITES's scale and scope.<sup>147</sup> Therefore, the best way to look at CITES's effectiveness is through well-documented implementations.

### *A. The United States: Cross-Listing and its Limits*

The need for international cooperation is made evident by the United States' practice of listing foreign species for protection under the ESA.<sup>148</sup> International cooperation is needed in this area because this practice costs time, money, and energy with little return, as jurisdictional lines limit the efficacy of domestic legislation.<sup>149</sup> The ESA implements CITES in the United States,<sup>150</sup> and the U.S. Fish and Wildlife Service (FWS), in turn, administers the ESA.<sup>151</sup>

The ESA was established in 1973, prior to CITES,<sup>152</sup> to protect some of the United States' "charismatic fauna" animals, such as the bald eagle or the grizzly bear, which are popular among citizens and tourists.<sup>153</sup> Its preamble, particularly

142. See Foley et al., *supra* note 140, at 635 (discussing limits in U.S. legislation to listing foreign species on ESA); see also Wyatt, *Canada and CITES*, *supra* note 4, at 150–51 (noting areas where Canada can improve domestic conservation efforts including agency involvement, speciesism, and slow legislative processes).

143. See generally Trouwborst, *International Wildlife Law*, *supra* note 34; Trouwborst, *Carnivore Conservation*, *supra* note 37.

144. See *infra* Part III for further analysis of CITES's limitations in the context of individual countries and species.

145. See *infra* Parts III.A and III.B for a discussion about successes and challenges implementing CITES in the United States and Canada, respectively.

146. See *infra* Parts III.C and III.D for an analysis of the difficulties in the conservation of certain species that inheres in CITES implementation.

147. See Trouwborst, *Carnivore Conservation*, *supra* note 37, at 1585 (noting CITES and other international conservation instruments require in-depth analyses to gauge their current and potential effects on large carnivore conservation).

148. See Foley et al., *supra* note 140, at 635 (discussing limitations of implementing ESA policies for species outside the United States).

149. See *id.* (conducting study finding that listing foreign species on ESA did not promote endangered species recovery despite significant time and energy required of federal scientists).

150. CITES, U.S. FISH & WILDLIFE SERV., <https://www.fws.gov/international/cites/> (last visited Jan. 20, 2022) [hereinafter CITES, FWS].

151. *Id.*

152. Endangered Species Act of 1973 § 1. CITES entered into force in 1975. CITES, FWS, *supra* note 150.

153. *The Overcrowded Ark*, THE ECONOMIST (Sept. 6, 2007),

the language from its “Findings” section, reads like that of CITES. For example, “[R]ecognizing that wild fauna and flora . . . are an irreplaceable part of the natural systems of the earth which must be protected for this and the generations to come” is similar to “these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people.”<sup>154</sup> In addition to implementing CITES, the ESA provides a legal framework for protecting critical habitats.<sup>155</sup>

The United States has had some notable successes in implementing endangered species protection, in part because American attitudes to ESA and CITES-style conservation are sympathetic across party lines.<sup>156</sup> Prominent Republican birders have included former First Lady Laura Bush and former U.S. Senator John McCain.<sup>157</sup> Additionally, former President Donald Trump has expressed disgust at trophy hunting,<sup>158</sup> and the Audubon Society celebrated President Joseph Biden’s 2020 presidential election victory.<sup>159</sup> As further evidence for the Act’s cross-party popularity, a seven-term California representative even lost his seat in Congress after trying to amend the law.<sup>160</sup>

Furthermore, the ESA includes protections for foreign species; trade in certain species listed on CITES Appendices but not native to the United States may be prosecuted under American law.<sup>161</sup> This is unique.<sup>162</sup> Several other wealthy countries—including Canada, Japan, the United Kingdom, Australia, and New Zealand—protect native but not foreign species.<sup>163</sup> An additional U.S. law, the Lacey Act, allows for the prosecution of people within U.S. jurisdiction who break foreign wildlife laws, regardless of whether the victim species is listed as protected

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<https://www.economist.com/united-states/2007/09/06/the-overcrowded-ark>.

154. *Compare CITES*, FWS, *supra* note 150 (stressing value of wild fauna and flora and urgency of international action by states to protect it), *with* Endangered Species Act of 1973 § 2(a)(3) (finding wildlife was of great value to the United States and in need of conservation efforts from the government).

155. *Id.*

156. *See Companies Can Now Get Away with Killing America’s Birds*, THE ECONOMIST (Feb. 22, 2020), <https://www.economist.com/united-states/2020/02/22/companies-can-now-get-away-with-killing-americas-birds> (discussing success and bipartisan support enjoyed by Migratory Bird Treaty Act).

157. *Id.*

158. Kitty Block, *Defying Trump, Fish and Wildlife Service Reverses Ban on ‘Horror Show’ of Elephant and Lion Trophy Hunting Imports*, THE HUMANE SOC’Y OF THE U.S.: A HUMANE WORLD (Mar. 6, 2018), <https://blog.humaneociety.org/2018/03/defying-trump-fish-wildlife-service-reverses-ban-horror-show-elephant-lion-trophy-imports.html>.

159. *See* Andy McGlashen, *What Biden’s Presidential Win Means for Birds and the Environment*, AUDUBON (Nov. 9, 2020), <https://www.audubon.org/news/what-bidens-presidential-win-means-birds-and-environment> (noting conservationists’ hopes that Biden will progress policy to address climate crisis and protect wildlife and their environments).

160. *The Overcrowded Ark*, *supra* note 153.

161. Foley et al., *supra* note 140, at 628–29.

162. *See id.* at 628 (discussing how ESA inclusion of foreign species is an exception compared to domestic laws of other CITES signatories).

163. *Id.*

under the ESA.<sup>164</sup>

Section 9 of the ESA prohibits interstate or foreign trade in species listed as “endangered.”<sup>165</sup> Species may also be listed as “threatened” and subject to less stringent protections.<sup>166</sup> While U.S. citizens may “take” a protected species in a foreign country, they must receive a permit from the FWS to import that species back into the United States.<sup>167</sup> This is especially relevant to trophy hunting.<sup>168</sup> All CITES-listed species are protected by the ESA regardless of whether they are officially listed on FWS lists, because the ESA also punishes CITES violations.<sup>169</sup>

The ESA’s foreign listing practice is inherently limited in power—the United States cannot enforce its laws outside of its jurisdiction.<sup>170</sup> Cross-listing, which entails listing species on both the CITES Appendices and a national protection list, may be redundant because species are already afforded legal protection under CITES.<sup>171</sup> In a way, though, the ESA illustrates a need for CITES; while many celebrate the spirit of the ESA’s foreign listing practice, its limits demonstrate that individual nations alone cannot combat such global problems.<sup>172</sup>

### **B. Canadian Enforcement Issues**

Canada’s experience implementing CITES is also illustrative of CITES’s limits and possibilities.<sup>173</sup> Canada was one of the original parties to CITES and passed the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (WAPPRIITA) in 1996 as its CITES implementing legislation.<sup>174</sup> Since Canada has relatively few native endangered species, its authorities primarily focus on imports.<sup>175</sup> Penalties for WAPPRIITA violations include fines up to 12 million CAD and imprisonment up to five years.<sup>176</sup> To conform with CITES regulations, Canada employs management and scientific authorities; the former grant certificates for exceptions while the latter conduct research and makes recommendations.<sup>177</sup>

164. Lacey Act of 1900, 16 U.S.C. § 3372(a)(2)(A).

165. Endangered Species Act of 1973 § 9.

166. *See id.* at 628 (explaining legislative delay in protecting threatened species under ESA and their limited protections); *see also* Endangered Species Act of 1973 § 4(b) (stating basis for determination of species as endangered or threatened)

167. *See* Endangered Species Act of 1973 § 3(19) (“The term ‘take’ means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.”); *see also* § 10(a) (detailing permit requirements for exceptions to import restrictions).

168. Foley et al., *supra* note 140, at 629.

169. *Id.*

170. *Id.* at 633, 635.

171. *Id.* at 635.

172. *Id.*

173. *See* Wyatt, *Canada and CITES*, *supra* note 4, at 150–56 (analyzing Canada’s approach to domestic application of CITES).

174. *See id.* at 146–47 (ratifying CITES in 1975 before it came into force).

175. *Id.* at 147.

176. *Id.*

177. *Id.* at 148–51.



Canada also has a well-regarded police force and a regulatory agency, both of which enforce its wildlife law.<sup>178</sup> These agencies work well with public health officials to stop disease-carrying vectors from bringing in pathogens dangerous to native ecosystems.<sup>179</sup> An interprovincial species transportation ban and cooperation with the First Nations to conserve wildlife complement the agency protection of said ecosystems and their species.<sup>180</sup>

Canada's WAPPRIITA successes are accompanied by struggles.<sup>181</sup> First, while it has a robust enforcement bureaucracy, it relies on other agencies, like customs, which prioritize terrorism and drug smuggling over illegal wildlife trade.<sup>182</sup> Second, priorities within the agency are often subject to "speciesism," preferring to protect charismatic, large, land animals over marine life.<sup>183</sup> Third, designation of new species as endangered is delayed, as WAPPRIITA requires public consultation and Parliamentary approval before a species obtains protection.<sup>184</sup> So while Canada may be a CITES success story, it also reflects international wildlife law's difficulties: lax local enforcement, speciesism, and a necessary reliance on Member States.<sup>185</sup>

### *C. Challenges with Protecting Large Carnivores Across the Globe*

Case studies of animals can also illustrate the effect of CITES, especially when the species require transnational protection.<sup>186</sup> They are especially helpful in illustrating areas of growth within CITES because protection of these "charismatic [mega]fauna" often enjoy broad political support.<sup>187</sup> If a law struggles to protect popular endangered species, it stands to reason that the law will struggle even more to protect less popular species.<sup>188</sup> While the United States and Canada show how

178. *See id.* at 152 ("For Horne . . . the optimal wildlife crime policy response must be (1) proactive and intelligence based, (2) multifaceted, addressing many aspects of the problem, (3) multilateral, involving cooperation between several actors, and (4) monitored, evaluated, and adapted as necessary. There is evidence of each of Horne's four criteria in the Canadian context, particularly as interviewees highlighted, due to the strengths of Canada's authorities.").

179. *See id.* at 154 (detailing Canadian restrictions on pathogen carrier imports such as requiring additional health and import permits).

180. *Id.* at 155.

181. *See id.* at 149 (describing areas for improvement in Canada's CITES implementation).

182. *Id.* at 150–51.

183. *Id.* at 151.

184. *See id.* (stating timeline requirements under WAPPRIITA are longer than those under CITES, leading to frequent CITES reservations when listing endangered and threatened species).

185. *See id.* at 149–52 (noting while Canada has had success in domestic implementation of CITES, difficulties of enforcement by border patrol and global nature of wildlife trade require international involvement).

186. *See* Trouwborst, *Carnivore Conservation*, *supra* note 37, at 1568 (noting conservation of large carnivores requires international cooperation as many populations roam across multiple countries).

187. *See, e.g.,* *The Overcrowded Ark*, *supra* note 153 (mentioning overwhelming popular support for ESA which was originally implemented to protect "charismatic fauna" such as bald eagle).

188. *See* Foley et al., *supra* note 140, at 630 (finding that less charismatic species were underrepresented under ESA); *see also* Wyatt, *Canada and CITES*, *supra* note 4, at 151 (noting

CITES works for nation-states, the lion and the ocelot show how CITES works for animals.<sup>189</sup>

CITES has struggled to protect some large carnivores, including lions, which are often featured in the public relations campaigns of international conservationists.<sup>190</sup> Large carnivores, including big cats, big dogs, and bears,<sup>191</sup> are threatened by trade.<sup>192</sup> Though Arie Trouwborst credits the institutional strength of CITES, the illegal trade in large carnivores has risen due to poaching.<sup>193</sup> CITES has issued resolutions calling on countries that feature large incidences of poaching to strengthen their anti-poaching enforcement.<sup>194</sup> However, these resolutions not only underline the difficulty for CITES enforcement once CITES gives up power to nation-states, but also highlight the need for better compliance and implementation.<sup>195</sup>

Countries may satisfy their CITES obligations by setting quotas on exports, and many have done so for lions.<sup>196</sup> Lions are currently listed on Appendix II, despite efforts by Kenya and some Central and West African nations to move them to Appendix I.<sup>197</sup> Due to the trophy hunting trend and the market for lion bones, CITES has imposed quotas on the export of lion bones, save those bred in captivity.<sup>198</sup> CITES tries to accommodate economic and recreational uses of trophy hunting by rural African communities by suggesting that, done in a responsible manner, trophy hunting may aid in the conservation of lions.<sup>199</sup> But CITES has realized that it has certain limits; some of the suggested remedies to prevent the

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even though no native Canadian fish are listed under CITES, it is unclear how Canada's Species at Risk Act interacts with WAPPRITA).

189. See generally Arie Trouwborst et al., *International Law and Lions* (Panthera leo): *Understanding and Improving the Contribution of Wildlife Treaties to the Conservation and Sustainable Use of an Iconic Carnivore*, 21 NATURE CONSERVATION 83 (2017) [hereinafter Trouwborst, *International Law and Lions*] (highlighting unique legal challenges of lion conservation in international law); see also Kimberley Graham, *International Intent and Domestic Application of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES): The Case of the Ocelot* (Leopardus pardalis), 20 J. INT'L WILDLIFE L. & POL'Y 253 (2017) (providing history of ocelot trade, threats posed to ocelot populations, and international and domestic conservation efforts).

190. See Trouwborst, *Carnivore Conservation*, *supra* note 37 (discussing various challenges faced in large carnivore conservation by analyzing several international treaties and noting even strictest CITES regime has been unsuccessful in reducing trade of large carnivores).

191. *Id.* at 1572.

192. *Id.* at 1576.

193. *Id.* at 1577.

194. *Id.*

195. See *id.* (demonstrating need for more effective implementation and enforcement of controls, as well as noting partnerships with several intergovernmental entities to aid national and regional enforcement networks).

196. See Trouwborst, *International Law and Lions*, *supra* note 189, at 102–07 (presenting general discussion of CITES protection of lions).

197. *Id.* at 103–04.

198. *Id.*

199. *Id.* at 105.

sale of lion bones have been rejected as impractical.<sup>200</sup> Lions, like other large carnivores, suffer as a result of weak legislation and enforcement of international wildlife law.<sup>201</sup>

Trouwborst presents several suggestions for protecting large carnivores.<sup>202</sup> Importantly, these proposals could be applied by CITES for all species.<sup>203</sup> First, he suggests improving the implementation of existing, agreed-upon provisions of CITES.<sup>204</sup> This would involve proper enforcement of CITES law against offenders.<sup>205</sup> Wildlife law enforcement must be properly trained and equipped to counter poaching and illegal trade.<sup>206</sup> Another suggestion is for the clarification of legal obligations and authoritative, though non-binding, guidance from the Convention of Biological Diversity (CBD) on how to best protect large carnivores.<sup>207</sup> The CITES COP and Bern Convention have issued guidance for big cat conservation in Asia and for the protection of European carnivores, respectively.<sup>208</sup> CITES could implement Trouwborst's suggestions to strengthen wildlife law enforcement and achieve some of their stated goals.

Another illustrative example of the triumphs and trials of CITES is the case of the ocelot, an American cat species listed on Appendix I of CITES and considered endangered by the International Union for the Conservation of Nature (IUCN).<sup>209</sup> Multiple nations in North, Central, and South America have implemented CITES legislation and have begun enforcement, resulting in a decrease in the trade in ocelot furs.<sup>210</sup> But despite an overall decline, trade continues to reduce the range and abundance of ocelots.<sup>211</sup>

Part of the problem is that ocelots receive differing levels of protection depending on which country they are in.<sup>212</sup> The nations often operate in silos, caring for ocelots based on conditions within each nation.<sup>213</sup> But ocelots, like many animals, are transnational beings that do not abide border agents as readily as

200. *See id.* (noting split-listing lions on Appendices I and II may be unviable because of enforcement problems it creates).

201. *See id.* at 119–20 (acknowledging lion protections would provide more security if range states lived up to their responsibilities, but as things stand, there are significant compliance deficiencies).

202. *See* Trouwborst, *Carnivore Conservation*, *supra* note 37, at 1567 (surveying international legal instruments protecting carnivores).

203. *See id.* at 1568 (noting general applicability of international cooperation and adjusting law and policy to wildlife population range instead of arbitrary nation-state borders).

204. *Id.* at 1585.

205. *See id.* at 1577 (listing innovative enforcement methods that can be implemented to strengthen enforcement in key regions).

206. *Id.*

207. *Id.* at 1580.

208. *Id.* at 1585.

209. Graham, *supra* note 24, at 253–54.

210. *Id.* at 287–88.

211. *Id.* at 288.

212. *Id.*

213. *Id.*

humans.<sup>214</sup> Kimberley Graham, a University of Sydney graduate legal scholar, calls on the CITES Secretariat to coordinate and inform efforts to protect the ocelot, suggesting that increased sharing of resources—even simply training and knowledge—will improve the protection of wildlife.<sup>215</sup>

While the limitations of international wildlife law are real, there are also opportunities to expand its influence. International wildlife law creates a stable commitment among nations which remains through election cycles and regime changes.<sup>216</sup> Other accomplishments include the creation of protected habitats and the instigation of domestic legislation that protects wildlife, such as the ESA in the United States.<sup>217</sup> And, not to be neglected are actual improvements in the survival of certain endangered species: the CITES ban on the trade in jaguar and other feline skins in South America has notably improved population levels.<sup>218</sup>

Graham highlights another fundamental problem with CITES and international wildlife law in general: commodification.<sup>219</sup> Commodification stems from a utilitarian view of nature that dominates the political and economic elite dictating international wildlife law.<sup>220</sup> As Graham puts it, “our own perceptions toward the natural world and the way they manifest into common values, behaviours, norms, and laws are at the core of our efforts (or lack of) to protect and conserve biodiversity and to live in harmony with nature.”<sup>221</sup> The permit system within CITES may suggest a callousness towards nature whereby animals are interchangeable and disposable, provided the disposal takes place at a slower pace so as to not deplete the supply.<sup>222</sup> But this may also reflect the need to use a certain mathematical detachment to talk about large, global problems like the international wildlife trade.

#### ***D. Large Herbivore Conservation***

Many large herbivores are keystone species that shape the function and health of their habitats by “cycling nutrients, dispersing seeds, providing food for predators and scavengers, influencing fire regimes, and providing benefits [to other species].”<sup>223</sup> Their continued existence benefits human life, and conservationists

214. *See id.* at 289 (detailing issues in ocelot protection across nation-states).

215. *Id.* at 290.

216. Trouwborst, *International Wildlife Law*, *supra* note 34, at 787.

217. *Id.*

218. *Id.*

219. Graham, *supra* note 24, at 290.

220. *See id.* at 290–91 (noting objectification of ocelots disregards animals’ individual autonomy and human disregard of natural world affects laws protecting wildlife).

221. *Id.* at 291.

222. *See id.* at 290–91 (“As the survival of numerous ocelots is largely dependent on the way humans perceive and (under) value them, it seems relevant to consider if an endangered species will ever be appropriately protected when so little value is assigned to the protection of each individual.”).

223. Arie Trouwborst, *Global Large Herbivore Conservation*, 28 BIODIVERSITY & CONSERVATION 3891, 3892 (2019) [hereinafter Trouwborst, *Global Large Herbivore Conservation*].

have considered effective multinational treaties like CITES to be instrumental in keeping them alive.<sup>224</sup>

Large herbivores account for a substantial percentage of the wildlife trade.<sup>225</sup> Mammals account for 51% generally, and the ivory trade makes up a large portion of those seizures.<sup>226</sup> 64% of large herbivores—defined by a weight over 100 kilograms—are placed at least on the IUCN threatened list, and 60% have declining populations as of 2019.<sup>227</sup> Like large carnivores, the legal framework covering large herbivores is complex, involving a great degree of overlap of international law and national law.<sup>228</sup>

CITES protects thirty-nine large herbivore species, with twenty-eight of those species on Appendix I.<sup>229</sup> Elephants and rhinos are featured prominently in CITES promotional material, given their high visibility and popularity among the general population.<sup>230</sup> CITES has prioritized elephants in particular as the ivory trade nearly pushed them to extinction by 1976.<sup>231</sup> In 1989, they were listed on Appendix I,<sup>232</sup> with CITES's strictest licensing requirements.<sup>233</sup> Since 1991, officials have seized almost 600,000 kilograms of ivory in enforcing protections.<sup>234</sup> Since the 1989 ban on the ivory trade and the 2017 shutdown of legal markets for ivory in the United States and China, ivory prices have steadily risen.<sup>235</sup> Illegal ivory markets seemed to dry up around the same time.<sup>236</sup>

The effectiveness of these regulations is a topic of debate.<sup>237</sup> Such seizures have limited the supply of ivory, and nations have applied criminal penalties, but this has also led to price increases consistent with a smaller supply of ivory.<sup>238</sup> Conservationists worry that a smaller supply might indirectly encourage more poaching.<sup>239</sup>

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224. *Id.* at 3892, 3901.

225. *See, e.g.,* Sosnowski et al., *supra* note 31, at 392 (detailing illegal trade of ivory sourced from elephants).

226. *Id.*

227. Trouwborst, *Global Large Herbivore Conservation*, *supra* note 223, at 3892, 3895.

228. *See id.* at 3902–03 (acknowledging although treaties are binding under international law, their success hinges on country-specific compliance).

229. *Id.* at 3906.

230. *See Topics*, CITES, [https://cites.org/eng\\_](https://cites.org/eng_) (last visited Sep. 18, 2022) (showing that elephants and rhinoceroses are featured on CITES's website); *see also More than Half of the UK Public Believe that Rhinos Will Be Extinct in the Wild in 30 Years*, GOV.UK (Mar. 4, 2013), <https://www.gov.uk/government/news/more-than-half-of-the-uk-public-believe-that-rhinos-will-be-extinct-in-the-wild-in-30-years> (describing rhinoceros and elephant as iconic species).

231. Sosnowski et al., *supra* note 31, at 392.

232. *Id.*

233. CITES, *supra* note 65, art. II, ¶ 1.

234. Sosnowski et al., *supra* note 31, at 392.

235. *Id.* at 398.

236. WORLD WILDLIFE CRIME REPORT, *supra* note 33, at 14.

237. *See, e.g.,* Sosnowski, *supra* note 31, at 398 (summarizing arguments of researchers that disagree on effect of ban on elephant poaching).

238. *Id.* at 392, 398.

239. *See id.* at 392 (noting increases in ivory market prices incentivize elephant poaching).

Some species are split-listed—their appendix placement depends on the threats faced by a particular subspecies or from a particular region.<sup>240</sup> Trouwborst has argued that while such flexibility is politically convenient, it is the “Achilles heel” of CITES, as it adds complexity to an area where many customs officials are already on unsure footing.<sup>241</sup> However, CITES has shown some successes in the large herbivore space, including the guanaco, the wood bison, and the Cape mountain zebra.<sup>242</sup> But large herbivore conservation has also illustrated the weakness of CITES’s decision-making process, with disagreement stymying proposals aimed at protecting elephants and rhinos from being hunted.<sup>243</sup> CITES parties even rejected a proposal to include the woolly mammoth on its Appendix I in an effort to stop trade in ivory,<sup>244</sup> which has been a consistent issue in the international trade of wildlife for several years.<sup>245</sup> So, while CITES has had some successes, it has been undermined by politicization and enforcement problems.<sup>246</sup>

#### IV. A PROGRAM TOWARDS CENTRALIZATION: PROPOSED CHANGES TO CITES

CITES, as an international agreement, faces staunch difficulties.<sup>247</sup> A correspondent for the Economist described the 2016 Convention as one where “khaki-clad hunters rub shoulders with animal-rights activists, nerdy scientists and blustering politicians.”<sup>248</sup> Beyond these different sub-national interest groups, CITES is the site of geopolitical conflicts.<sup>249</sup> Many of the debates often include a racial and a class element to them—private owners of rhinos are often white, and they seek to monopolize and exclude their trade from Black African poachers.<sup>250</sup> Conservationists tend to be members of the middle class and seek animal protections which may harm the economies of poorer communities in developing countries.<sup>251</sup> And while all attendees, whether sportsmen or vegans, may have a

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240. See Trouwborst, *Global Large Herbivore Conservation*, *supra* note 223, at 3906 (indicating four species are split-listed and detailing different treatment of subspecies for red deer).

241. *Id.*

242. See *id.* at 3908 (providing example of herbivores that have been downlisted on CITES appendices due to conservation successes).

243. See *id.* at 3908 (citing conflicting proposals from parties regarding African elephants and white rhinoceros as well as continued illegal trading).

244. *Id.*

245. See Sosnowski, *supra* note 31, at 392 (describing role of ivory trade in declining elephant populations).

246. See Trouwborst, *Global Large Herbivore Conservation*, *supra* note 223, at 3902–03 (describing difficulties in implementing and enforcing international treaties at local level including capacity shortages, corruption, and governance problems).

247. See generally, *To Sell or Not to Sell? Conservationists Argue About Ivory and Rhino Horn*, THE ECONOMIST (Sept. 29, 2016), <https://www.economist.com/middle-east-and-africa/2016/09/29/to-sell-or-not-to-sell> [hereinafter *To Sell or Not to Sell?*].

248. *Id.*

249. See *id.* (describing disputes between strict conservationists, private owners, and politicians on impact of trade bans and best path forward to fund conservation efforts).

250. *Id.*

251. See *id.* (noting debate about animal conservation must include solutions for impoverished people who rely on animal trade to avoid efforts being seen as a middle-class

desire to preserve wild animals, their disagreements over operational policy are quite sharp.<sup>252</sup>

There is also an ideological divide within CITES.<sup>253</sup> On the one side are the “preservationists,” those who argue against any use of wildlife in favor of a new environmental ethic.<sup>254</sup> On the other are the “conservationists,” who favor responsible use.<sup>255</sup> CITES must balance these groups’ competing interests to adequately regulate the international wildlife trade.<sup>256</sup> Keeping a narrow focus has helped CITES preserve political capital and achieve some victories, such as the 1990 ban on the elephant ivory trade.<sup>257</sup>

CITES must accommodate various national, ideological, and economic perspectives. Amending CITES is difficult—nations must do so, instead of scientists, conservationists, or recreation groups.<sup>258</sup> These nations are not above trading votes to get protections or allowances for particular species.<sup>259</sup> The need for such compromise has engendered some pessimism.<sup>260</sup> As one commentator put it, “[i]t seems that CITES, as it stands, has become obsolete. It needs to be renewed. It needs to be modernised. It needs to be taken into the 21st century . . . . We can’t go on talking about trading in endangered species, when we have such big biodiversity loss in the world.”<sup>261</sup>

So how can CITES become more effective? CITES need not undertake vast structural reforms; rhetorical and operational leadership may help alleviate some of the problems, including difficulty in local and regional enforcement. This will involve a heightened role in dispute settlement, the provision of guidance for conservation efforts, and the strengthening of operations. CITES could also assume more of a position in moral leadership; much of its current operations are rooted in good conservation principles but speak in a language of commodification. If we believe that language can shape thought and that thought shapes action, CITES could change how the international community thinks about stopping a mass extinction event.

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issue).

252. *See, e.g., id.* (acknowledging polarized perspectives of rhino owners, rhino horn medicine-makers, and conservation groups on rhino horn market).

253. Stoett, *supra* note 71, at 569.

254. *Id.*

255. *Id.*

256. Vyawahare, *supra* note 131.

257. *Id.*

258. *See List of Parties to the Convention, supra* note 67 (describing how CITES operates).

259. *See Wyatt, Canada and CITES, supra* note 4, at 145 (describing how additions and removals are made to CITES’ appendices and how each party may utilize their one vote).

260. Vyawahare, *supra* note 131.

261. *Id.*

### A. Arbitrational Engagement

International wildlife law has been implicated in disputes in the WTO.<sup>262</sup> Throughout its two-and-a-half-decade history, the WTO, with its desire for liberalized trade and comparative advantage, has been viewed by some conservationists as inimical to wildlife protection.<sup>263</sup> But at times, the WTO has also been a force for conservation and has used CITES as authority in some of its decisions.<sup>264</sup> One way it has done this is through the decisions of its dispute resolution body,<sup>265</sup> which handles trade disputes between Member States.<sup>266</sup> Appeals are handled by the Appellate Body, a seven-member court representative of the international membership.<sup>267</sup> Two decisions exemplify the Body's commitment to animal welfare in the context of international trade: *United States – Import Prohibition of Certain Shrimp and Shrimp Products (US – Shrimp)* and *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products (EC – Seal Products)*.<sup>268</sup>

The *US – Shrimp* case arose from American regulations which sought to protect endangered sea turtles.<sup>269</sup> Responding to concerns that shrimp fishing often ends up killing sea turtles and acting in accordance with its own law (the ESA), the United States placed an import ban on shrimp that was not harvested in a manner safe for sea turtles.<sup>270</sup> The measure was challenged by India, Pakistan, Malaysia,

262. See, e.g., WORLD WILDLIFE CRIME REPORT, *supra* note 33, *passim* (stating that international cooperation is necessary to protect wildlife); see also, e.g., CITES AND THE WTO, *supra* note 2 (showing evolution of cooperation between WTO and CITES); see also, e.g., Appellate Body Report, *European Communities—Measures Prohibiting the Importation and Marketing of Seal Products*, WTO Doc. WR/DS400/AB/R (adopted May 22, 2014) [hereinafter *EC – Seal Products*] (showing example of WTO annual body report with delegate nations).

263. See Sykes, *supra* note 22, at 56 (“Advocates for the better treatment of animals tend to think of international trade law as a block to the achievement of their goals, not as a legal tool that could contribute to their realization. Compassion in World Farming, for example, has described the WTO as ‘the greatest threat facing animal protection today’ and an institution the rules of which ‘have been wrecking progress on animal welfare’. These statements are fairly representative of the views of many animal welfare advocates on the relationship between international trade law and animal protection.”).

264. *Id.* at 74.

265. See *id.* (citing *United States—Import Prohibition of Certain Shrimp and Shrimp Products* as example of WTO dispute resolution body using international instruments, including CITES, to inform their decisions).

266. *Dispute Settlement*, WORLD TRADE ORG., [https://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm) (last visited Sept. 30, 2021).

267. Understanding on Rules and Procedures Governing the Settlement of Disputes art. 17, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 U.N.T.S. 401.

268. Sykes, *supra* note 22, at 74.

269. *Id.*; see also Appellate Body Report, *United States—Import Prohibition of Certain Shrimp and Shrimp Products*, ¶¶ 1–6, WTO Doc. WT/DS58/AB/R (adopted Oct. 12, 1998) [hereinafter *US – Shrimp*] (outlining in detail U.S. regulations at issue).

270. See *US – Shrimp*, *supra* note 269, ¶¶ 2–3 (noting in 1987, United States required shrimp trawl vessels to include turtle excluder devises (TEDs) in areas with high sea turtle mortality).



and Thailand in 1997.<sup>271</sup> On appeal, the Appellate Body of the WTO held that “measures to conserve exhaustible natural resources, whether living or non-living” may fall under Article XX(g) of the General Agreement on Tariffs and Trade (GATT), the governing treaty of the WTO.<sup>272</sup>

The Appellate Body went on to recognize that sea turtles qualified as “exhaustible natural resources,” noting that “[t]he exhaustibility of sea turtles would in fact have been very difficult to controvert since all of the seven recognized species of sea turtles are today listed in Appendix 1 of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES”).”<sup>273</sup> In doing so, the WTO adapted conservation principles and gave them relevance in international trade law.<sup>274</sup>

In *US – Shrimp*, the Appellate Body did not merely reflect what environmental instruments already said about the protection of animals in international law. It also confirmed the relevance and effectiveness of the principles expressed by those environmental instruments in another field of international law. The WTO added its contribution to the development and refinement of those principles as part of a global conversation about animal protection.<sup>275</sup>

The decision reflected the legitimacy of international wildlife law as defined by CITES, which suggests that having a body of international law can help ensure wildlife laws are respected by international organizations.<sup>276</sup>

In *EC – Seal Products*, the panel decided that the European Union’s (E.U.) Seal Regime was based on animal welfare and the prevention of animal cruelty.<sup>277</sup> This, the panel ruled, was a legitimate basis for domestic regulation and therefore qualified as a “public morals” exception under Article XX(a) of the GATT.<sup>278</sup> The Appellate Body affirmed this decision, finding that the objective of the E.U. Seal Regime conformed to the Article XX exceptions to the GATT.<sup>279</sup> By classifying animal welfare as a “public morals” exception, the Appellate Body and the WTO enabled Member States to pass domestic legislation protecting endangered species

271. *Id.* ¶ 1.

272. *Id.* ¶ 131; *see also* General Agreement on Tariffs and Trade, art. XX(g), Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194 (containing exception to General Agreement on Trade and Tariffs (GATT) for conserving exhaustible natural resources under WTO even if it imposes some restriction on free trade).

273. *Id.* ¶¶ 132, 134.

274. Sykes, *supra* note 22, at 75.

275. *Id.*

276. *Id.*

277. *See id.* at 73 (discussing panel’s reasoning that WTO members have wide discretion to pass legislation informed by moral considerations, such as animal welfare); *see also EC – Seal Products*, *supra* note 262, § 5.3.2.1 (outlining panel’s findings on moralistic legislative objectives of E.U. Seal Regime, including animal welfare considerations).

278. *See* Sykes, *supra* note 22, at 73–74 (explaining public morals exception encompasses legislation that Member States find necessary to further ideals of great moral value, such as reducing animal suffering or cruelty).

279. *EC – Seal Products*, *supra* note 262, § 6.1(c).

at home without worrying about violating the provisions of the GATT.<sup>280</sup>

These decisions by the WTO demonstrate the legitimacy given by CITES to international wildlife law.<sup>281</sup> This also shows that the political will of several countries will back up the spirit of the agreement.<sup>282</sup> Though CITES lacks a dispute resolution system like the WTO's, codifying international wildlife law in a treaty gives it force in international legal dispute resolution.<sup>283</sup> The Convention could use its legitimacy in international arbitration to continue to advocate for decisions that benefit wildlife law through providing briefs and other advocacy measures. Such recognition as an international authority on wildlife law may increase its persuasiveness when providing guidance to nations.

### ***B. Incentivizing Research and Providing Definitive Guidance to Nations***

While CITES has extensive appendices and asks countries to appoint scientific authorities, the international community is in desperate need of uniformity and guidance in order to effectively implement CITES, as well as other bodies of international wildlife law.<sup>284</sup> CITES struggles with the fact that human knowledge of the wilderness is not nearly as comprehensive as one may like to think—even scientists often have little idea of the actual population of certain species.<sup>285</sup> Those charged with enforcing wildlife trade law are often the same people charged with policing the borders for illegal drugs, fugitives, and weapons.<sup>286</sup>

In order to effectively implement CITES, nations need to be able to identify

280. See Sykes, *supra* note 22, at 73 (“The decision confirms that moral concerns about animal welfare can be a legitimate basis for domestic regulation and for invoking the exception in Article XX(a) GATT for measures necessary to protect public morals.”).

281. See CITES AND THE WTO, *supra* note 2, at 8–9 (discussing how CITES has influenced WTO and GATT jurisprudence, and in turn international wildlife law, to legitimize conservationist and animal welfare-oriented policies).

282. See Sykes, *supra* note 22, at 73–74 (discussing how states themselves have freedom to unilaterally uphold values, such as animal welfare, in policymaking).

283. See *id.* at 77 (discussing how regulatory framework and codification of wildlife law provided by CITES further influences developing agreements, such as Multilateral Environmental Agreements (MEA), which strengthen states’ enforcement and formal regulatory capacity under CITES); see also CITES AND THE WTO, *supra* note 2, at 6 (outlining several features of CITES’ regulatory functions, including prohibitions on trade of certain species, which were adopted purposefully to promote conservationist objectives of convention).

284. See Sand, *supra* note 5, at 27 (discussing lack of uniformity in enforcement and compliance among Member States, citing Japan and their continued whaling activities as an example, and noting how this erodes political and legal credibility of the Convention); see also Wyatt, *Canada and CITES*, *supra* note 4, at 152–54 (citing specialization within domestic agencies, courts, and law enforcement in wildlife crime and environmental skills, and cooperation between domestic and global law enforcement as critical to strengthening CITES’ efficacy).

285. See Nuwer, *supra* note 8, at 3 (demonstrating knowledge of population estimates and sustainable trade levels is incomplete, which frustrates purpose of CITES as a treaty focused on conservation rather than trade).

286. See Wyatt, *Canada and CITES*, *supra* note 4, at 150 (highlighting enforcement at border checkpoints, a key point in illegal wildlife smuggling, is often underprioritized by agents unknowledgeable in wildlife and environmental crimes).

the species deserving of protection.<sup>287</sup> However, the research shows ambiguity on this issue.<sup>288</sup> Rather than assume the worst, countries often use this information to maintain the status quo.<sup>289</sup> CITES might benefit from assuming that species are more endangered, given present trends towards extinction,<sup>290</sup> to incentivize more careful research at the local and regional level. If a nation finds that, barring more detailed research, their trade will be restricted, they might be motivated to research the status of the species more deeply.<sup>291</sup>

Another issue in wildlife law is species identification,<sup>292</sup> as species classification often changes.<sup>293</sup> For example, from 1996 to 2016, the number of different primate species increased from roughly 230 to about 500.<sup>294</sup> Species' names matter for the enforcement of wildlife law, as many agreements, including CITES and the ESA, use species' names to identify those animals at risk from international trade.<sup>295</sup> To determine if these laws have been violated, an investigator must identify the name of the species to verify that wildlife law has indeed been breached.<sup>296</sup>

Much of the confusion comes from the academic community, who determines how taxonomy is implemented.<sup>297</sup> But this has implications for the legal community as well.<sup>298</sup> CITES's approval of a definitive taxonomic system and increased briefing on the issue could help guide decisions at the national and international level, as seen in the case of the orangutan, which exemplifies the need for decisive, centralized action.<sup>299</sup> As mentioned in the section above, CITES might also provide authoritative guidance and best practices for conservation around the

287. See Jacobs & Baker, *supra* note 84, at 262 (emphasizing species identification in wildlife law enforcement is highly critical).

288. See *id.* (explaining issues such as changing taxonomy, introduction of new species, incomplete morphological analyses, and inaccurate geographical information challenge species' ability to be properly identified).

289. See *id.* at 263 (explaining changing taxonomy poses challenges to wildlife law enforcement, such as a species being recognized as two distinct species, thus requiring new interpretation of legal categorization and enforcement measures—which often takes years for governments to implement).

290. *E.g.*, *Species Extinction Rates*, *supra* note 7.

291. See CITES AND THE WTO, *supra* note 2, at 7–8 (discussing trade restrictions as potential method for achieving policy goals regarding environmental concerns, such as conservation of natural resources).

292. Jacobs & Baker, *supra* note 84, at 261.

293. *Id.*

294. *Id.*

295. *Id.* at 262.

296. *Id.*

297. *Id.* at 263.

298. See *id.* (explaining changing taxonomies gives rise to potential legal loopholes where a new taxonomy is not yet legally recognized in a given state, therefore hindering law enforcement of wildlife crimes).

299. See *id.* at 263–64 (highlighting the Sumatran and Bornean orangutans were not listed as distinct protected species under ESA until seventeen years after their recognition as distinct species and explaining that such discrepancies in taxonomical systems pose issues for enforcement).

world, as it did with big cats in Asia.<sup>300</sup>

### *C. Strengthening the Secretariat*

CITES aims to protect wildlife, but its licensing system incentivizes bribery in contravention of international anticorruption law.<sup>301</sup> Under these licensing procedures, officials are presented with the opportunity for personal enrichment by both actively participating in wildlife smuggling through falsifying paperwork, for instance, or passively participating through turning a blind eye to smuggling operations.<sup>302</sup> Traffickers, too, have incentives to offer premiums for licenses or even to have processes expedited.<sup>303</sup>

This smuggling does not only cause problems for the flora and fauna themselves; U.N. resolutions have recognized that international wildlife trafficking helps fund violent groups in the Central African Republic and the Democratic Republic of the Congo.<sup>304</sup> Some have gone so far as to suggest that illicit wildlife trade helped start or spread the COVID-19 pandemic.<sup>305</sup> As a result, many international and nongovernmental organizations have called for greater cooperation between CITES and anticorruption organizations in order to address these issues.<sup>306</sup> The U.N. Office on Drugs and Crime is one such group, and has called for an increase in the investigation and prosecution of wildlife crime and trafficking within the sphere of corruption.<sup>307</sup> Such a strategy would result in greater resource allocation and power to investigators, as well as lead to the apprehension of more senior figures within wildlife crime rings.<sup>308</sup>

Not everyone believes that strengthened criminal laws are the solution.<sup>309</sup> Radha Ivory, an Australian legal scholar, has contested the calls for a wholesale merger of pro-wildlife and anticorruption agendas.<sup>310</sup> She claims, first, that anticorruption efforts are not particularly effective at stopping crime.<sup>311</sup> Second, given the absence within CITES of recognition of the special considerations due to

300. See Trouwborst, *Carnivore Conservation*, *supra* note 37, at 1576–77 (highlighting success of CITES' COP Resolution, Res. Conf. 12.5, adding several Asian 'big cat' species to Appendix 1).

301. Ivory, *supra* note 72, at 414.

302. *Id.*

303. *Id.*

304. *Id.* at 415.

305. Adiba Firmansyah, *CITES Reform: Enhanced Wildlife Trade Regime Needed to Avoid Next Pandemic*, EJIL TALK! (July 28, 2020), <https://www.ejiltalk.org/cites-reform-enhanced-wildlife-trade-regime-needed-to-avoid-next-pandemic/>.

306. See Ivory, *supra* note 72, at 412–15 (calling for intersectional cooperation among various global actors, particularly in realms of effective enforcement, human rights, and politics).

307. WORLD WILDLIFE CRIME REPORT, *supra* note 33, at 22–23.

308. See *id.* at 21 (explaining potential benefits of targeted enforcement approaches and specialized investigative techniques as methods of combating wildlife crime).

309. See Ivory, *supra* note 72, at 413 (detailing common issues associated with anticorruption laws in context of protecting wildlife).

310. See *id.* (arguing anticorruption laws are susceptible to ideological biases, fail to fulfill goal of protecting wildlife, and would result in unintended human consequences).

311. *Id.* at 416.

Indigenous groups under other bodies of international law, the implementation of anticorruption laws may have unintended consequences and end up harming these already vulnerable groups.<sup>312</sup> Finally, she says such an agenda may reflect Western priorities, which tend towards commodification of animals and implementation of Western policies on developing states.<sup>313</sup> Thus, she cautions against using anticorruption law as the main tool to combat international wildlife trafficking.<sup>314</sup>

CITES currently gathers data and encourages laws which protect wildlife.<sup>315</sup> The Standing Committee of CITES would probably do well to encourage some nations to strengthen criminal laws where needed<sup>316</sup> and could do so while allowing review power to remain in the hands of the Conference of the Parties. The Secretariat could also propose sanctions automatically if a nation does not list species in compliance with CITES protocols, as is procedure with the ESA.<sup>317</sup> If CITES labeled certain trades as illegal, it might find a sympathetic partner in the United States and international organizations over which the United States has strong influence.<sup>318</sup>

CITES should also take steps to see that actions are taken equitably against members from both the northern and southern hemispheres. With the help of a few large, conservation-minded allies, CITES may be able to execute a program that is more informed by conservation principles and less by politics.<sup>319</sup> An inherent difficulty would be that nations would need to abide by the Secretariat's decision, but such a decision might put domestic political pressure on governments, especially in developed countries where conservation is popular.

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312. *See id.* at 417 (discussing potential consequences of bolstered domestic responses under international instruments that feature little protection for Indigenous peoples' sovereignty and land use).

313. *Id.*

314. *Id.* at 418.

315. *See id.* at 413 (detailing how species listing process on relevant appendices requires approval from national "Scientific" or "Management Authority" agencies, but states are left discretion on enforcement matters); *see also* Foley et al., *supra* note 140, at 628 (discussing how CITES provides framework in terms of wildlife protection goals, but actual policymaking and enforcement are responsibility of states).

316. *See* Ivory, *supra* note 72, at 417–418 (discussing potential neo-imperialistic consequences of Western and global North states implementing anticorruption, antitrafficking, and expropriative policies that disproportionately impact developing nations).

317. *See* Foley et al., *supra* note 140, at 628 (comparing how ESA enforcement is supplemented by Lacey Act, which provides automatic enforcement mechanism for wildlife crimes).

318. *See id.* at 629–30 (discussing how domestic legislation, robust enforcement, and listing mechanisms are severely limited in their respective foreign spheres, and explaining how mechanisms enabling better foreign enforcement from CITES could help fill these gaps).

319. *See* Ivory, *supra* note 72, at 417–18 (describing neoliberal economic interests of global North countries in executing "global environmental governance" strategies such as expropriation, or "green grabbing," which is more political than conservationist in effect).

#### ***D. Stronger Moral Leadership***

International wildlife treaties “have had some success in safeguarding species,” but will require “substantially increased political will and financial support if they are to be effective in the critical task of securing the survival of the world’s mega-fauna.”<sup>320</sup> There is anecdotal evidence that the political will is present around the world.<sup>321</sup> Countries, after all, often identify with particular native species of flora and fauna,<sup>322</sup> and many would hate to see beloved symbols pass on to extinction.<sup>323</sup>

Though, as Peter Stoett, a Canadian legal scholar, has noted, CITES is split between preservationists and conservationists,<sup>324</sup> and the conservationists have really already won.<sup>325</sup> CITES is modeled on newer, ecological conservationist ideals, seeking to conserve nature rather than preserve it.<sup>326</sup> While conservation began as a justification for continued resource extraction, conservation philosophy evolved with an empirical science which increasingly recognized the limits of responsible use and called for an ethic of restraint.<sup>327</sup> Refuting excessive resource extraction, this new conservation ethic believed that responsible use required great deference to nature, similar to the preservationists who saw human beings as an integral part of nature rather than simple observers.<sup>328</sup>

CITES embodies this ethic, albeit timidly.<sup>329</sup> CITES does not seek simple

320. Trouwborst, *Global Large Herbivore Conservation*, *supra* note 223, at 3911 (quoting William J. Ripple et al., *Saving the World’s Terrestrial Megafauna*, 66 BIOSCIENCE 807, 811 (2016)).

321. See WORLD WILDLIFE CRIME REPORT, *supra* note 33, at 20 (“The Sustainable Development Agenda includes a variety of targets associated with reducing wildlife trafficking, notably 15.7, further, the international community has resolved in a series of UN General Assembly resolutions on tackling illicit wildlife trade, in addition to those of the Commission on Crime Prevention and Criminal Justice, CITES and UNCAC, to work to end this scourge. Combined with several national and regional strategies for addressing wildlife crime, these statements and commitments lay the political foundation to end wildlife crime.”).

322. See CITES, *supra* note 65, pmbl. (“Recognizing that peoples and States are and should be the best protectors of their own wild fauna and flora[.]”).

323. See Foley, *supra* note 140, at 628 (citing numerous CITES members who have adopted legislation particularly aimed at protecting their native flora and fauna).

324. Stoett, *supra* note 71, at 569.

325. See *id.* (defining conservationists as favoring nonexcessive and nonthreatening utilization of nature and wildlife); see also Nuwer, *supra* note 8, at 2–6 (discussing ironic duality of CITES members signaling their commitment to conservation, yet continuing normal wildlife trade when knowledge of its sustainability is incomplete).

326. See J. Baird Calicott, *Whither Conservation Ethics?*, 4 CONSERVATION BIOLOGY 15, 17 (1990) (describing contrast between preservationists, who seek to have land preserved and human use limited to passive religious and philosophical pursuits, and conservationists, who seek to have land used, albeit reverently and responsibly).

327. See *id.* at 17–18 (discussing evolution of American conservation with work of Aldo Leopold, who believed ecology was so complex that it transcended utilitarianism and advocated for use of ecological space in a way that is conscientious of its preservation).

328. *Id.* at 17.

329. See CITES, *supra* note 65, pmbl. (declaring belief that humans are nature’s greatest protectors, and that international cooperation is necessary to curb overexploitation).

preservation of all species; in fact, species move from Appendix I to Appendices II and III with some frequency.<sup>330</sup> CITES rejects, too, the simple extractive approach which seeks to maximize profits; this is epitomized by Appendix I.<sup>331</sup> Rather, CITES is concerned with active human management of and involvement with the natural world, while encouraging ecologically responsible use.<sup>332</sup> But as it is currently set up, it gives too much sway to the preservationists who seek a misguided and unworkable purity and the extractors who seek use and money.<sup>333</sup>

CITES can illuminate a middle path, recognizing the integral connection between humans and wildlife and reconciling that with the desire to save endangered species. Again, this might materialize from definitive guidance that aligns with such conservation principles. Human beings cannot completely cease from their use of other species, but continued exploitative utilization is untenable for preserving species.<sup>334</sup> CITES would best serve the international community by becoming more active as an ideological leader, providing more guidance to Member States, and censuring violations to instill a similar ecological ethic around the world.

## V. CONCLUSION

CITES has been successful in many areas throughout its history, as seen in the cases of the American alligator, the Nile crocodile, and the South American vicuña.<sup>335</sup> The CITES agreement has provided a framework for addressing the international wildlife trade.<sup>336</sup> CITES can play an important role, especially now, as nations seek to stave off what may prove to be one of the largest mass extinction events in recorded history.<sup>337</sup>

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330. See Wyatt, *Canada and CITES*, *supra* note 4, at 145 (explaining CITES members can propose and vote on additions, removals, or changes on appendices every three years).

331. See CITES, *supra* note 65, art. III (declaring all species listed on Appendix I are subject to strict regulation due to high danger of extinction and therefore only traded in exceptional circumstances).

332. *Id.* pmbl.

333. See *To Sell or Not to Sell?*, *supra* note 247 (discussing constant ideological conflict between “strict conservationists” and those who want to see a more open, albeit regulated, version of ivory trade); see also Trouwborst, *International Wildlife Law*, *supra* note 34, at 784 (noting pressing challenge posed by ideological differences between parties, particularly in reference to those favoring strict protection and those wanting sustainable use of rhinoceros and elephants).

334. See Trouwborst, *Global Large Herbivore Conservation*, *supra* note 223, at 3910 (emphasizing necessity of concerted, international action and robust frameworks to protect at-risk species from overexploitation); see also Sand, *supra* note 5, at 27 (highlighting need for equitable international enforcement of conservation and anti-exploitation provisions, in light of existing trends that allow noncompliance of powerful Member States to occur without consequence).

335. *Wildlife Treaty Comes of Age*, *supra* note 26, at 1; Horton & Weissgold, *supra* note 137, at 2.

336. See *Wildlife Treaty Comes of Age*, *supra* note 26, at 1 (“Thanks to the effective implementation of CITES by those who harvest, produce, trade, transport, buy and regulate the wildlife species covered by the Convention, new emergency listings of species have become increasingly rare.”).

337. See Sand, *supra* note 5, at 5 (warning species are disappearing at rate thousands of times faster than prehuman levels).

CITES has done well mostly in addressing wildlife trade when certain conditions are present.<sup>338</sup> The Canadian implementation of CITES demonstrates what can be accomplished when a country has strong political will to enforce the laws surrounding wildlife trade, good education about wildlife trade, and strong organizations to provide enforcement.<sup>339</sup> The same can be said of the United States and its implementation of the ESA.<sup>340</sup> Both examples show that wildlife protections work best when they are intra-, rather than inter-, national.<sup>341</sup>

However, the system imposed by CITES does not work as effectively when nations need to cooperate.<sup>342</sup> Species which do not travel across national borders seem to fare better—witness the local American alligator's success and the roaming Pan-American ocelot's demise.<sup>343</sup> The case of the lion shows how difficult it can be to organize a regional response to an endangered species, and the effect it ends up having on the political buy-in and the species itself.<sup>344</sup> The ocelot's fate offers similar lessons.<sup>345</sup>

CITES, too, has worked effectively with international organizations.<sup>346</sup> Given the subject matter shared between these entities, CITES and the WTO have shown that wildlife conservation and a free trade regime can coexist.<sup>347</sup> But while it has worked well so far, the future is unclear, given the outlook for the WTO itself.<sup>348</sup>

To improve its effectiveness, CITES could take several actions, as this Comment has explored. First, CITES should continue to engage with other international organizations and advocate for decisions in compliance with international wildlife law. Second, I recommend that CITES develop guidelines for species identification and enforcement in order to provide guidance to countries

338. See *id.* at 7–8 (explaining CITES is viewed by many as a successful instrument of international environmental law and, in some instances, a role model for other programs).

339. See *supra* Part III.B for a discussion of Canada's successes and struggles in enforcing obligations under CITES.

340. See *supra* Parts III.A for a discussion of the effectiveness of CITES and ESA working together towards U.S. wildlife conservation.

341. See *supra* Parts III.A and III.C for discussions comparing U.S. domestic success with challenges faced by cross-border species, such as the lion and ocelot, in conservation due to lack of international legislative and enforcement coordination.

342. See, e.g., Trouwborst, *Global Large Herbivore Conservation*, *supra* note 223, at 3911.

343. See *supra* Part III for discussions of the revival of the American alligator and the struggles of the Pan-American ocelot.

344. See *supra* Part III.C for a discussion of the challenges faced among African nations in coordinating lion conservation efforts regionally and domestically.

345. See *supra* Part III.C for a discussion of the challenges posed by the ocelot's transitory nature in terms of international enforcement.

346. CITES AND THE WTO, *supra* note 2, at 2–4.

347. See *supra* Part IV.A for a discussion of the beneficial role WTO dispute resolution has had in legitimizing international wildlife law and CITES.

348. See Eric Neumayer, *The WTO and the Environment: Its Past Record is Better than Critics Believe, but the Future Outlook is Bleak*, 4 GLOB. ENV'T POL. 1, 10 (2004) (discussing bleak outlook for WTO in terms of bolstering environmentally friendly trade policies, due to lack of member support, particularly from developed countries, and resistance from developing countries for fear of greenwashed neo-imperialist policies).



struggling to meet their CITES obligations.<sup>349</sup> Third, CITES should continue partnering with international police while empowering the Secretariat to propose sanctions automatically to effectively enforce violations.<sup>350</sup> Finally, I propose that CITES use its authority to promote a philosophy of wildlife conservation that will be more effective and beneficial in the long-term.<sup>351</sup> Together, these recommendations can strengthen the power of CITES and its Member States to protect vulnerable species while lessening the detrimental impact on vulnerable communities.

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349. See *supra* Part IV.B for a discussion of the importance of species identification and specialized enforcement mechanisms for effectively fulfilling CITES obligations and conservation efforts.

350. See *supra* Part IV.C for a discussion of shifting CITES enforcement mechanisms to a more centralized, automatic framework, as seen with the ESA.

351. See *supra* Part IV.D for a discussion of CITES taking a stronger role as an ideological leader in wildlife and environmental law, encouraging ecologically responsible use.