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NOTES

INTERNATIONAL TRADE IN ENDANGERED SPECIES UNDER C.I.T.E.S.: DIRECT LISTING VS. REVERSE LISTING

The member countries attending the 1981 meeting of the Convention on International Trade in Endangered Species of Wild Fauna and Flora¹ adopted an Australian resolution.² The resolution called for a study to look into restructuring the listing process currently used for regulating international trade in endangered species.³ Instead of continuing the policy of listing those species which are endangered or threatened, the proposal recommends listing only those species which are not endangered or threatened.⁴ The aim of the proposal is to facilitate the process of identification, and control.⁵ Although reverse listing is not a new procedure, its use in the past has been limited largely to areas of consumer and environmental concerns,⁶ where the listed item is considered dangerous rather than

1. The term "Convention" will be used to refer to the entity comprised of member countries of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. The term "C.I.T.E.S." will be used to refer to the treaty originally adopted by the Convention in 1973. *See infra* note 10.

The Convention meets approximately every two years. The third meeting, during which Australia submitted a resolution to study restructuring the listing process, was held in New Delhi, India from February 25 to March 8, 1981. Fifty-five countries attended the meeting as parties; 18 countries, the United Nations Environment Programme, and numerous other organizations attended as observers. *See* Convention on International Trade in Endangered Species of Wild Fauna and Flora, Third Meeting of the Conference of the Parties, Part. 3.1 and 3.2 (New Delhi, India, Feb. 25-March 8, 1981) [hereinafter cited as New Delhi Proceedings].

2. *See* New Delhi Proceedings, *supra* note 1, Plen. 3.9, at 1-2. The Australian proposal was adopted by a vote of 28 to 7 with 6 abstentions. *Id.* at 2.

3. *See* New Delhi Proceedings, *supra* note 1, Doc. 3.30.1.

4. This approach is called "reverse" or "clean" listing. *See* New Delhi Proceedings, *supra* note 1, Doc. 3.30, at 1. This Note will refer to the approach as reverse listing.

5. *See* New Delhi Proceedings, *supra* note 1, Doc. 3.30.1.

6. *See, e.g.*, Federal Food, Drug, and Cosmetics Act, 21 U.S.C. § 355(i) (1976) (requiring regulations listing drugs exempt from operation of the Act); and Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136a (1976) (subjecting all pesticides to the provisions of the Act except those the administrator lists as exempt under § 136w(b)). One may argue that wildlife laws protect the public from exotic diseases. *See infra* note 64. This argument does not imply, however, that reverse listing would better protect the public from exotic diseases than would direct listing. *See infra* note 63 and accompanying text.

endangered.

The adoption of reverse listing would require major adjustments in the procedures used to implement and enforce C.I.T.E.S., both in the United States and internationally. Because the international regulation of trade in wildlife under previous laws was largely ineffective,⁷ and because C.I.T.E.S. is considered by some to be very effective,⁸ the Convention should adopt reverse listing only after careful scrutiny and consideration.⁹

This Note discusses C.I.T.E.S. and its implementation in the United States, and then examines the effects of reverse listing on the present system. Following an evaluation of the goals of the Convention, the Note concludes that direct listing is the preferable system for regulating international trade in wildlife.

I

BACKGROUND

A. INTERNATIONAL ADMINISTRATION

The Convention on International Trade in Endangered Species of Wild Fauna and Flora¹⁰ is a treaty aimed at controlling international trade in specimens¹¹ of species which currently are, or soon

Wildlife laws which use a form of listing similar to reverse listing do exist. Such laws generally prohibit the killing or trapping of wildlife with listed exceptions. These laws differ from reverse listing laws in that the exceptions are usually very limited in quantity. See, e.g., Tahquitz National Game Preserve Act, 16 U.S.C. §§ 689-689(c) (1976).

7. See, e.g., Grove, *Wild Cargo: The Business of Smuggling Animals*, 159 NAT'L GEOGRAPHIC 287 (March, 1981). Cf., Travaglio and Clement, *International Protection of Marine Mammals*, 5 COLUM. J. ENVTL. L. 199, 222 (1979). Messrs. Travaglio and Clement discuss a number of treaties which deal with the international treatment of whales. They claim that C.I.T.E.S. is ineffective in dealing with many problems of international wildlife. The authors explain that the treaty's weakness is not related to the listing process, but to the ability of countries to abstain from certain of the treaty's provisions. *Id.* at 223. See *infra* note 34 and accompanying text.

8. See, e.g., Grove, *supra* note 7, at 309. Mr. Grove's article is a study of big game smuggling. His analysis and research include a study of C.I.T.E.S. and its effects on the smuggling of wild animals.

9. The Australian proposal recommends an examination of the implications and ramifications of reverse listing. New Delhi Proceedings, *supra* note 1, Doc. 3.30.1. Australia is to coordinate input from all parties, including the United States, in order to prepare a final paper to go to the Technical Expert Committee. *Id.*, Plen. 3.9, at 2.

10. The Convention on International Trade in Endangered Species of Wild Fauna and Flora, done July 1, 1975, 27 U.S.T. 1087, T.I.A.S. No. 8249 [hereinafter cited as C.I.T.E.S.]. Thirty-eight countries participated in the original signing of the Convention in Washington, D.C. on March 3, 1973. The United States Senate ratified the treaty on September 13, 1973. 12 INT'L LEGAL MATERIALS 1085 (1973). There are presently 76 parties to the treaty. Telephone interview with Art Lazarowitz, acting Chief of the Management Operations Branch, Federal Wildlife Permit Office (Jan. 18, 1982).

11. The term "specimens" includes animals, dead or alive, and parts thereof. 68 DEP'T ST. BULL. 628 (April 5, 1973), reprinted in 12 INT'L LEGAL MATERIALS 1085 (1973).

may be, in danger of becoming extinct.¹² It includes three appendices that order and list species according to the extent to which they are endangered. Each appendix specifies the degree of regulation and protection necessary for the species listed therein.¹³ Appendix I lists the species most vulnerable to extinction. It includes "all species threatened with extinction which are or may be affected by trade."¹⁴ Trade in specimens of these species can be authorized only in "exceptional circumstances,"¹⁵ and is never authorized when the specimen is to be used primarily for commercial purposes.¹⁶

Appendix II consists of two sub-categories: species that are somewhat less threatened than those in Appendix I, but nevertheless warrant strict regulation; and species that are so similar to others listed in the Appendix that they must be regulated in order to accomplish effective control.¹⁷ The treaty permits trade in these species only after the Scientific Authority¹⁸ of the exporting country has determined "that such export will not be detrimental to the survival of that species."¹⁹ The Scientific Authority must monitor the levels of export of any listed species in order to "maintain that species

12. *Id.* The first United States law dealing generally with federal wildlife regulation was the Lacey Act, ch. 553, 31 Stat. 187 (1900) (codified as amended at 18 U.S.C. §§ 42-44 (1976)). The Lacey Act prohibited the interstate transportation of any wild animals or birds that had been killed in violation of state law. Environmental Law Institute, *THE EVOLUTION OF NATIONAL WILDLIFE LAW*, 20 (1977) [hereinafter cited as E.L.I.].

The Endangered Species Preservation Act of 1966, Pub. L. No. 89-669, 80 Stat. 926 (repealed 1973), was the first United States law to authorize habitat protection. In 1969 this Act was supplemented by the Endangered Species Conservation Act, Pub. L. No. 91-135, 83 Stat. 275, to include restrictions on the importation of wildlife threatened with worldwide extinction. E.L.I., *supra* at 371-375.

C.I.T.E.S. covers amphibians, mammals, reptiles, birds and plants. The exact extent of trade in a particular endangered species is frequently indeterminable, as at times each specimen is counted, while at other times only shipments of specimens of a species are counted. In 1977, however, customs officials recorded illegal trade in over 1,000,000 items (excluding plants), plus leather and skins. WILDLIFE PERMIT OFFICE, UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR, CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA, ANNUAL REPORT FOR 1977, at 11 (1978) [hereinafter cited as 1977 WILDLIFE PERMIT OFFICE REPORT].

13. Commentators indicate that C.I.T.E.S. recognition of varying degrees of endangerment and the regulatory provisions which reflect these differences are the treaty's most significant innovations. E.L.I., *supra* note 12, at 380. The three appendices contain an aggregate of 1,549 species of wildlife (excluding plants). Telephone interview with David Mack, Assistant Director, TRAFFIC (U.S.A.) (Jan. 18, 1982) [hereinafter cited as Mack interview].

14. C.I.T.E.S., *supra* note 10, art. II(1).

15. *Id.* C.I.T.E.S. does not define the term "exceptional circumstances."

16. *Id.* art. III(3)(c).

17. *Id.* art. II(2).

18. Each Convention member must delegate at least one Scientific Authority and at least one Management Authority. *Id.* art. IX(1). In the United States the Secretary of the Interior performs both functions. 16 U.S.C. § 1537(a)(Supp. 1980).

19. C.I.T.E.S., *supra* note 10, art. IV(2)(a).

throughout its range at a level consistent with its role in the ecosystems in which it occurs."²⁰ The treaty further requires that whenever it determines that exports in such species should be limited, the Scientific Authority "shall advise the appropriate Management Authority²¹ of suitable measures to be taken to limit the grant of export permits for specimens of that species."²²

Appendix III lists those species that a party²³ to the Convention designates "as being subject to regulation within [the designating party's] jurisdiction for the purpose of preventing or restricting exploitation, and as needing the co-operation of other parties in the control of trade."²⁴ An importer of these species must present a "certificate of origin and, where the import is from a State which has included that species in Appendix III, an export permit."²⁵ This provision discourages the smuggling of that species from the listing country by limiting available foreign sales markets. By discouraging smuggling, a country can better manage the species it has listed in Appendix III and effectively reduce the possibility of relegating the species to Appendices I or II. The Convention recognizes that "peoples and states are and should be the best protectors of their own wild fauna and flora,"²⁶ and endeavors to help individual countries take the measures necessary to preserve their own ecosystems.²⁷

A two-thirds vote of the members present and voting is required to amend Appendices I and II.²⁸ Any member country may add a species to Appendix III or withdraw any species it has designated.²⁹

Signatory countries may not make any general reservations³⁰ to C.I.T.E.S.' provisions.³¹ Members may, however, enter specific reservations to species in any of the appendices.³² In effect, the reservation provision represents a major weakness in C.I.T.E.S. because it allows any country with an economic interest in exploiting a species

20. *Id.* art. IV(3).

21. *See supra* note 18. C.I.T.E.S. expects the scientific and management authorities to work together in coordinating and implementing policies.

22. C.I.T.E.S., *supra* note 10, art. IV(3).

23. The term "party" means "any State for which the . . . Convention has entered into force." *Id.* art. I(h).

24. *Id.* art. II(3).

25. *Id.* art. V(3).

26. *Id.* at preamble.

27. *Id.*

28. *Id.* art. XV(1), (6).

29. *Id.* art. XVI(1), (3).

30. A reservation is a "unilateral statement . . . made by a State, when signing [or] ratifying a treaty, whereby it purports to exclude or to vary the legal effect of certain provisions of the treaty in their application to that State." Vienna Convention on the Law of Treaties, art. II(1)(d), U.N. Doc. A/Conf. 39/27 (1970).

31. C.I.T.E.S., *supra* note 10, art. XXIII(1).

32. *Id.* art. XXIII(2).

to override the ecological, aesthetic, and moral purposes of the lists.³³ The treaty does encourage signatory countries to adopt domestic regulations that are stricter than C.I.T.E.S. requires.³⁴

The treaty also contains provisions dealing with non-member countries. When trading in specimens from a non-member country, the exporter/importer must show "comparable documentation issued by the competent authorities in that state which substantially conforms with the requirements of the present Convention for permits" for any species listed in the appendices.³⁵ Through these provisions the Convention attempts to control international trade in listed species in as many countries as possible.

B. ADMINISTRATION IN THE UNITED STATES

In the United States, the Endangered Species Act (Act)³⁶ functions as the enforcement mechanism for C.I.T.E.S. The Act provides that "[i]t is unlawful for any person subject to the jurisdiction of the United States to engage in any trade in any specimens contrary to the provisions of the Convention."³⁷

Under the Act,³⁸ the Secretary of the Interior, with the aid of an advisory commission,³⁹ implements C.I.T.E.S. in the United States.

33. Travaglio and Clement, *supra* note 7, at 222-23; Grove, *supra* note 7, at 309. For example, France, Italy, Japan, West Germany, and Switzerland all take exception to the listing of saltwater crocodiles because those countries process the skins into leather goods. Since they make most of the world's crocodile-skin products, their reservations undermine C.I.T.E.S.' attempt to protect saltwater crocodiles. *Id.* See generally, Note, *Enforcement Problems in the Endangered Species Convention: Reservations Regarding the Reservation Clauses*, 14 CORNELL INT'L L.J. 429 (1981).

34. C.I.T.E.S., *supra* note 10, art. XIV.

35. *Id.* art. X.

36. 16 U.S.C. §§ 1531-1543 (1976) as amended by Endangered Species Act Amendments of 1978, Pub. L. No. 95-632, 92 Stat. 3751 (1978).

37. 16 U.S.C. § 1538(c)(1). The maximum penalty for violations is \$20,000 and one year in jail. *Id.* § 1540(b)(1).

38. "The Secretary [of the Interior] shall do all things necessary and appropriate to carry out the functions of the Management Authority . . . [and] the Scientific Authority under the Convention." *Id.* § 1537a(b), (c) (Supp. IV 1980).

39. *Id.* § 1537a(d) (Supp. IV 1980). The International Convention Advisory Commission is composed of members appointed by the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Director of the National Science Foundation, and the Chairman of the Council on Environmental Quality. *Id.*

The Secretary has delegated his duties regarding international trade in mammals, amphibians, reptiles, and birds to the United States Fish and Wildlife Service in the Department of the Interior. The Service allows eight ports of entry for specimens of such wildlife and has assigned specialized agents and inspectors to those ports. 1977 WILDLIFE PERMIT OFFICE REPORT, *supra* note 12, at 7.

The Secretary has delegated his duties regarding international trade in plants to the Animal and Plant Health Inspection Service in the Department of Agriculture. The Service allows fourteen ports of entry and has assigned specialized personnel to monitor those ports. WILDLIFE PERMIT OFFICE, UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR, CONVENTION ON INTERNATIONAL TRADE IN ENDAN-

The Act requires that any changes in the lists of species be published in the Federal Register.⁴⁰ The Secretary of the Interior must also publish in the Federal Register explanations of decisions not to list particular species.⁴¹

The Act requires the publication of two lists: one for species considered to be threatened and one for species that are endangered.⁴² The Secretary of the Interior classifies species "on the basis of the best scientific and commercial data available," after consultation with all interested parties, states, and foreign governments.⁴³

If a species is listed as endangered, it cannot be imported to, or exported from, the United States.⁴⁴ It is also illegal for any person subject to United States jurisdiction to possess, sell, deliver, carry, transport or offer for sale any endangered species.⁴⁵ While there are exceptions to these prohibitions, they are limited.⁴⁶ If a species is considered threatened, the Secretary of the Interior "shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species."⁴⁷

United States customs officials and specialized inspectors enforce the Act and C.I.T.E.S.⁴⁸ They must be able to recognize and distinguish species during importation into, or exportation from,

GERED SPECIES OF WILD FAUNA AND FLORA, ANNUAL REPORT FOR 1979, at IN-3 (1980) [hereinafter cited as 1979 WILDLIFE PERMIT OFFICE REPORT].

40. Any party to the Convention can protect species not listed. C.I.T.E.S., *supra* note 10, art. XIV. The Endangered Species Act provides for additional listings. 16 U.S.C. § 1533 (Supp. IV 1980).

41. *Id.* § 1537a(d)(7). The Secretary of the Interior must publish reasons for not listing a particular species.

42. *Id.* § 1533(c)(1). As of January 1981, the Secretary of the Interior listed 750 species as threatened or endangered, including 493 species of mammals and birds and 60 species of plants. ENDANGERED SPECIES TECHNICAL BULLETIN, January 1981, at 8.

43. 16 U.S.C. § 1533(b)(1) (Supp. IV 1980).

44. *Id.* § 1538(a)(1)(A).

45. *Id.* § 1538(a)(1)(D), (E) and (F). Between October 1, 1976 and September 30, 1977, there were 482 civil convictions and 36 criminal convictions under the Endangered Species Act. Agents reported 1205 violations, fifty percent of which were related to illegal trade in elephant ivory. 1977 WILDLIFE PERMIT OFFICE REPORT, *supra* note 12, at 7. Most violations occurred at the port of entry in San Francisco; nearly all of the other major violations occurred at New York City. *Id.*

Between October 1, 1978 and September 30, 1979, there were 2,327 civil convictions under the Act, and over \$500,000 worth of wildlife specimens were confiscated. 1979 WILDLIFE PERMIT OFFICE REPORT, *supra* note 39, at VII.

46. *See generally* 16 U.S.C. § 1539 (1976). These exceptions include use for scientific purposes, for the alleviation of specific instances of economic hardship, and for subsistence purposes by Alaskans. *Id.*

47. *Id.* § 1533(d). The regulations include provisions for instituting trade restrictions and habitat protections.

48. 1977 WILDLIFE PERMIT OFFICE REPORT, *supra* note 12, at 7. *See also supra* note 39.

United States ports of entry.⁴⁹ Although there have been species identification problems in the past,⁵⁰ intensive training programs and a new emphasis on strict enforcement have improved the customs officials' ability to recognize species.⁵¹ While the flow of illegal items into the United States has not ended, these improvements have caused a noticeable decrease in the importation of protected species.⁵²

II

REVERSE LISTING PROPOSAL

C.I.T.E.S. presently lists approximately 700⁵³ of the over 10,000 species of plants, birds, mammals, reptiles and amphibians actively traded on the international market.⁵⁴ If the Convention adopts the Australian reverse listing proposal, the resulting list would by implication contain nearly 9,700 species.⁵⁵

The importation of species is a large scale operation. Approximately 422,000 live birds, 1,100,000 reptiles and amphibians, 11,800,000 wildlife hides and skins, and 129,600,000 individual items made from wildlife were imported into the United States during 1977.⁵⁶ The system of control must be practicable in order to prevent smuggling when such large numbers of specimens are traded.⁵⁷

49. See generally Grove, *supra* note 8 (discussion of customs officials' duties under the Act).

50. A United States customs official revealed: "Until recently, few of us [customs officials] knew one species from another You just sort of glanced at the shipping papers that came with them and waved them on through." *Id.* at 294.

51. *Id.* at 294-296, 308-309. To help ease the enforcement problems, persons engaged in importing or exporting fish or wildlife as a business, are required to be licensed, to keep records and to follow reporting procedures. The licenses are revocable upon violation of the Endangered Species Act. See 50 C.F.R. §§ 13.51(a)(3), 14.93(f) (1980). The Convention is in the process of writing an instruction manual to provide basic information and illustrations of species for Management Authorities. This manual will include regional as well as global information. See New Delhi Proceedings, *supra* note 1, Doc. 3.11.

52. See generally Grove, *supra* note 7.

53. 12 INT'L LEGAL MATERIALS 1085, 1096 (1973). This is not a completely accurate figure as many similar species are lumped together in the appendices. The actual number of species may be as high as 1500. Mack interview, *supra* note 13.

54. This low estimate of the number of species is based on a conglomeration of figures. There are over 13,000 birds and mammals in existence. See Grove, *supra* note 7, at 294. If only one-half of these species enter into international trade, then 6500 species of birds and mammals must be listed. Over 3500 species of amphibians, reptiles, fish and plants are traded. Mack interview, *supra* note 13. Therefore, 10,000 species is a minimum estimate of the number of species actively traded.

55. The 300 species now listed in Appendix I would not be listed under the reverse listing format. The estimated 9,300 currently unlisted species and the 400 species listed in Appendices II and III result in an estimated 9,700 species to be listed under the reverse listing format. See *supra* notes 53-54.

56. Grove, *supra* note 7, at 293.

57. For figures on smuggling see *supra* note 45.

The Australian proposal identified three problems under the current listing system that hamper such control:

- 1) identification of species that demand varying degrees of control;
- 2) identification of subspecies requiring management and trade limitations; and
- 3) classification, validation and enforcement.⁵⁸

Reverse listing would help to resolve problems in the first area of concern. Under the present system customs officials must prove that the specimen is from a listed species, while the importer/exporter attempts to prove that the specimen is from an unlisted species. Thus, the importer/exporter has little incentive to cooperate with the official. Reverse listing would shift the burden of proving that a species is listed from the customs official to the importer/exporter, who would then have considerable incentive to cooperate in the identification process. However, reverse listing would be no panacea for the identification problem; arguably, if the Australian proposal was implemented, smugglers would attempt to categorize specimens from unlisted species as specimens from listed species.

The Australian proposal recommends two or more lists of species classified according to levels of restriction on trade.⁵⁹ Thus, reverse listing would alleviate the second problem identified in the proposal by requiring an affirmative showing that no restriction or only a limited restriction on trade in a particular subspecies is necessary for the protection of that subspecies.⁶⁰ Subspecies would not be harmed by an inadvertent lack of investigation, because countries would be forced to justify trade in a subspecies before trade would be allowed.⁶¹

Reverse listing would not be as helpful in solving the third problem identified in the Australian proposal. Many species are similar and difficult to classify and validate. With approximately 9,700 species listed, the process might be impracticable for customs officials. Similarities between listed and unlisted species will continue to exist and customs officials still must ultimately decide which specie a specimen most resembles. This remains a difficult determination under either listing system.

58. New Delhi Proceedings, *supra* note 1, Doc. 3.30.1.

59. *Id.*, Doc. 3.30 at 2.

60. *Id.* at 1.

61. Currently, the United States prefers to concentrate "more resources on the actual recovery of species already listed as endangered." N.Y. Times, Dec. 9, 1981, at A24, col. 4 (discussion with Harold J. O'Connor, Deputy Director of the Interior Department's Fish and Wildlife Service). Under reverse listing, the U.S. would have to allocate resources to the investigation of requests to list species for unrestricted or partially restricted trade. Private parties desiring to trade in an unlisted species might aid in such investigations. See *infra* text following note 64.

III

CURRENT USES OF REVERSE LISTING

Most of the wildlife acts which list species use the direct listing method.⁶² Federal acts utilizing reverse listing generally regulate insecticides, drugs and other dangerous and manmade substances.⁶³ Because these substances require exceptionally stringent controls, only those that have been tested and found safe are listed. Manmade products may be produced quickly; therefore, the government prefers to assume that all drugs and pesticides are unsafe until proven otherwise. Conversely, wildlife is relatively stable; problems with identified species are usually known and the discovery of new species occurs infrequently.⁶⁴

Drug and pesticide laws employ reverse listing in order to place the burden of proving safety on the producers, who must spend the necessary time and money in order to secure listing. Reverse listing of wildlife would accomplish the same result. Private parties who are financially interested in importing or exporting a species would perform the necessary investigation on the ecological impacts of trade in that species. This shift of burden would present two problems. First, the economic cost would still exist. Instead of the public paying for the research through taxes, consumers would pay for it through higher prices. Second, drug and pesticide producers can obtain patents on products and copyrights on names, while wildlife traders cannot acquire such protections against competitors. The potential for some traders to benefit from the efforts of others to achieve the listing of a species might operate as a disincentive to the expenditure of time and money for the examination of the impact of trade in that species.

Recently, the International Council for Bird Preservation⁶⁵

62. See, e.g., The Migratory Bird Treaty Act, 16 U.S.C. §§ 703-11 (1976); The Marine Mammal Protection Act, 16 U.S.C. §§ 1361-1407 (1976). Cf., Protection and Conservation of Wildlife Act, 16 U.S.C. § 668dd(c) (1976); and *supra* note 6 and accompanying text. Several countries use reverse listing for wildlife protection laws. Examples are Norway, the United Kingdom, Sweden and Uruguay. New Delhi Proceedings, *supra* note 1, Plen. Doc. 3.9.

63. See *supra* note 6.

64. Occurrences of unexpected disasters from wildlife importation are rare. One instance involved the outbreak of Newcastle disease, which is transmitted by exotic birds, and is fatal to domestic poultry. Controlling the outbreak of the disease cost California 56 million dollars in 1971. Grove, *supra* note 7, at 294.

65. The International Council for Bird Preservation meets every four years. Eighteen member countries, including the United States, Canada, Japan, Great Britain, France, and South Africa, and several organizations meet to "stimulate interest in all countries for a more adequate protection of wild birdlife." 12 BULLETIN OF THE INTERNATIONAL COUNCIL FOR BIRD PRESERVATION, at 13 (1975).

unanimously adopted reverse listing.⁶⁶ During its sixteenth World Conference in 1974,⁶⁷ the Council voted to support both C.I.T.E.S.⁶⁸ and the concept of reverse listing.⁶⁹ During the Council's 1978 meeting it strengthened its stand in favor of reverse listing and passed a resolution calling for C.I.T.E.S. to adopt reverse listing.⁷⁰ The primary reason underlying the resolution was "the increasing practical problems involved in identifying the numerous species listed for varying degrees of control."⁷¹

IV

EVALUATION OF THE REVERSE LISTING PROPOSAL

A. GOAL COMPARISON

The Convention should adopt the reverse listing proposal only if reverse listing affords easy enforcement of trade restrictions⁷² and satisfies the objectives of C.I.T.E.S. and the Endangered Species Act more effectively than does direct listing.

1. *Ease of Enforcement*

It would probably be easier to enforce trade restrictions under reverse listing than under direct listing. Reverse listing would make it easier for customs officials to identify unfamiliar specimens, because, to avoid confiscation, the importer/exporter will aid the customs official by attempting to show that the species in question is listed.⁷³ An importer/exporter attempting to smuggle restricted specimens would have to prove that the specimens were from listed species. Proving that a specimen from an unlisted species has the exact characteristics of a listed species would be more difficult than the smuggler's task under the direct listing format, where the importer/exporter need only distinguish the specimen from a perfect example of a listed species.

66. *Id.* at 66. (Resolution 10 was unanimously adopted by the International Council for Bird Preservation, urging the Convention to "[l]ist the species which [it] will allow to be exported or imported.")

67. *Id.* at 51.

68. *Id.* at 66, resolution 10(a).

69. *Id.* at 66, resolution 10(b).

70. New Delhi Proceedings, *supra* note 1, Doc. 3.30 at 1.

71. *Id.*

72. Grove, *supra* note 7, at 309. If customs officials cannot enforce C.I.T.E.S., the treaty is worthless. Only if its provisions can be easily enforced will the objectives of C.I.T.E.S. be furthered.

73. *See supra* notes 58-59 and accompanying text.

2. *The Focus on Endangered Species*

The major disadvantage of the reverse listing format is that it de-emphasizes the protection of endangered species. Direct listing focuses attention on individual species that are endangered or threatened,⁷⁴ while reverse listing relegates those species to the background. The House Report on the Endangered Species Act recognized the need for emphasizing the endangered species. "The ultimate goal of the Endangered Species Act is to focus sufficient attention on listed species, so that, in time, they can be returned to a healthy state and removed from the list."⁷⁵

Reverse listing emphasizes preventive protection, assuming that a species is endangered unless proven otherwise. It attempts to prevent non-endangered species from becoming endangered, and to identify species which should be considered endangered, but which have not been so designated. Because each country has limited resources with which to protect wildlife, priorities must govern the allocation of resources. The priorities of C.I.T.E.S. lie in protecting endangered species,⁷⁶ and helping countries control smuggling.⁷⁷ Reverse listing does not satisfy either of these goals more effectively than does direct listing.

3. *Different Degrees of Protection*

The C.I.T.E.S. appendices provide different degrees of protection,⁷⁸ a practice which the Australian resolution proposes to continue.⁷⁹ Reverse listing, however, will tend to minimize such protections. Categorizing 9,700 species,⁸⁰ in varying degrees, presents more difficulties than categorizing 700 species. Reverse listing could also cause identification problems among similar species and subspecies, thereby hampering enforcement.

The recognition of varying degrees of endangerment and the adoption of regulatory provisions which reflect those differences constitute C.I.T.E.S.' most significant innovations for the protection of

74. See generally, C.I.T.E.S., *supra* note 10; H.R. REP. No. 167, 96th Cong., 1st Sess., reprinted in 1979 U.S. CODE CONG. & AD. NEWS 2557 [hereinafter cited as HOUSE REPORT].

75. HOUSE REPORT, *supra* note 74, at 2561.

76. C.I.T.E.S., *supra* note 10, at preamble; Grove, *supra* note 7, at 294-96. C.I.T.E.S. was created to reduce the smuggling of those species that were known to be endangered. *Id.* at 294.

77. See *supra* notes 26-27, and accompanying text.

78. E.L.I., *supra* note 12, at 380. See also, *supra* note 13.

79. See *supra* notes 59-60, and accompanying text.

80. For a discussion of the derivation of the approximate figure of 9,700, see *supra* notes 53-55.

wildlife.⁸¹ Under reverse listing this categorization may not be as effective as it is under direct listing. At best, the ramifications of reverse listing are unknown.

B. EFFECTIVENESS

C.I.T.E.S. has been fairly effective in protecting wildlife⁸² despite the fact that it is limited to international trade and lacks an effective enforcement mechanism.⁸³ No trade restriction will be completely effective unless consumers reduce their demand for endangered species articles.⁸⁴ Although C.I.T.E.S. does not and cannot eliminate that demand, it does diminish its effects by curtailing the importation of endangered species. By closing the market transportation system between smugglers and consumers, C.I.T.E.S. attempts to defeat the demand for illegal species.

It is not clear whether the reverse listing format would afford more effective control of illegal trade than does the current system. Reverse listing will not provide a greater reduction in demand for endangered species articles, nor will it help in closing the market transportation system. Any reduction in the difficulties of enforcement that reverse listing may provide must be balanced against the possibility that reverse listing will diminish the protections that direct listing provides because of its focus on endangered species and its provisions for varying degrees of trade restriction.

Moreover, the effectiveness of reverse listing in the preventive protection of species is questionable. Ideally, reverse listing would protect species by focusing on them before they become endangered.⁸⁵ This theory relies on two assumptions: 1) that reverse listing forces Convention members to examine all species of wildlife in their countries in order to justify listing them; and 2) that if the Convention adopts the reverse listing proposal, the rigorous overseeing activities of the Convention would continue unabated. Neither assumption is necessarily valid. A country might simply list a species without performing the extensive investigation that would be necessary to determine if greater protection is appropriate. The more wildlife that a country must categorize, the more likely it is that such an inadequate practice will occur. The expense and time neces-

81. See *supra* note 13.

82. Grove, *supra* note 7, at 296, 309.

83. Travalio and Clement, *supra* note 7, at 223. Neither of these drawbacks would be affected by a change to reverse listing. C.I.T.E.S. would continue to rely upon each member to enforce the treaty, and would lack a formal mechanism to enforce restrictions. Finally, it would also lack the power to sanction any members that violated the treaty.

84. Grove, *supra* note 7, at 309.

85. See *supra* notes 75-6, and accompanying text.

sary to compile extensive lists with varying degrees of protection could be prohibitive. It would be overly burdensome for the Convention to determine the appropriate restrictions to impose on trade in each of 9,700 species. The Convention might, therefore, accept member lists without sufficient analysis to decide whether the categorizations are appropriate. This tendency is less likely when only 700 species must be categorized.⁸⁶

A change to reverse listing would be expensive for the Convention, both in time and money. Drawing up new lists, deciding on protections for each list, and getting a consensus on each species could be costly. Given the lack of a clear benefit, adoption of a reverse listing format would be a waste of the Convention's limited resources.⁸⁷

CONCLUSION

C.I.T.E.S. has effectively reduced wildlife smuggling. Its listing process, with provisions for varying degrees of protection, is the major reason for its success. C.I.T.E.S. focuses on endangered species, is enforceable, and is the best wildlife protection treaty to be enacted since the international community first recognized the need for international cooperation.⁸⁸

Reverse listing could alleviate some of the enforcement problems that C.I.T.E.S. fails to resolve. At the same time, however, reverse listing could retard progress toward other important goals. It refocuses attention from endangered species to healthy ones, and may not afford the varying degrees of protection that the current system does. The listing of 9,700 species is, arguably, a process too cumbersome to be a realistic endeavor. The direct listing of 700 endangered or threatened species is more practical and allows individual countries to monitor the other species within their borders. C.I.T.E.S. places monitoring and enforcement responsibilities on member countries while the Convention serves as the information-

86. Currently, the Convention carefully scrutinizes every proposed amendment to the C.I.T.E.S. appendices. During its 1981 meeting the Convention adopted only one-half of the 92 proposed changes. United States Fish and Wildlife Service, Department of the Interior, *ENDANGERED SPECIES TECHNICAL BULLETIN*, April, 1981, at 3.

87. Reverse listing has an additional weakness. C.I.T.E.S. now covers all countries in that it includes provisions restricting trade in species from non-member countries. See C.I.T.E.S., *supra* note 10, at art. X; *supra* note 35, and accompanying text. Under reverse listing, the Convention would have to enact a provision to cover species which are only indigenous to non-member countries. This weakness could be eliminated by enacting one of several possible provisions: 1) allowing non-members to list species, 2) allowing members wishing to import such species to recommend listing, or 3) permitting a general exception to species indigenous only to non-member countries. Admittedly, this is a minor weakness and does not significantly impair the effectiveness of reverse listing.

88. Travaglio and Clement, *supra* note 7, at 222; Grove, *supra* note 7, at 309.

gathering point. Reverse listing would not change this, but it might hamper the Convention's ability to gather and organize the necessary information due to the sheer quantity of species that would be involved in the listing process.

C.I.T.E.S. must be effective if the world is to maintain its wildlife resources. Reverse listing would not increase the effectiveness of C.I.T.E.S. and might harm it. The Convention should, therefore, reject the Australian proposal in favor of continuing the direct listing system.

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