

GAO

Report to the Chairman, Committee on
Resources, House of Representatives

September 2004

PROTECTED SPECIES

International Convention and U.S. Laws Protect Wildlife Differently



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Highlights of [GAO-04-964](#), a report to the Chairman, Committee on Resources, House of Representatives

Why GAO Did This Study

International trade in wildlife is a multibillion-dollar industry that, in some cases, has taken species to the brink of extinction. To address the problem, several countries, including the United States, created an international treaty—the Convention on International Trade in Endangered Species of Wild Fauna and Flora—that took effect in 1975. The United States also has domestic laws, such as the Endangered Species Act, that protect species. The protections provided by the Convention and domestic laws can differ. For example, in some cases, U.S. laws afford more stringent protections to species than the Convention does; such stricter protections can prevent U.S. interests from participating in trade that is permitted by the Convention. The Convention's member countries meet periodically to discuss implementation of the Convention and are scheduled next to meet in Thailand in October 2004.

In anticipation of this meeting, GAO was asked to report on (1) how implementation of the Convention has changed over the years, (2) U.S. funding and other resources spent on Convention-related activities, and (3) the relationship between the Convention and some domestic laws.

The Department of the Interior and the National Oceanic and Atmospheric Administration generally agreed with the information in the GAO report.

www.gao.gov/cgi-bin/getrpt?GAO-04-964.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Barry Hill at (202) 512-3841 or hillbt@gao.gov.

PROTECTED SPECIES

International Convention and U.S. Laws Protect Wildlife Differently

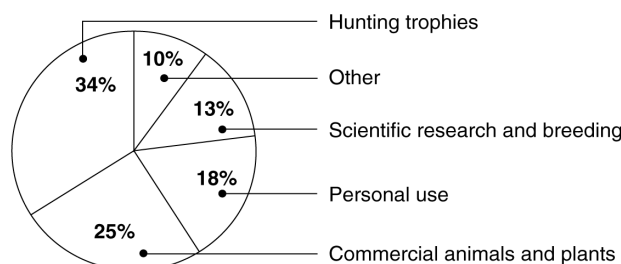
What GAO Found

Implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora has become increasingly complex and controversial since its inception. Complexity has increased in part because of the sheer number of member countries (166) and species protected (more than 33,000) and because the criteria for identifying protected species have become more scientific and specific, resulting in heavier data-gathering, permitting, enforcement, and reporting requirements for member countries. Controversy, in turn, has increased because the Convention membership has recently contemplated, and in some cases approved, protection of commercial species such as sharks and Patagonian toothfish (commonly marketed as Chilean seabass)—species that in some cases are already managed under regional fisheries agreements.

Over the 9-year fiscal period 1995 through 2003, the United States spent more than \$50 million on Convention-related activities. As the agency primarily responsible for U.S. implementation of the Convention, the Fish and Wildlife Service spent the largest portion of these funds—about \$37 million over the period. Other agencies have roles as well, including the Department of State, which makes U.S. contributions to help administer the Convention internationally.

The Convention and the Endangered Species Act protect species differently. In some cases, the act prohibits imports that are allowed by the Convention. For example, the act generally prohibits the import of a popular exotic fish, the Asian arowana, although the Convention allows some commercial trade in the species. The Convention establishes mandatory requirements and recognizes countries' rights to establish stricter protections. However, such protections have generated heated debates among affected parties. Those in favor say that the United States should impose stricter protections than the Convention, when needed to protect endangered species or their habitats. Opponents say that U.S. actions should be consistent with the agreements reached by a majority of the Convention's members.

Intended Uses of Wildlife, 2003, per U.S. Import/Export Permit Applications



Source: U.S. Fish and Wildlife Service.

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United States Government Accountability Office
Washington, D.C. 20548

September 15, 2004

The Honorable Richard W. Pombo
Chairman, Committee on Resources
House of Representatives

Dear Mr. Chairman:

International trade in wildlife, including rare and endangered species, is a multibillion-dollar industry involving items such as crocodile leather products, beluga caviar, mahogany, and ivory. Such trade is regulated through the Convention on International Trade in Endangered Species of Wild Fauna and Flora (the Convention), an international treaty designed to ensure that international trade does not threaten species' survival. The Convention entered into force in 1975 with 18 member countries, including the United States, and originally protected about 1,200 animal species. Some of these species, such as tigers and elephants, were considered "charismatic megafauna"—species that many people recognized and supported the need to protect. Currently, 166 countries are members of the Convention, which protects more than 5,000 animal species. (The Convention also protects more than 28,000 plant species.) To implement the Convention, member countries are expected to carry out programs to regulate the import and export of protected species as well as contribute to a voluntary fund that finances the Convention's management and administration worldwide. Although the language of the Convention has changed little since its inception, member countries have clarified or interpreted its implementation through various decisions and resolutions at periodic conferences.

U.S. domestic laws, such as the Endangered Species Act and the Marine Mammal Protection Act, also protect certain species. In some cases, the protections provided under domestic law are more stringent than those provided under the Convention. For example, in 1983, the Convention members voted to allow trade in Nile crocodile products from several African countries. However, the United States did not allow imports of such products until 1996 because of Endangered Species Act protections. The Convention explicitly recognizes the sovereign right of member countries to impose stricter domestic measures. Nevertheless, these measures have caused concerns among regulated entities, such as the aquaculture industry and big game hunters, that are unable to participate fully in activities or trade allowed by other Convention member countries.

In October 2004, the Convention's member countries will meet in Bangkok, Thailand, to discuss several proposals to protect new species, such as the humphead wrasse (a gourmet food fish), and to change the level of protection afforded species, such as loosening restrictions on trade in bald eagles. In addition, administrative aspects of the Convention will be considered, such as options for using electronic systems for processing import/export permits and trade reports. In anticipation of the upcoming conference, you requested that we identify (1) how implementation of the Convention has changed over the years since its inception; (2) U.S. funding and other resources expended on Convention-related activities; and (3) the relationship between the Convention, the Endangered Species Act, and the Marine Mammal Protection Act, including how each identifies species for protection and affects use of those species. We obtained documents on implementation of the Convention in the United States and budget data from the Department of the Interior's Fish and Wildlife Service, which is the agency with primary responsibility for implementing the Convention. We performed a comparative analysis of the Convention, the Endangered Species Act, and the Marine Mammal Protection Act; and we discussed the Convention and acts with numerous federal and nonfederal officials involved in international trade and species protection. We conducted our work from March 2004 through August 2004 in accordance with generally accepted government auditing standards.

Results in Brief

In several ways, implementation of the Convention has become more complex and controversial since 1975. First, permitting and enforcement tasks related to the import and export of protected species are more difficult, in part because workload has increased due to the sheer number of species now protected by the Convention and the demand for such species. Permitting and enforcement tasks are also complicated by the evolving nature of the wildlife trade and the various stipulations attached to the use of protected species. For example, a significant portion of trade is now in wildlife parts and products—rather than whole plants or animals—that are much more difficult to detect and identify. Inspectors must be familiar with numerous wildlife products such as plant pollen, roots, and seeds; animal hides; and wildlife tissue; all of which may be subject to different levels of protection. Second, the criteria for identifying species for protection under the Convention have become more scientific. In the past, some species were protected on the basis of very little field-collected data and, instead, because scientists suspected—rather than deduced—that a particular species was in decline. Today, the Convention places more emphasis on obtaining biological evidence of decline when

identifying new species for protection. Lastly, some proposals for species protection are broadening the historical reach of the Convention into areas that generate considerable controversy, such as commercial fisheries. Such proposals have spurred acrimonious debate among member countries over the extent to which the Convention should intervene in regulating trade in species that, in some cases, are managed by other international or regional organizations. As a way forward, the Convention membership is taking steps to proactively cooperate with other resource management and oversight organizations.

The United States spent more than \$50 million implementing the Convention between fiscal years 1995 and 2003; data on expenditures before this time were not available. The Fish and Wildlife Service (the Service) spent the majority of these funds—approximately \$37 million—for activities such as processing applications for import and export permits and preparing for and participating in conferences of the member countries. The Service spent additional funds for inspecting wildlife shipments and carrying out enforcement actions. Other agencies also expend resources implementing the Convention—including the National Marine Fisheries Service, for providing expertise on marine species, and the Animal and Plant Health Inspection Service, for inspecting the import and export of plants. In addition, the United States, through the Department of State, provided about \$13 million between 1995 and 2003 in voluntary contributions to support the financing and operation of the Convention internationally. For 2003, U.S. contributions were about \$1 million—approximately 22 percent of the total contributed by all member countries.

Although the Convention, the Endangered Species Act, and the Marine Mammal Protection Act share a common goal of protecting species, they offer protection for different reasons and in different ways. The Convention seeks to ensure that international trade in wild animals and plants does not threaten species' survival in the wild, while the Endangered Species Act intends to conserve species that are at risk of extinction for any reason and to conserve their habitats. The Marine Mammal Protection Act goes further than both of the others: it seeks to ensure that populations of all marine mammal species are maintained at their optimum sustainable population levels, regardless of whether species are at risk of extinction. Under the Convention, trade in a protected species is restricted or monitored, depending on the species' risk of extinction. The two U.S. laws, in addition to similarly restricting trade, prohibit or restrict any activity that kills or otherwise harms protected species; the Endangered Species Act

also prohibits or restricts activities that may adversely affect habitats critical to the survival of protected species. While the Convention and the U.S. laws all allow trade in protected species in certain circumstances, some uses allowed by the Convention are not allowed by the Endangered Species Act. For example, the Asian arowana, a freshwater ornamental fish considered in some cultures to bring good luck, is protected but may be traded commercially under the Convention because of Convention-approved captive breeding programs. However, the fish is also recognized as endangered under the Endangered Species Act, so its import into the United States for purposes that do not enhance the survival of the species is prohibited.

Some regulated entities and Convention member countries believe that “stricter domestic measures,” such as those imposed under the Endangered Species Act, unnecessarily restrict U.S. citizens from participating in trade allowed by other member countries and may undermine some species conservation efforts. For example, some exporting countries rely on revenue from trade in protected species to generate funds for supporting conservation efforts such as protecting species from poaching. In contrast, some species advocates believe that all individuals of any species that has been identified as at risk for extinction should be protected and that the additional protections provided by the Endangered Species Act are necessary and appropriate. We did not hear similar concerns or debate about stricter domestic measures imposed under the Marine Mammal Protection Act, although the act currently protects a number of species in which the Convention allows some trade. Some officials we interviewed speculated that the act’s provisions generate fewer concerns because there is not a large demand for trade in marine mammals in the United States.

The Department of the Interior and the National Oceanic and Atmospheric Administration generally agreed with the information presented in this report. The department expressed concern, however, that the report emphasizes the negative aspects of complexity and controversy and implies that the Convention may be inappropriately duplicating the work of other agreements. We intended our discussion to be merely descriptive, rather than negative or positive, and we did not intend to imply an inappropriate duplication of effort. Also, the department took issue with our statement that there is no clear consensus on the effectiveness of the Convention in conserving species.

Background

Although it first entered into force in 1975, the Convention evolved from years of discussions among several countries about conservation and sustainable trade. For example, in 1963, the General Assembly of the International Union for the Conservation of Nature and Natural Resources passed a resolution calling for “an international convention on regulations of export, transit and import of rare or threatened wildlife species or their skins and trophies.”¹ A first draft of the Convention was produced in 1964, and after subsequent discussions and drafts, the Convention was signed in March 1973 in Washington, D.C. According to the Convention’s preamble, the member countries recognized that the conservation of wild fauna and flora was of global importance and that international cooperation was essential for the protection of certain species against overexploitation through international trade.

What Is Wildlife Trade?

Each year, wildlife (animals and plants) of all types are sold in the wildlife trade. Some of this trade is regulated by the Convention; some is regulated by domestic laws; and some is not regulated at all. In general, uses of wildlife consist of trade in wildlife parts and products and trade in live wildlife. Global trade in wildlife parts and products includes the following, among other things:

- exotic fur and leather such as fox and leopard fur coats, elephant and ostrich skin boots, snake and shark skin shoes, kangaroo skin soccer balls, and alligator and eel skin purses;
- ornamental objects and curios such as sea turtle shell cases, snail shells, elephant ivory jewelry, seahorses, and matted butterflies;
- food such as monkey and ape bushmeat, turtle, bear paws, frog legs, lobsters, shrimp, conch, fish, clams, and oysters; and
- traditional medicine ingredients such as tiger bones, rhinoceros horn, ginseng root, bear gall bladders, deer antlers, seahorses, and plant-based powders and ointments.

¹Now known as the World Conservation Union, the International Union for the Conservation of Nature and Natural Resources is an organization of scientists and experts from more than 180 countries with the mission of influencing, encouraging, and assisting societies throughout the world to conserve the integrity and diversity of nature and ensuring that any use of natural resources is equitable and ecologically sustainable.

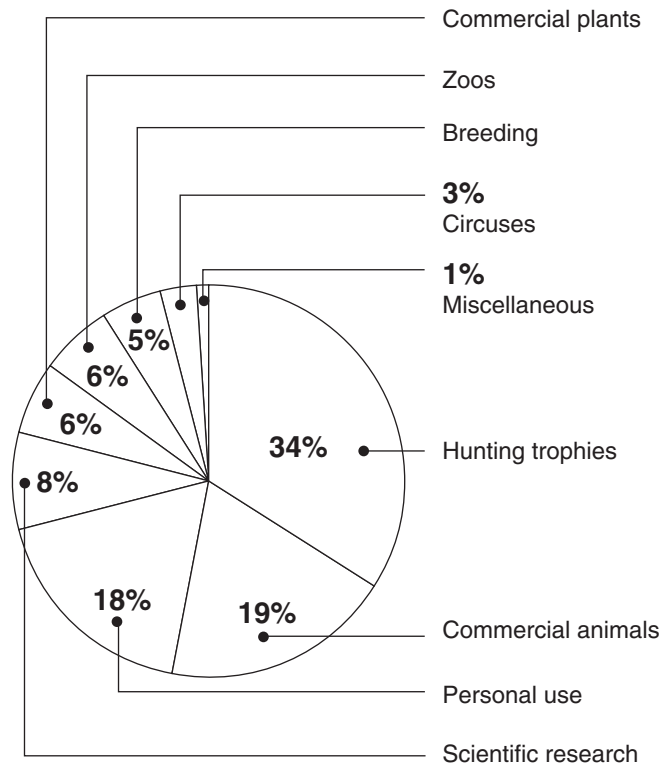
Trade in live wildlife includes the following, among other things:

- furnishing the exotic pet and plant trade with species such as tropical fish, seahorses, parrots, iguanas, orchids, snakes, and geckos;
- providing species for biomedical research and teaching, such as monkeys, snakes, fish, and frogs;
- stocking public or private game farms and hunting ranches with deer, antelope, and wild sheep;
- providing zoos and safari parks with species such as elephants, rhinoceros, dolphins, large cats, monkeys, pandas, birds, and reptiles; and
- providing food such as reptiles, amphibians, and fish.

As one of the wealthiest countries in the world, the United States is the largest importer and exporter of wildlife products and dominates an estimated \$5 billion annual world wildlife trade industry, according to the Fish and Wildlife Service. The United States' share of worldwide trade, according to Service officials, is between \$1 billion and \$2 billion a year.² Figure 1 shows the intended uses of wildlife for which U.S. applicants sought import or export permits from the Service in 2003.

²All of these estimates refer to the values declared at the point of import or export, not to the retail or wholesale values, according to Service officials.

Figure 1: Intended Uses of Wildlife by U.S. Permit Applicants, Fiscal Year 2003



Source: U.S. Fish and Wildlife Service.

How Is the Convention Structured?

The Convention provides a framework for cooperation and collaboration among member countries to conserve species affected by international trade. The membership is made up of all countries that have joined the Convention; as of July 2004, 166 countries were party to the Convention. Each member country, by its signature, ratification, or accession, agrees to abide by and enforce the terms of the Convention. For example, the member countries agree to monitor and regulate imports and exports of certain species, as specified by the Convention, and to submit annual reports on trade in species protected under the Convention and biennial reports on implementation of the Convention. The member countries also agree to enforce the terms of the Convention, typically through legislation that incorporates Convention provisions, establishes requisite authorities, and imposes penalties for noncompliance. Enforcement provisions

generally involve inspecting import and export permits, as well as the shipments, to ensure their compliance with Convention requirements.

The Convention's Secretariat, located in Geneva, Switzerland, provides support to the member countries to implement the Convention. The Secretariat organizes and facilitates each conference of the member countries, helps members implement the requirements of the Convention, undertakes scientific and technical studies regarding issues that may affect the implementation of the Convention, and manages the fund that is financed through member contributions. The fund supports the day-to-day operation of the Convention, such as purchasing office supplies, paying personnel, and facilitating Convention-related conferences. Currently, the Secretariat has a full-time staff of 28. The membership agreed to a system to provide a stable source of funding through voluntary contributions by member countries in 1979 and implemented that system in 1983. Prior to that time, Convention funding was provided through the United Nations Environment Programme.³ Members' annual contributions to the fund are determined through a scale of assessment related to a country's gross domestic product. The Convention does not provide a mechanism for enforcing the payment of annual contributions. Although the Secretariat reported in 2003 that the overall amount of contributions in arrears was not great, it also indicated that several countries have not made contributions for years.

The membership convenes every 2 or 3 years at a conference of the member countries, referred to as the "Conference of the Parties." The conference is the primary forum at which the membership debates and votes on proposals submitted by one or more members. Approval of substantive proposals, such as species-related decisions or significant procedural changes, generally requires a two-thirds majority of the members present, although many decisions are still made by consensus. Proposals are to be distributed to all members (through the Secretariat) several months before the conference and are to include the documentation necessary to explain or justify them (e.g., population surveys, scientific studies, discussion papers). In October 2004, the thirteenth conference of the member countries will take place in Bangkok, Thailand.

³The United Nations Environment Programme acts as an advocate and facilitator to promote wise use and sustainable development of the global environment.

A number of committees conduct business in between the biennial or triennial conferences of the member countries. The standing committee serves essentially as a steering committee; among its responsibilities are providing policy and operational direction to the Secretariat, overseeing the development and execution of the Secretariat's budget and expenditures, coordinating and advising other committees, and drafting resolutions for consideration by the Convention's membership. Among the responsibilities of the animals and plants committees are providing advice and guidance to the membership on all scientific matters relevant to international trade in protected animal and plant species and developing decisions and resolutions to implement the Convention. For example, the committees may review and assess all available biological and trade information on species considered to be significantly affected by trade and, based on such assessments, form appropriate conclusions and recommendations. The nomenclature committee ensures clarity and consistency in the identification and classification of species.

How Does the Convention Protect Wildlife?

The Convention membership protects wildlife by first identifying species in need of protection and then regulating or monitoring trade in those species, depending on the risk that trade poses to a species' survival. The Convention regulates trade primarily through a system of import and export permits that are sought by organizations and individuals wishing to use protected species. Such consumers include (1) zoos and circuses that use animals for display, entertainment, or research; (2) furniture and clothing manufacturers, for selling raw materials or finished goods to consumers in other countries; (3) medical and scientific institutions, for biological samples for research; (4) producers, for artificially propagated or captive-bred species; and (5) individuals, for various items ranging from curios to hunting trophies.

Species in need of protection are identified in one of three appendixes to the Convention. The Convention extends the most stringent protections to the species it has included in appendix I. These are species that are considered at risk of extinction by virtue of meeting at least one of several criteria and are, or may be, affected by trade. Among the criteria are an observed, inferred, or projected decline in (1) the number of individuals, (2) the area and quality of habitat, (3) the area of distribution, (4) the number of subpopulations, or (5) reproductive potential. The Convention generally prohibits commercial trade in species included in appendix I but may allow trade in household goods, hunting trophies, or live animals for purposes of display, research, or breeding when such trade is not

detrimental to species in the wild. Species currently listed in appendix I include the Ethiopian toad, the red-necked parrot, the short-nosed sturgeon, Brazilian rosewood, the Burmese peacock turtle, the Asian golden cat, the giant armadillo, living rock cactus, and the bowhead whale.

Appendix II to the Convention includes species that are not yet but may become threatened with extinction at least in part due to trade; the Convention regulates trade in these species. Among the criteria for a species' inclusion in appendix II are a known, inferred, or projected conclusion that (1) a species will meet at least one of the appendix I criteria in the near future unless trade in the species is subject to strict regulation or (2) the harvesting of specimens from the wild for international trade has or may have a detrimental effect on the species by exceeding, over an extended period, the level that can be continued in perpetuity. Species currently listed in appendix II include the strawberry poison-arrow frog, the crab-eating fox, the wrinkled hornbill, yellow pencil coral, fragrant prickly-apple, queen conch, the freckled monitor, Caribbean mahogany, the piebald dolphin, Himalayan yew, and the king cobra. Another criterion for inclusion in appendix II is that a species resembles another species listed in appendix I or appendix II, such that a nonexpert, with reasonable effort, is unlikely to be able to distinguish between them. In contrast to the generally prohibited trade in appendix I species, trade in appendix II species is generally allowed, although it is monitored and controlled to ensure that it does not pose a threat to the continued existence of the species. For example, the Convention requires that trade in appendix II species be monitored through trade reports that members must submit each year. These reports detail the number of species, parts, and products the country imported, exported, and reexported during the year.⁴ In some cases, limited populations of species found in appendix I are put in appendix II to allow for some trade to occur. In these cases, the downlisted populations are managed in some way that ensures that trade will not be detrimental to the survival of the species in the wild (see fig. 2).

⁴Reexport means the export of any species, part, or product that has previously been imported.

Figure 2: Special Vicuña Management Allows for Limited Trade in the Species



Source: CITES Photo Gallery, photo by Heinz Plenge.

Note: Vicuñas were being killed in the wild for their high-quality wool and had consequently become critically endangered. The vicuña was listed in appendix I to the Convention, and trade in the species was thus prohibited. Subsequently, however, several South American countries developed programs for capturing and shearing vicuñas without killing them. Accordingly, the Convention membership agreed to downlist specific populations of vicuñas in Argentina, Bolivia, Chile, and Peru from appendix I to appendix II to allow for limited trade in vicuña wool.

Finally, appendix III to the Convention includes species that a member country has identified as being subject to regulation to prevent or restrict exploitation and as needing other countries' cooperation in controlling trade. Appendix III species are listed by individual member countries and are not put to a vote for their inclusion. Although member countries may trade in appendix III species, trade must be accompanied by an approved export permit from the country that listed the species or by a "certificate of origin" from a nonlisting country.⁵ The listing country can then monitor trade in the appendix III species through review of issued export permits and certificates of origin. Species currently listed in appendix III, and the country that listed them, include the red-breasted toucan (Argentina), the walrus (Canada), the Egyptian goose (Ghana), the ocellated turkey (Guatemala), the dog-faced water snake (India), the water buffalo (Nepal), the starry tree gecko (New Zealand), the Cape stag beetle (South Africa), and the naked-tailed armadillo (Uruguay).

⁵A certificate of origin is intended to show that a species was obtained legally.

No clear consensus exists on the Convention's effectiveness in conserving species. In the opening session of the last conference of the member countries, the Minister of Agriculture of Chile pointed to the fact that no species protected by the Convention has become extinct, as a sign of the Convention's effectiveness. Others have highlighted the benefits of the Convention in raising awareness of conservation issues and strengthening wildlife legislation in member countries. According to the Fish and Wildlife Service, the Convention has a long history of adopting successful measures to support the conservation and sustainable use of wildlife species in trade. However, it is difficult to directly link protections provided under the Convention to improvements in a species' status in the wild. The major issues complicating such assessments are the lack of data and the fact that typically numerous factors, in addition to trade, contribute to a species' decline, such as habitat loss, overuse, and disease.

How Is the Convention Implemented in the United States?

In the United States, the Secretary of the Interior, through the Fish and Wildlife Service, is responsible for implementing the Convention. One of the Service's responsibilities is to oversee the permitting process and enforce compliance with the terms of the Convention within the United States. Irrespective of the Convention, the United States requires that all wildlife species that enter or exit the country be declared to and approved by the Service. That is, wildlife shipments must be accompanied by the appropriate permits and must be in compliance with not only the Convention, but also other applicable wildlife laws. To enforce these laws and the Convention, the Service (1) issues permits to entities and individuals wishing to import, export, or reexport protected species, products, or parts if the intended uses and the applications meet Convention and U.S. regulation requirements; (2) enforces these permits at U.S. borders by inspecting permits and shipments; and (3) investigates cases of illegal trade.

Penalties for violating the import or export requirements of the Convention or other wildlife laws are assessed based on the level of protection afforded the species. For example, penalties for a shipment of appendix I species or products that was not accompanied by the proper permits would generally be more stringent than if the shipment contained appendix II species. However, penalties for appendix II species could be severe if a shipment included a large number of protected species. Penalties for shipments that violate Convention requirements can range from monetary fines to criminal charges. Additionally, as shown in figure 3, illegal shipments may be confiscated.

Figure 3: Service Employee Recording Confiscated Wildlife Products



Source: U.S. Fish and Wildlife Service, photo by John and Karen Hollingsworth.

Another Service responsibility is to prepare and coordinate U.S. proposals for consideration by the Convention membership and advocate the U.S. position at each conference of the member countries. For the upcoming conference in October 2004, for example, the United States will propose the inclusion of several species of Asian turtles in appendix II and the downlisting of the bald eagle from appendix I to appendix II. In preparing the United States' positions and proposals, the Service coordinates with other relevant federal agencies and holds public meetings, when appropriate.

Although the Fish and Wildlife Service has the primary responsibility and authority for implementing the Convention within the United States, other agencies are involved as well:

- The National Oceanic and Atmospheric Administration's National Marine Fisheries Service is involved in an advisory capacity. Although it has no legal authority to carry out the terms of the Convention, the National Marine Fisheries Service provides scientific advice and assistance as needed to the Fish and Wildlife Service, such as in

assessing the status of marine species. In addition, the National Marine Fisheries Service provides liaison to marine resource organizations, such as the International Whaling Commission and regional fisheries management organizations. The National Marine Fisheries Service also organizes and carries out educational workshops and assists in law enforcement by monitoring for potentially illegal trade in marine species in areas other than designated ports of entry.

- The Department of State is responsible for providing U.S. annual contributions to the Convention and provides expertise and advice on international issues such as implementing multilateral environmental agreements and providing liaison with foreign governments. The department also provides funds for educational programs on Convention-related issues.
- The Animal and Plant Health Inspection Service is responsible for inspecting shipments of plants. The Customs Service inspects items brought into the country by citizens and visitors and assists the Fish and Wildlife Service in detecting items that consist of or contain wildlife or wildlife parts or products.⁶
- The Department of Agriculture coordinates with the Fish and Wildlife Service on Convention policy related to plants.

The Convention's Implementation Has Become More Complex and Controversial

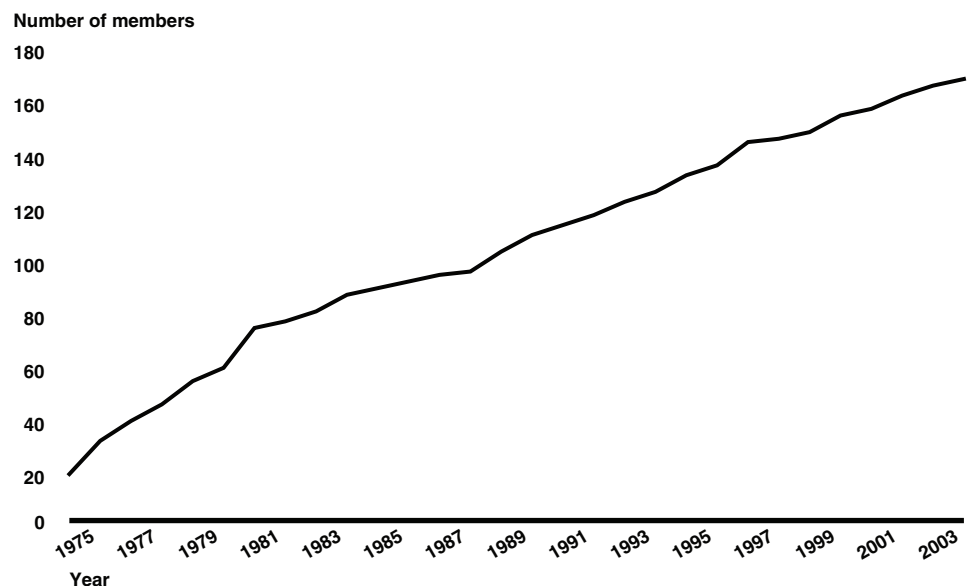
In several ways, implementing the Convention is currently more complex and controversial than it was in 1975, when it took effect. First, permitting and enforcement tasks have become more difficult, owing to increases in both the workload and the complexity of the individual tasks. Another change in the Convention is that the criteria for identifying species for protection have become more specific and science based. Although this is a positive step, it requires more resources for data gathering and reporting. And finally, proposals for protection of some species have become quite controversial because they address species that are subject to management by other multinational organizations.

⁶The Department of Homeland Security has taken over some of the tasks formerly conducted by the Animal and Plant Health Inspection Service and now oversees the Customs Service.

Permitting and Enforcement Tasks Are More Difficult

Since the Convention's inception, the permitting and enforcement workload has become larger, and the tasks themselves more difficult. Workload has increased along with increases in the Convention membership. The number of countries that are party to the Convention has increased dramatically since 1975, reflecting increased global interest in species protection and trade participation. Convention membership has grown from the initial 18 countries, whose membership entered into force in 1975, to 166 countries as of July 2004 (see fig. 4).

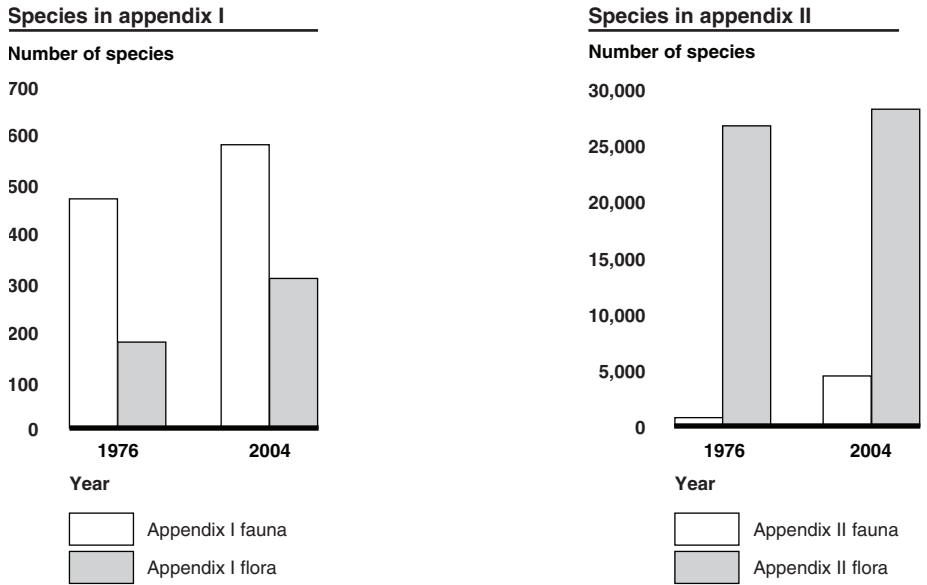
Figure 4: Convention Membership Has Increased by 800 Percent Since 1975



Source: The Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

Along with the increase in membership has come an increase in the number of species protected by the Convention. The number of protected species has increased by about 20 percent since the early years of the Convention. In 1976, about 28,000 species were listed in the Convention's appendixes I and II; currently, more than 33,000 species are protected. The biggest change has been in the number of protected animal species, which has increased by about 320 percent. Overall, though, plant species continue to make up the vast majority of protected species (see fig. 5).

Figure 5: Species Listed in the Convention's Appendixes I and II in 1976 and 2004

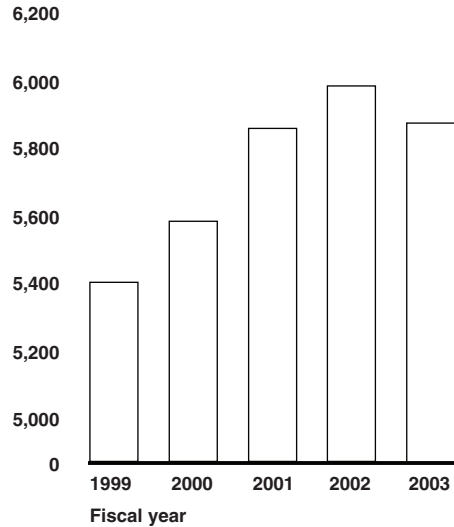


Source: Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

As the number of protected species has increased, so has the Service's workload. In just the past 5 fiscal years, the Service's permitting workload has increased by almost 9 percent. In total, over the 5-year fiscal period 1999 through 2003, the Service issued more than 28,000 permits for Convention-protected species, parts, and products (see fig. 6). Over the same period, the Service denied about 200 permit applications.

Figure 6: The Fish and Wildlife Service's Convention-Related Permitting Workload, Fiscal Years 1999 through 2003

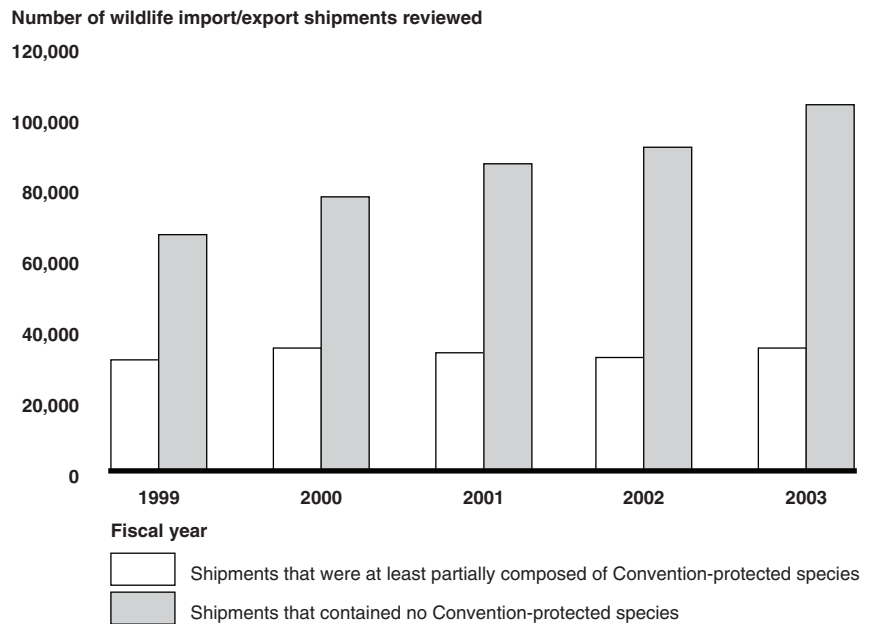
Number of permits issued for Convention-related activities



Source: U.S. Fish and Wildlife Service.

As the number of imports and exports has risen, so too has the Service's review and inspection workload. In many cases, according to several law enforcement officials at the Service, only the paperwork (e.g., permits) accompanying a wildlife shipment is reviewed to ensure compliance with appropriate wildlife laws, as well as the Convention. Decisions about which shipments are to be physically inspected are based on factors such as past experiences with the exporting country, the importer's or exporter's record and reputation, and the type and intended use of the item being shipped. Over the 5-year fiscal period 1999 through 2003, the Service reviewed import and export permits for nearly 600,000 wildlife-related shipments, of which about 170,000 were at least partly composed of items protected under the Convention (see fig. 7). According to law enforcement officials, about 25 percent of all shipments are physically inspected.

Figure 7: Wildlife Shipments Reviewed by the Service Since Fiscal Year 1999



Source: U.S. Fish and Wildlife Service.

The difficulty of the permitting and enforcement tasks has increased not only as a result of the growth and change in Convention membership and protected species, but also as a result of changes in the nature of trade in wildlife. In the early days of the Convention, trade was primarily conducted in whole animals or plants; currently, a significant portion of trade is in wildlife parts and products. This change is significant because in most cases it is more difficult to detect and identify parts and products. In addition, permitting and enforcement tasks are more difficult because of numerous resolutions and decisions that have added complexity to provisions governing species' identification, protection, and packaging. Some resolutions, for example, have resulted in annotations (i.e., footnotes) to the appendixes that are intended to define the scope of a species' protection. For example, some annotations may indicate that specific populations, parts, or products of a species are subject to different protection levels than are other populations, parts, or products. Another reason for many annotations (e.g., those about the vicuña) is to minimize the scope of the Convention's restriction on trade in a species by focusing solely on trade resulting from wildlife harvesting methods that are detrimental to the species. Although resolutions and decisions have

resulted in increased workload for member countries, the modifications have generally been intended, at least in part, to make the provisions of the Convention more workable and clear, according to Service officials.

One of the more complex situations, with regard to annotations, is that of the African elephant. One annotation specifies the conditions under which elephant hides, live elephants, and ivory may be exported from the elephant population in Zimbabwe. Another annotation specifies the conditions under which ivory may be exported from the elephant populations in Botswana, Namibia, and South Africa (see fig. 8).

Figure 8: Annotations Specify Circumstances for Allowable Trade in Elephant Ivory



Source: U.S. Fish and Wildlife Service, photo by Gary M. Stoltz.

Note: Although trade in elephant parts and products is generally prohibited under the Convention, one annotation to appendix II allows trade in whole tusks and pieces of raw ivory from elephants that are from Botswana or Namibia, as long as the ivory comes from registered government-owned stocks originating in the country and excluding seized ivory and ivory of unknown origin. If the elephant is from South Africa, though, tusks and cut pieces of ivory are allowed to be traded only if they are both 20 centimeters or more in length and 1 kilogram or more in weight. Like the products from the other two countries, the South African tusks must come from registered government-owned stocks, but the South African products are further restricted—they can come only from the Kruger National Park. Further, trade in these products from any of the three countries is allowed only to trading partners that have been verified by the Secretariat to have sufficient national legislation and domestic trade controls to ensure that the imported ivory will not be reexported and will be managed in accordance with all

requirements concerning domestic manufacturing and trade. Also, imports may not occur until the exporting country has submitted the required baseline information on issues such as elephant population numbers and incidence of illegal killing. Further, a specified maximum of ivory may be traded (20,000 kilograms from Botswana, 10,000 kilograms from Namibia, and 30,000 kilograms from South Africa), and it must be sent in a single shipment under strict supervision of the Secretariat. And finally, the proceeds of the trade are to be used exclusively for elephant conservation and for community conservation and development programs within or adjacent to the elephant range.

The expanded use of such annotations has made it increasingly difficult for permitting and inspection officials to readily identify which species—and parts and products thereof—are protected. Thus, inspectors are faced with the difficult task of ascertaining whether shipments of elephant parts and products meet all the cited requirements and are indeed from elephants that came from the country listed on the permit. Service law enforcement officials told us that inspectors encounter shipments with elephant products daily and that headquarters frequently sends guidance to inspectors on how to deal with these shipments and the annotations. A similarly complex situation arises when annotations provide different protections for species from wild populations and those that were bred in captivity or artificially propagated. Such a distinction is often difficult for inspectors to make. According to Service officials, one of the Convention's committees is working on ways to make it easier to identify the source of protected species.

According to a Service official, taking enforcement actions against illegal trade is more complex when dealing with high-value commercial species and products like mahogany and caviar. In some cases, such as for caviar, the product is perishable, so the Service must ensure that the inspection process goes quickly, lest the product spoil. In addition, the perishable nature of some products makes their storage and handling more difficult. Caviar is a high-value product, and international demand for it is high—caviar from the beluga sturgeon, found in the Caspian Sea, sells for more than \$1,500 per pound on the U.S. retail market. High-value products such as these can be tempting targets for smugglers. For example, in January 2003, a Russian citizen was sentenced to 30 months' imprisonment for repeated violations of the Convention, including illegally importing into the United States 44 kilograms of osetra caviar (derived from Russian sturgeon) without the required permits.

Criteria for Identifying Species for Protection Are Increasingly Based on Science

Another change in the Convention is that the criteria for identifying species that need protection have become more science based. In the early years of the Convention, according to the Secretariat's Deputy Secretary General, if a country believed that a species was threatened and proposed its protection, the membership nearly always approved it—if the species was specific to that country. If, however, the species existed in other countries as well, and those countries disagreed with the protection proposal, then the protection was rarely approved. Over the years, though, the criteria for identifying a species' need for protection have become increasingly rigorous and the associated information requirements more thorough.

Some species in need of protection had been identified long before the Convention took effect in 1975. A first draft of the Convention appeared in 1964, and in 1969, a list of species in need of protection through trade regulation was presented at the General Assembly of the World Conservation Union. As a result, by 1976, when the Convention membership met for the first time, many species had already been included in the appendixes. At that first conference of the member countries, held in Bern, Switzerland, the membership adopted scientific criteria to guide countries' listing proposals. These criteria, known as the "Bern criteria," required the submission of data such as scientific reports on the population size or geographic range of the species. After a while, though, the Bern criteria were considered too general and, in some cases, contributed to some species' being included in Convention appendixes with little or no supporting information. Accordingly, in 1979, the membership made it possible to delist species that had been included in an appendix without the normally required population data.

In 1994, the Convention membership adopted standards for specific biological and statistical criteria to replace the Bern criteria for identifying species in need of protection. The 1994 criteria provided specific requirements for including a species in an appendix, deleting a species from an appendix, or uplisting or downlisting a species (i.e., moving a species' listing between appendixes I and II). With the more stringent criteria provided in 1994, Fish and Wildlife Service and Secretariat officials believe that the Convention now has a strong science base.

The 1994 criteria also defined key terms and specified the information to be submitted in support of any proposal. Such support includes information on

- the species' distribution, habitat, population, and role in the ecosystem;

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- the nature, intensity, and extent of threats to the species, such as competitors, pathogens, predators, toxins, and habitat loss;
 - the purpose and level of use, including trends if possible, as well as harvest levels;
 - the level and nature of national and international trade, along with the source of statistics used, such as Customs statistics, Convention annual report data, and industry reports;
 - national legislation related to the conservation of the species, the nature of legal protection, and the effectiveness of this legislation;
 - measures in place to manage populations of the species in question, such as captive breeding or artificial propagation, ranching, or quota systems, including details such as planned harvest rates and planned population sizes; and
 - consultation undertaken with, and comments received from, other countries in which the species exists and any organizations that also manage the species, such as intergovernmental bodies that act through international agreements other than the Convention.

In proposing inclusion of the humphead wrasse in appendix II, for example, the United States submitted the required information for consideration by the membership at the upcoming conference in Bangkok (see fig. 9).

Figure 9: Selected Information from the U.S. Proposal for the Humphead Wrasse



Source: U.S. Fish and Wildlife Service, photo by Liu Min.

Note: The humphead wrasse is traded in the live reef food fish market, which serves luxury restaurants in Hong Kong, Singapore, and other locations. As a rare species, the wrasse commands high prices—from \$90 to \$175 per kilogram, retail, in 1997. Although no global population assessments exist for the species, which is distributed widely throughout the tropical Indo-Pacific, reef surveys and other sources indicate declines in local populations owing to increased fishing activity. Threats to the species include (1) intensive and species-specific removal for the live reef food fish trade, which itself is ill-managed; (2) spear-fishing at night with SCUBA gear; (3) lack of coordinated, consistent national and regional management; and (4) illegal, unregulated, or unreported fisheries. The wrasse is particularly vulnerable to fishing, because it grows slowly, matures late, and prefers shallow water. Because they tend to hide in crevices when chased, most humphead wrasse are caught using cyanide squirt bottles, which are illegal in Indonesia and many other countries and cause damage to the reef habitat. The species' essential coral reef habitat is also seriously threatened by other human activity throughout the Indo-Pacific region.

Although Service and Secretariat officials believe that decisions should be based on sound science, they also noted that the associated information gathering and reporting require additional staff and time. For example, Service staff spend more time collecting and analyzing species-specific information and responding to requests from the Secretariat for information on species or trade. Recent requests sought information on U.S. controls over the elephant ivory trade and information about sturgeon

and the labeling of caviar. Complying with the increasingly rigorous monitoring and reporting requirements is difficult for all countries but is especially so for countries that lack the necessary capacity or resources to accomplish them. Accordingly, the Secretariat assists such countries, to the extent possible, in preparing their annual trade reports or conducting population surveys to support proposals for listing or delisting a species.

Proposals for Protection of Some Species Are Becoming Increasingly Controversial

Although proposals to protect species have generated controversy and debate in the past, controversy is expected to intensify as some proposals broaden the reach of the Convention, especially proposals to protect commercial fish species. In the past decade, extensive debate has occurred over the appropriate role for the Convention in the regulation of commercial fisheries. At the heart of the issue is whether the Convention should regulate trade in marine fish species or whether such species should be managed by other resource management or oversight organizations, such as regional fisheries organizations. When a marine fish species is already under the purview of such an organization, a proposal to manage its trade under the Convention implies that the other management structure has failed and could be considered an affront to those involved in managing the species. In addition, any further trade prohibitions or restrictions put in place as a result of a species' listing in appendix I or II of the Convention could damage local economies that are dependent on trade in the species. Some commercial fish species have been put under the protection of the Convention, while proposals for other fish species have failed to achieve a two-thirds majority support. Opposition to such proposals generally centered on the belief that fisheries should be managed by regional or international fisheries organizations rather than by the Convention.

- **Sharks:** Past attempts to list shark species met with objections and were rejected based on the argument that regulation of the commercial fisheries trade should be outside the Convention's purview. This argument was instrumental in rejecting, for example, a proposal at the 1997 conference to list the whale shark, which is widely traded for its meat. In 2002, however, global commitment to finding long-term conservation solutions for shark fisheries was strengthened by the member countries' vote to list in appendix II whale sharks and basking sharks—the world's two largest species of fish. The vote was preceded, however, by an intense debate over whether the Convention was an appropriate instrument for regulating trade in commercially fished marine species, even though neither of these shark species was subject

to management by international or regional resource management organizations.

- Patagonian toothfish (commonly marketed as Chilean seabass): Citing evidence of rapid declines in stocks of the toothfish, Australia proposed at the 2002 conference of the member countries that the Patagonian toothfish and Antarctic toothfish be listed in appendix II. However, the Commission for the Conservation of Antarctic Marine Living Resources, which governs South American fishing waters, and several Convention members, argued that issues concerning marine fisheries resources should be dealt with under the auspices of the relevant regional fisheries organization (in this case, the commission), not under the Convention. After heated debate, Australia withdrew the listing proposal, but the membership voted to cooperate with the commission to strengthen controls over international trade in toothfish products and to eliminate illegal, unreported, and unregulated fishing.
- Humphead wrasse: The humphead wrasse was proposed by the United States to be included in appendix II at the 2002 conference. After considerable debate, the proposal was rejected by a vote of 65 to 42, with 5 abstentions. Proponents of the proposal noted that inclusion of the species in appendix II would help ensure sustainable fisheries practices. Among the opponents' arguments were that the Convention should not be the entity responsible for commercial fish stocks; that the proposal would be difficult to implement; and that it would not address destructive fisheries practices, which were the major cause of the decline in the species. The United States will introduce the proposal again at the 2004 conference.

The United States' position in this debate, according to National Marine Fisheries Service officials, has been to consider the Convention as a useful adjunct to traditional fisheries management when the species meet the listing criteria, trade is of concern, and management is lacking or absent. Most of the marine fish species considered for Convention protection are not at this time managed by any resource management or oversight organization. In these cases, Convention protection can make a difference. For example, according to National Marine Fisheries Service officials, the inclusion of the queen conch in the Convention's appendix II, together with the associated trade regulation and collection of trade data, have caused the affected member countries to undertake discussions that will likely lead to regional management of this species.

Clearly decisions about regulating trade in commercial fisheries are controversial, and sometimes resource management organizations are offended by the implication that they have failed. Yet the effectiveness of fisheries management organizations in stemming the decline in various commercial fish species is questionable, as politics and economics are often the first considerations in making decisions on species' management. Concerns about declines in fish species are sparking many countries to look to the Convention to regulate trade in some commercial species. As we reported in February 2004,⁷ about one-third of the U.S. fish stocks assessed by the National Marine Fisheries Service are overfished or are approaching overfished conditions. This situation threatens the \$28 billion commercial fishing and fishing-related industries that rely on sustainable catches.

The United States is not alone in facing this problem. According to the Food and Agriculture Organization,⁸ about 28 percent of the world's major fish stocks are reported as overexploited, depleted, or recovering from depletion. Another 47 percent are fully exploited and are producing catches that have reached, or are very close to, their maximum sustainable limits. Similarly, a Secretariat official said that numerous species of commercial fish are being massively depleted by commercial fisheries and, in his opinion, should be protected under the Convention, including European cod, bluefin tuna, and the spiny lobster. However, he said, fisheries organizations can be quite powerful in arguing against Convention attempts to restrict commercial fisheries. Nevertheless, the Convention has the authority to examine and place under its protection any species that is threatened by trade, if a two-thirds majority of the member countries present at a conference agrees to do so.

Although considerable tension and concern remain over the relationship between the Convention and regional and international fisheries organizations, discussions have recently moved toward rapprochement. For example, the Convention membership and the Food and Agriculture Organization have agreed to pursue development of a memorandum of understanding to promote information sharing and collaboration in

⁷GAO, *Individual Fishing Quotas: Methods for Community Protection and New Entry Require Periodic Evaluation*, [GAO-04-277](#) (Washington, D.C.: Feb. 24, 2004).

⁸The Food and Agriculture Organization of the United Nations advises governments and regional organizations on the management of agricultural and fisheries resources. It does not, however, directly manage any marine fish species.

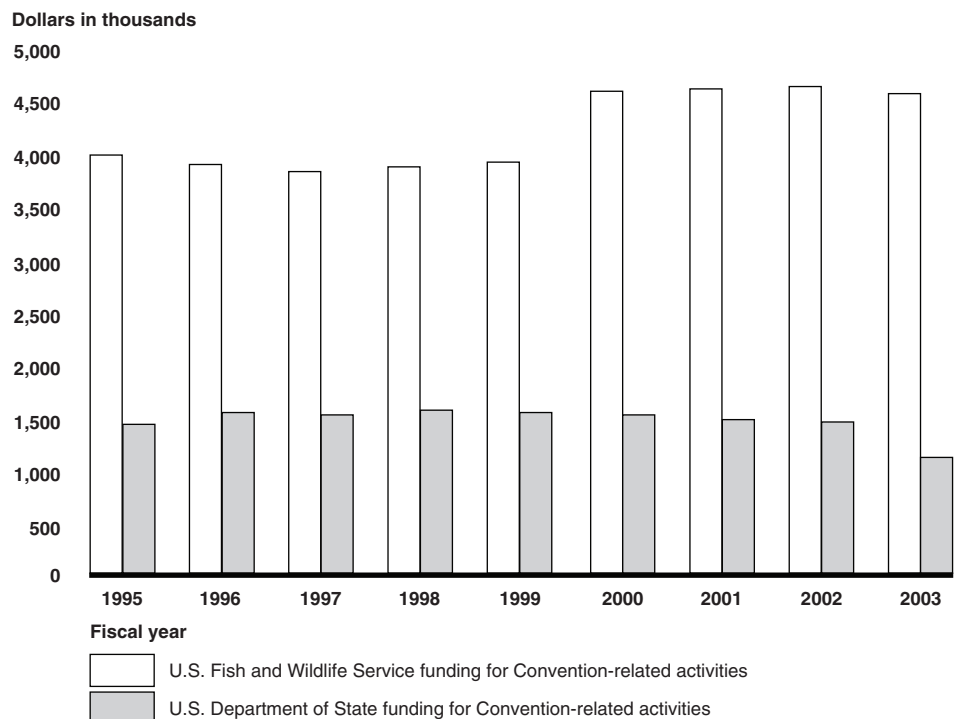
deciding the appropriate and necessary management for commercial fisheries. In addition, at the 2002 conference, Chile introduced a draft resolution that outlined the main elements of cooperation needed between the Convention and the Commission for the Conservation of Antarctic Marine Living Resources to strengthen the commission's management of toothfish. Further, at the 2002 conference, much of the debate about the individual fish listing proposals centered less on whether it is appropriate to apply the Convention to protection of marine species and more on whether the species in question met the listing criteria and what benefits might accrue from collaboration. Such discussions are useful in light of the need to resolve concerns about the health of the world's commercial fisheries, major fish stocks, and indeed the entire marine ecosystem. As we reported in February 2004, greater competition for fewer fish increases the likelihood that stocks will decline further and catches will decrease. If a fishery cannot be sustained, the marine ecosystem could be transformed, thus threatening the livelihood of fishermen and the way of life in many communities.

Other commercial species that may be subject to resource management organizations, such as timber species, are expected to generate similar controversy as fear of overexploitation spurs proposals for their protection. Proposals to protect mahogany and ramin under the Convention in the early 1990s were met with arguments similar to those presented for commercial fish species—that other resource organizations should be responsible for managing them, not the Convention. For example, arguments against protecting mahogany asserted that the International Tropical Timber Organization is the appropriate body for managing the species. Mahogany was, however, approved for listing in appendix II at the last conference of the member countries. Controversy is also expected as proposals are introduced for Convention protection of other marine resources, such as sea cucumbers and pipehorses.

The United States Has Spent More than \$50 Million on Convention-Related Activities Since 1995

The United States spent more than \$50 million, or about \$6 million annually, on Convention-related activities from 1995 through 2003;⁹ data are not available for expenditures between 1975—when the Convention entered into force—and 1995 because Convention activities were not tracked separately from other species protection programs. The \$50 million spent since 1995 includes about \$37 million spent by the Fish and Wildlife Service on activities aimed at implementing the Convention and about \$13 million spent by the Department of State for voluntary contributions to help administer the Convention internationally (see fig. 10).¹⁰

Figure 10: Selected U.S. Expenditures on Convention-Related Activities from 1995 through 2003



Source: U.S. Fish and Wildlife Service.

⁹By comparison, in 2003 the Fish and Wildlife Service spent nearly \$132 million for implementing the Endangered Species Act.

¹⁰All dollars have been adjusted for inflation and are presented in 2003 dollars.

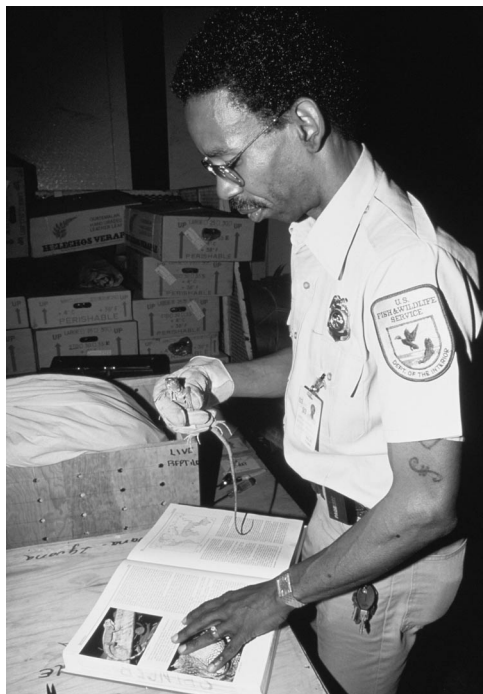
Service activities directed exclusively at implementing the Convention include coordinating U.S. proposals that will be negotiated at conferences of the member countries. Preparation for such proposals involves requesting public input through the *Federal Register* and coordinating with other federal agencies that have expertise in certain species. For example, the Service turns to the National Marine Fisheries Service for advice on marine species. Another Fish and Wildlife Service activity is issuing permits for the import, export, and reexport of Convention species. The Service ensures that each permit contains the information required under the terms of the Convention, such as the purpose of the import or export (e.g., hunting trophies, education, zoos, or commercial), the nature of the specimens being traded (e.g., live animals, skins, wallets, shoes), and the source of those specimens (e.g., animals born in captivity, specimens taken from the wild, specimens originating from a ranching operation). In fiscal year 2003, the Service allotted 49 full-time-equivalent staff to accomplish these tasks, among others.

The \$37 million spent by the Service does not include funds expended by the agency for activities, such as enforcement, that not only implement the Convention, but also serve other purposes. For example, Service wildlife inspectors review all the declaration paperwork for wildlife shipments, inspect selected shipments at specified points of entry into the United States, and investigate cases involving illegal trade.¹¹ During the review and inspection process, the inspectors enforce not only the Convention but also U.S. laws and regulations that regulate the import or export of wildlife, such as the Endangered Species Act, the Marine Mammal Protection Act, the Wild Bird Conservation Act, and the Lacey Act.¹² Convention-related enforcement expenditures cannot be broken out from the Service's overall budget of \$49 million and 445 full-time-equivalent staff for law enforcement activities in 2003. Figure 11 shows a wildlife inspector at work.

¹¹The Customs Service and the Animal and Plant Health Inspection Service also expend resources on Convention implementation during their import/export inspection duties. These expenditures are not included in our tally of Convention-related expenditures because neither agency tracks funds specific to the Convention.

¹²The Wild Bird Conservation Act was enacted to promote the conservation of wild exotic birds. The Lacey Act (officially known as the Lacey Act Amendments of 1981) was enacted to strengthen controls over the smuggling of and trade in illegally taken fish and wildlife.

Figure 11: Service Employee Inspecting and Identifying a Wildlife Shipment



Source: U.S. Fish and Wildlife Service, photo by John and Karen Hollingsworth.

The \$13 million spent by the Department of State was provided to the Convention's trust fund, as part of the United States' voluntary contributions to the Convention. In 2003, the U.S. contribution was about \$1 million. This amount was more than any other country contributed and made up about 22 percent of the total contribution of the membership in 2003. Other top contributors were Japan, 20 percent; Germany, 10 percent; France, 6 percent; and the United Kingdom, 6 percent.

Not included in the \$13 million contributed to the Convention by the Department of State are the funds the department has provided to the National Marine Fisheries Service over the past 3 years to support scientific, technological, or environmental initiatives for Convention members addressing newly protected species. For example, the department provided \$130,000 to the National Marine Fisheries Service to conduct, among other things, a technical workshop on seahorse conservation in Mexico in February 2004. All seahorses came under Convention protection in May 2004. As noted previously, the National

Marine Fisheries Service also advises the Fish and Wildlife Service on decisions about marine species. The National Marine Fisheries Service sets aside about \$100,000 per year from its appropriations for general activities to help implement the Convention.

The Fish and Wildlife Service also expends funds and technical assistance for activities that are not intended to implement the Convention but nevertheless help protect Convention-protected species. For example, the Service spent nearly \$4 million and utilized 14 full-time-equivalent staff in 2003 for international conservation efforts. It spent an additional \$4.4 million to support acts such as the African Elephant Conservation Act, the Asian Elephant Conservation Act, the Rhinoceros and Tiger Conservation Act, and the Great Ape Conservation Act. These funds are separate from the funds appropriated for implementation of the Convention or the Endangered Species Act.

The Convention and U.S. Laws Identify Protected Species Differently and Allow Different Uses

The Convention and U.S. laws share a common goal of protecting species, but they extend protection based on different criteria that reflect different underlying purposes. The purpose of the Convention is to protect species endangered by international trade, while the purpose of the Endangered Species Act is to protect species and their habitats that are threatened or endangered for any reason. The level of protection for a species dictates the allowable uses of that species, and uses allowed by the Convention sometimes differ from uses allowed by domestic laws. For example, U.S. laws sometimes afford stricter protections to species than the Convention does; as a result, some U.S. interests such as small businesses, aquariums, individual consumers, and big game hunters cannot participate in activities allowed by other member countries in accordance with the Convention. Stricter domestic measures, such as those imposed under the Endangered Species Act, can also create conflict among countries that are party to the Convention. There are arguments both for and against stricter domestic measures, and there is no consensus on how they affect species protection, member country economies and relations, individual consumers, or the efficacy of the Convention.

The Convention and U.S. Laws Have Different Criteria for Identifying Species for Protection

As previously discussed, the Convention seeks to ensure that international trade in wild animals and plants does not threaten species' survival, and the membership places species in appendix I or II, depending on the risk posed by trade. Appendix I species are in danger of extinction, in part due to

trade; appendix II species are not now in danger of extinction but may be at future risk if trade is not controlled. Appendix III is a list of species included at the request of a member country that already regulates trade in those species and needs the cooperation of other countries to prevent unsustainable or illegal exploitation of the species.

The criteria for identifying a species for protection by the Endangered Species Act are different from those employed by the Convention and reflect the act's intent to protect species that are at risk of extinction for any reason—not just trade—and to conserve their habitats. Under the Endangered Species Act, a species is eligible for protection if it meets at least one of five criteria spelled out in the act. These criteria describe threats to survival such as disease, predation, destruction of habitat, and overuse. Species are considered either “endangered,” if they are in danger of extinction throughout all or a significant portion of their range, or “threatened,” if they are likely to become endangered within the foreseeable future. While most of the act's protections apply to species found in the United States, the act also recognizes foreign species that meet the requirements for protection. Approximately 1,825 species are currently protected by the act; of these, about 560 are foreign species. The vast majority of the foreign species are mammals, birds, and reptiles.¹³

The criterion for protection by the Marine Mammal Protection Act is simply that a species is a marine mammal. The act seeks to ensure that populations of all marine mammal species are maintained at their optimum sustainable population levels, regardless of whether the species are at risk of extinction. As a result, any marine mammal that is protected by the Convention is also protected by the act. Marine mammals currently protected by the Convention include whales, dolphins, manatees, sea otters, and fur seals.

¹³In the mid-1970s, the United States extended Endangered Species Act protections to all Convention appendix I species once the Convention entered into force. These species were not subjected to the normal regulatory process for identifying species in need of protection and were not assessed against the act's listing criteria. About two-thirds of the currently listed foreign species came under the Endangered Species Act's protections at that time. Currently, the Service reviews a foreign species' status against the act's listing criteria and goes through the required regulatory and public comment process before it protects a foreign species under the act.

The Convention and U.S. Laws Allow Different and Sometimes Conflicting Uses of Protected Species

The Convention allows limited trade of some appendix I species and requires permits for both import and export (and reexport) of these species. Permits to use appendix I species may be issued if the intended use is not primarily for commercial purposes and will not be detrimental to the survival of the species. For example, permits have been issued for giant pandas to be exported from China for scientific or research purposes. The Convention allows broader trade in appendix II species—generally allowing trade, although monitoring it. For appendix II species, only export and reexport permits are required¹⁴ and are issued if the species were legally obtained and, as with appendix I species, only if their intended use will not be detrimental to the survival of the species. For appendix III species, the Convention imposes the least stringent requirements. Trade in these species requires either an export permit showing that they were legally taken or a certificate proving their origin.

The Endangered Species Act also allows some use of protected species, which may include trade, but it regulates use more stringently than the Convention. While the Convention is concerned with regulating trade that may be detrimental to wild populations of protected species, the Endangered Species Act goes beyond this standard and seeks to ensure that trade or any other use of threatened or endangered species contributes to the conservation of the species in the wild, unless the use is for scientific purposes or is incidental to an otherwise lawful use. Therefore, trade or other use of a protected species might not be allowed under the act if the use does not contribute to the conservation of the species in the wild.

The Marine Mammal Protection Act is even more stringent than the Endangered Species Act in that its conservation goals and provisions apply to all marine mammals, regardless of their status. The act allows the use of marine mammals only for specified purposes, including public display and scientific research, and requires both import and export permits for trade. The act also provides certain exemptions for the use of marine mammals by Alaska Natives.

For a number of species, trade allowed by the Convention is restricted by the Endangered Species Act. One example is trade in the cheetah, which is protected as endangered under the act. Although cheetah populations are

¹⁴Although import permits are not required for appendix II species, their import does require the presentation of either an export or reexport permit.

protected under appendix I of the Convention, Botswana, Namibia, and Zimbabwe have established quotas, as allowed by the Convention, for the export of cheetahs hunted within their countries. However, under the Endangered Species Act, the Service has not allowed the import of sport-hunted cheetahs because it has not found that current hunting and management programs enhance the survival of cheetahs. Therefore, U.S. hunters may travel to those countries to legally hunt and kill cheetahs, but they may not bring home cheetah trophies such as skins, teeth, or mounted heads, while citizens of other countries may do so. The Service has, however, allowed the import of live cheetahs—both captive-bred and wild-caught—when it has determined that their importation and subsequent use would benefit the species.

Another species for which the United States imposes stricter trade measures than the Convention is the Asian arowana, also known as the Asian bonytongue. The arowana is a fresh-water ornamental fish that is traded around the world and considered by some to bring good luck to its possessor. Although the species is protected by appendix I of the Convention, some exporting countries have arowana populations in Convention-registered captive-breeding programs; these populations are treated as appendix II species and thus may be traded. However, the arowana is also protected as an endangered species under the Endangered Species Act, and the Service has not determined that trade in captive-bred arowana will contribute to the conservation of the species in the wild. As a result, U.S. consumers cannot import Asian arowana and, therefore, cannot participate in some activities allowed under the Convention—activities in which citizens of other countries may participate.

The Endangered Species Act accommodates Convention-approved trade in threatened or endangered species when the trade meets the requirements of section 10 or 4(d) of the act. Section 10 allows the Service to issue permits for “take” of a protected species,¹⁵ as long as the permitted action is incidental to carrying out a lawful activity, is intended for scientific purposes, or can be shown to enhance the survival of the affected species. Although section 10 of the act is more frequently used than section 4(d) when foreign species are involved, according to Service officials, the Service issues section 10 permits for foreign species only for the enhancement purposes allowed under the act (e.g., scientific research,

¹⁵Under the act, “take” means to harass, harm, pursue, shoot, wound, kill, trap, hunt, capture, or collect, or to attempt any such conduct.

conservation, and education); it does not issue section 10 permits for incidental take of foreign species. The Service has issued numerous section 10 “enhancement” permits for Convention-allowed trade in species that are protected as threatened or endangered under the act. For example, it has issued permits for the import of endangered giant pandas, cheetahs, and Asian elephants for the purpose of scientific research. The Service has not, however, used section 10 permits for some uses of endangered species, such as for the import of Asian arowana for display purposes or for the import of sport-hunted cheetah trophies, because—according to agency officials—the Service has not been able to show that such activities would enhance or conserve the species in the wild. The Service proposed a draft policy in August 2003 on the various circumstances under which the agency might be able to conclude that uses such as these do enhance the status of endangered species in the wild and would thus warrant a section 10 permit. However, the Service received a significant amount of negative comments on this proposal. In particular, several conservation groups indicated that allowing trade in endangered species for uses other than display and scientific purposes is contrary to the historical U.S. philosophy on species conservation; some groups asserted that killing or capturing wildlife is not the best way to protect endangered species. The proposal has not been finalized and is still under deliberation within the Department of the Interior.

Section 4(d) of the act, which is used less frequently than section 10, provides another mechanism for allowing Convention-approved trade, but only for species that are protected as threatened under the act. Section 4(d) allows the Service to specify circumstances under which use of a threatened species can occur, including uses that would be prohibited if the species were endangered. The purpose of a “4(d) rule” is to further the conservation of the species, in addition to allowing otherwise prohibited activities to occur. Section 4(d) differs from section 10 in that it allows the Service to make blanket determinations about allowable uses of species, rather than requiring case-by-case evaluations of permit applications for individual uses. The Service has more than 60 “4(d) rules”—about one-third of which are for foreign species—including one for the use of Nile crocodile products from certain African countries and one for wool from live vicuñas from certain South American countries; both of these rules involve appendix II species in which member countries agreed to allow limited trade.¹⁶ Most recently, the Service proposed a 4(d) rule for beluga

¹⁶Some populations of these species are still protected under appendix I.

sturgeon—a species of fish best known for its expensive caviar. In each of these cases, the Service determined that allowing some commercial trade in the species would contribute to programs that assist in the conservation of these species in the wild. For the beluga sturgeon, for example, the 4(d) rule stipulates that, among other things, countries wishing to export beluga sturgeon caviar and meat to the United States must submit basin-wide beluga sturgeon management plans for the Black Sea and Caspian Sea basins, national regulations that implement the plans, and annual reports documenting management measures in place and the status of the species.

As illustrated by sections 10 and 4(d), member countries' domestic laws may provide greater protection for species than the Convention does. Article XIV of the Convention explicitly recognizes member countries' sovereign right to impose such stricter domestic measures. These measures generally take on one of two main forms. One type imposes stricter measures on the import, export, hunting, or transport of specific species, regardless of the agreed-upon protections provided by the Convention, such as in the cheetah and Asian arowana cases. The other type imposes more stringent restrictions on the trade, possession, or transport of protected species, such as requiring import permits for appendix II or III species. While not enacted with the purpose of restricting trade in species protected by the Convention, certain protections of the Endangered Species Act and Marine Mammal Protection Act have that effect and go beyond the restrictions called for under the Convention.

Other member countries—including both importing and exporting countries—have also enacted stricter domestic measures. For example, the European Union, Japan, and Namibia require import permits for trade in some or all appendix II species. Australia generally bans the export of live native wildlife species, regardless of whether the species may be traded under the Convention; and Ecuador and Nigeria have banned all commercial exports of wild flora and fauna. Costa Rica and Paraguay prohibit all international trade in wildlife.

Merits of Stricter Domestic Measures Are Hotly Debated

Stricter domestic measures can create heated conflict within and among member countries. Although there are arguments both for and against stricter domestic measures, there is no consensus on how these measures affect species protection, member country economies and relations, individual consumers, or the efficacy of the Convention. The following arguments represent the opinions of a variety of individuals at U.S. and international trade organizations, government agencies, nongovernmental

organizations, and private businesses. We are presenting the opinions as presented to us; we did not verify the accuracy of the assertions.

Arguments Supporting Stricter Domestic Measures

Those who support stricter domestic measures generally argue that they are necessary to protect species, for several reasons:

- Stricter domestic measures can help draw attention to tragically endangered species. For example, U.S. bans on trade in rhinoceros and tigers have aided those species by increasing worldwide awareness of their danger of extinction. U.S. decisions to provide additional protection for species can influence other countries to do the same.
- Stricter domestic measures allow countries to protect species without delay. Because the member countries to the Convention meet only every few years, species in danger of extinction may be harmed beyond recovery before the members meet to consider the species for protection. Domestic measures can provide critical interim protection.
- Stricter domestic measures facilitate enforcement in member countries. In the United States, for example, if the mere possession of a protected species is illegal under the Endangered Species Act, then U.S. law enforcement officials can prosecute the violator. Otherwise, enforcement officials would have to show that the species had been illegally imported, which, according to some officials we spoke with, is difficult to prove.
- Stricter domestic measures allow major consumer countries to leverage greater species protection efforts from other countries. For example, by requiring import permits for appendix II species (for which the Convention requires only export permits), a country can control the conditions under which it will import protected species. For example, the European Union requires import permits for appendix II species. This extra step allows the European Union to help ensure the sustainable management of species in the exporting countries.
- Stricter domestic measures allow countries to protect species for reasons beyond the scope of the Convention. For example, the Endangered Species Act protects species at risk of extinction for any reason—not just trade—and conserves their habitats. By itself the Convention cannot prevent the extinction of some species, let alone further their recovery, because they may suffer from threats other than those posed by trade.

Supporters of stricter domestic measures also argue that they allow countries to prioritize species protection goals:

- Stricter domestic measures provide a mechanism by which countries can display their philosophy regarding species protection. For example, the United States has chosen a precautionary approach in implementing its own Endangered Species Act, as indicated in the act's legislative history. Given the potential benefits of some species to the human race, such as offering possible cures for cancer, we should be careful to protect the continued existence of species, according to the House report associated with the act.¹⁷ A cautious approach is also reflected in the act's extension of protections to not only species that are endangered, but also those that are at risk of becoming endangered.
- Stricter domestic measures can help focus attention on recovery of wild populations. As previously discussed, some trade in appendix I species is allowed if the intended use is not detrimental to the species' survival. In the Asian arowana example, captive breeding is the reason the species is not threatened with extinction due to trade. However, captive breeding does nothing to help the declining wild population. Enacting a stricter domestic measure that requires documentation that some proceeds from the sale of captive-bred species are funneled into conservation could aid in species recovery.

Arguments Opposing Stricter Domestic Measures

Opponents of stricter domestic measures argue that they can actually harm species:

- Stricter domestic measures can discourage developing countries from establishing programs to fund species conservation. Governments in exporting countries that benefit from trade in protected species have a vested interest in maintaining those species' survival. If a major consumer country, like the United States, enacts a stricter domestic measure preventing U.S. trade in a species, the incentive for the exporting country to conserve the species may diminish. Loss of revenues from trade may also decrease a country's ability to fund enforcement efforts, such as those addressing poaching.
- If stricter domestic measures diminish trade in a protected species, funding for existing conservation programs can decrease. Some

¹⁷H.R. Rep. No. 93-412, at 5 (1973).

countries have programs that take a percentage of proceeds from the sale of protected species and channel the funds into species conservation. For example, the export of giant pandas, an appendix I species, has generated \$11 million for panda conservation projects in China. Similarly, sport hunting of Namibian cheetahs generates revenue for cheetah conservation. If China or Namibia were to implement a stricter domestic measure barring the export of pandas or cheetahs, or if a country that currently imports these species were to implement a measure to prevent future imports, then the trade-based conservation revenue for these species could decrease or even cease.

Another argument against stricter domestic measures is that they can harm foreign economies and consumer interests:

- Stricter domestic measures can affect the economy of an exporting country, particularly if export of a protected species is a major source of income, and can restrict the ability of an exporting country to benefit from its natural resources.
- Stricter domestic measures prevent some users from participating in activities that are allowed by the Convention. In the Asian arowana and cheetah examples, U.S. consumers and big game hunters are prohibited from engaging in activities permitted by other member countries, in accordance with the Convention—as noted previously, the United States is the largest consumer of wildlife and wildlife products.
- Stricter domestic measures may act as trade barriers against the exporting country. Countries that are also members of the World Trade Organization¹⁸ may choose to resolve such issues through it rather than continue to work within the Convention. To date, however, no such resolution has been sought.

Some opponents of stricter domestic measures argue that they provide little benefit to the species:

- Stricter domestic measures provided under the Endangered Species Act do little for foreign species because the Service cannot regulate “take”

¹⁸The World Trade Organization is the only global international organization dealing with the rules of trade between nations. Member countries agree to keep their trade policies within agreed limits, to all members' benefit.

or habitat destruction in foreign countries, nor does the Service develop recovery plans for species that do not occur in the United States.

Finally, opponents of stricter domestic measures argue that they run counter to the spirit of the Convention:

- Some member countries believe that stricter domestic measures, although in accordance with the Convention, undermine the multilateral goals the Convention espouses. The Convention is based on a collaborative decision-making process; when one country contravenes a decision made by the majority by disallowing trade that is allowed by the Convention, that action undermines confidence in the majority's decisions. For example, countries in southern Africa are outspoken in arguing that the unilateralism represented by stricter domestic measures is inappropriate in a multilateral agreement like the Convention.
- Stricter domestic measures foster discord among the Convention's member countries. Some member countries resent it when major consumer countries (e.g., the United States) use stricter domestic measures because doing so implies that those countries believe they know how to manage a species better than the exporting countries and Convention membership.

We heard support for and against stricter domestic measures under the Endangered Species Act but not under the Marine Mammal Protection Act, even though the Convention allows some trade in marine mammals (that would otherwise be prohibited under the Marine Mammal Protection Act). Some officials we interviewed speculated that the act's provisions generate fewer concerns because there is not a large demand for trade in marine mammals in the United States.

The use of stricter domestic measures reflects the varying philosophies around the world on species protection and stimulates intense and often emotional debate among and within countries. At the last conference of the member countries, for example, wide-ranging views were expressed over a suggestion that the Convention be modified to encourage countries to avoid the use of stricter domestic measures. In addition, concerns have been expressed within the United States about a potential change in the country's policy on international species protections. The United States has historically taken a precautionary approach to species protection, although recent actions, such as voting in support of allowing limited trade in

African ivory, have raised concerns among conservation groups that these actions indicate a change in that approach.

Concluding Observations

The Convention on International Trade in Endangered Species of Wild Fauna and Flora has changed significantly since its inception in the early 1970s—in size, complexity, and the number and type of species it protects. With these changes have come an increase in member countries' workload pertaining to permitting, enforcement, and reporting. Further, protections called for under the Convention have become more controversial, with some countries proposing the protection of commercial species that other countries believe should be managed by organizations or agreements other than the Convention. Accordingly, it appears that implementing the Convention will entail a continuing commitment of resources and that debating the merits of its application to commercial species will continue to spark international and organizational flashpoints in establishing an appropriate relationship between the Convention and other resource management organizations.

Stricter domestic measures elicit intense opinions and debate. Given the United States' strong laws and historically aggressive protection of vulnerable species, it has received criticism from the Convention's member countries, as well as from some of its own citizens and businesses, when it goes beyond the protections to which the Convention member countries have agreed, while at the same time it hears concerns about any potential relaxing of protections afforded species under current laws. Whether the United States continues with its preference, as articulated in current law, to provide stricter protections for Convention-protected species or changes its approach in deference to Convention agreements, either approach will be met with a mixture of concern and support. Making decisions about how to properly manage species both at home and abroad will continue to be challenging, particularly given the pressure to continue managing species with a precautionary approach.

Agency Comments and Our Evaluation

The Department of the Interior and the National Oceanic and Atmospheric Administration provided written comments on a draft of this report. (See app. I and II for the full text of these comments.) The Department of the Interior said that it appreciated the spirit of the report in examining issues that can help it improve the implementation of the Convention. The department agreed that the complexity of work for port inspectors and law

enforcement personnel has increased along with increases in the number and types of species, parts, and products protected under the Convention. The department noted, however, that Convention members, with strong U.S. support, have made a concerted effort over the last decade to mitigate the effects associated with the complexity of the Convention by creating a streamlined set of resolutions and decision documents as well as developing practical processes for implementation. The member countries, in considering actions to be taken, have also been mindful of the need to reduce the administrative and implementation burden on the members.

The department also agreed that new issues have brought new areas of controversy for consideration by the Convention membership but noted that controversy has accompanied every phase of the Convention's evolution. The department was concerned, however, that the report appears to highlight the negative and understate the positive effects of the Convention. For example, the department was concerned that the "Results in Brief" emphasizes the negative aspect of controversy and implies that the Convention may be inappropriately duplicating the work of other agreements. According to the department, an important impetus for the Convention's involvement in species protection is the continuing deterioration of the status of the various species in question and the failure of other institutions and organizations to deal with the deterioration effectively. Also, the department was concerned that our discussion of increased complexity portrays it as a negative aspect of the Convention, when in the department's view, the growth in the number of parties and listings reflects widespread support for the Convention and is a positive trend to which complexity is a side effect. We did not intend to portray the increased controversy or complexity associated with the Convention as either negative or positive, but rather as descriptive characterizations of the Convention's evolution. We also did not intend to imply that the Convention duplicates the work of other agreements. Rather, we intend to reflect the range of opinions among member countries about the appropriate role for the Convention in managing some species. We have changed the report to clarify our discussion and to include the department's views.

Regarding our discussion of the Convention's recent involvement in marine fisheries, the department noted that the Convention has helped support other management bodies, such as the International Whaling Commission, which requested the Convention's assistance. The department also noted that the Convention regulates trade, while international fisheries

organizations and agreements regulate harvest; thus, the Convention's involvement can as easily be complementary as competitive.

The department stated that the report accurately portrays the range of views on the use of stricter domestic measures by Convention members, including the United States. The department noted, however, that the U.S. "preference" to provide stricter protections is reflected in law and that the department is required to implement the legislated responsibilities under its jurisdiction, including the implementation of the Endangered Species Act and the Marine Mammal Protection Act, as written. We have clarified in the report that the United States' "preference" to provide stricter protections is articulated in current laws.

The department disagreed with the report's statement that "there is no clear consensus on the effectiveness of the Convention in conserving species." In the department's view, the Convention is effective and highly functioning and has a long history of adopting successful measures to support the conservation and sustainable use of wildlife species in trade. In the department's opinion, the effectiveness of the Convention is demonstrated by the high number of countries who are party to the Convention, thereby endorsing the Convention's basic principles, and by the overall success of the conferences of the member countries in coming to agreement on very difficult issues concerning species listing and Convention implementation. Although we appreciate the department's view and note that it is shared by others, the department did not provide information to show that there is consensus among member countries about the Convention's effectiveness in conserving species.

Finally, the department viewed our observation that there will be continued flashpoints between the Convention and other multinational agreements as too broadly stated, given that our study did not consider the relationship of the Convention to other multilateral agreements. Although our evaluation did not compare the Convention with other multilateral agreements, we stand by our observation. Judging by the controversy and spirited debates that have been the hallmark of the Convention for a quarter of a century, it seems clear that these are likely to continue. Nevertheless, our report recognizes that cooperative efforts are under way to reconcile longstanding differences of opinion about the Convention's appropriate role in managing marine fish species. Additionally, the department notes that the Convention has formed memoranda of understanding with the Convention on Migratory Species, the Convention on Biological Diversity, and the United Nations Environment Programme.

The National Oceanic and Atmospheric Administration commended our comprehensive look at how the Convention is implemented and how its regulatory regime differs from domestic laws protecting wildlife species. The administration agreed that one of the most controversial issues before the Convention is the regulation of international trade in marine fish species and noted that, for species under the administration's jurisdiction, it has the expertise to participate fully in implementing the Convention.

The administration recommended that we clarify the role of the Food and Agriculture Organization and the difference between the Convention and the Endangered Species Act, which we have done. In addition, the administration recommended that we revise our discussion of the controversy over regulation of commercial fisheries trade. Specifically, the administration noted that most of the marine fish species considered for listing in the Convention appendixes are not managed by any resource management or oversight organization at this time. We changed the report to reflect the administration's comments on this discussion. The administration also noted that the position of the United States has been to consider the Convention as a useful adjunct to traditional fisheries management when the species meet the listing criteria, trade is a concern, and management is lacking or absent.

In addition to their overall comments, the department and the administration provided numerous technical and editorial suggestions, which we appreciate and have incorporated in the report as appropriate.

Scope and Methodology

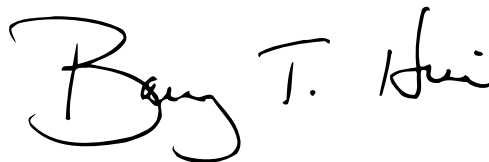
We conducted our work primarily at the Department of the Interior's Fish and Wildlife Service, which is the primary agency responsible for implementing the Convention. We obtained documents on implementation of the Convention in the United States and budget data from the Service. We assessed the reliability of data on shipments inspected and permits issued and determined that they were acceptable for our purposes. We also contacted officials at the Department of Commerce's National Oceanic and Atmospheric Administration, which advises the Department of the Interior on marine mammal and fisheries issues. We performed a comparative analysis of the Convention, the Endangered Species Act, and the Marine Mammal Protection Act, to identify the relationships between them. We also discussed the Convention and acts with numerous federal and nonfederal officials involved in international trade and species protection, including officials at the Fish and Wildlife Service, National Marine Fisheries Service, industry groups, and conservation groups; and an

individual business owner. We also obtained documents on implementation of the Convention and the upcoming conference from the office of the Secretariat for the Convention in Geneva, Switzerland. We conducted our work from March 2004 through August 2004 in accordance with generally accepted government auditing standards.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 8 days after the date of this letter. At that time, we will send a copy of the report to the Secretaries of the Interior and Commerce and to appropriate congressional committees. We will make copies available to others on request. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-3841 or my Assistant Director, Trish McClure, at (202) 512-6318. Other key contributors to this report were Claire Cynak, Cynthia Norris, Michelle K. Treistman, and Pamela Tumler.

Sincerely yours,

A handwritten signature in black ink that reads "Barry T. Hill". The signature is written in a cursive style with a large, looped initial "B".

Barry T. Hill
Director, Natural Resources and Environment

Comments from the Department of the Interior



United States Department of the Interior

OFFICE OF THE ASSISTANT SECRETARY
POLICY, MANAGEMENT AND BUDGET
Washington, DC 20240



SEP 03 2004

Mr. Barry T. Hill
Director, Natural Resources and Environment
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Hill:

Thank you for providing the Department of the Interior the opportunity to review and comment on the draft U.S. Government Accountability Office report titled, "Protected Species: International Convention and U.S. Laws Protect Wildlife Differently," GAO-04-964, dated August 11, 2004.

We have carefully reviewed the draft document. We appreciate the spirit of the current report in examining issues which can help us improve the implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). GAO focused its examination on how implementation of the Convention has changed over the years since its inception; U.S. funding and other resources expended on Convention-related activities; and the relationship between the Convention, the Endangered Species Act, and the Marine Mammal Protection Act. In particular, GAO's report focused on the question of increases in complexity and controversy in CITES implementation and the impact of stricter domestic measures embodied in U.S. legislation. We note, however, that the arrangement and selection of facts appear to highlight the negative and understate the positive impacts of CITES.

Regarding the Results in Brief, the GAO maintains that the Convention has become more complex and controversial since 1975. With respect to controversy, it is true that new issues, which have brought new areas of controversy and which the report accurately characterizes, are being considered by the Convention. However, in general, controversy has accompanied every phase of CITES' evolution as the Parties have considered measures to control and regulate wildlife trade. The summary emphasizes the negative – controversy – and implies that CITES may be inappropriately duplicating the work of other agreements. An equally important impetus to CITES' involvement is the continuing deterioration of the status of the various species in question, and the failure of other institutions and organizations to deal with that deterioration effectively. This factor is addressed in the body of the report but omitted from the one-page summary, the summary in the cover letter, and the "concluding observations."

Appendix I
Comments from the Department of the
Interior

With regard to complexity, Convention implementation reflects the reality that more species and more parts and products are listed, increasing the complexity of the work for port inspectors and law enforcement personnel, in particular. However, the Parties, with strong U.S. support, have made a concerted effort over the last decade to mitigate the effects associated with the complexity of CITES, by reviewing the Resolutions and Decisions to create a streamlined set of resolutions and decision documents as well as develop practical processes. The Parties, in their consideration of actions to be taken, have also been mindful of the need to reduce the administrative and implementation burden on the Parties. These efforts have not been detailed in the report. Additionally, the summary under "What GAO Found" leads with the observation that implementation of CITES has become more "complex and controversial." The report then notes that the complexity results from several factors: the listing process has become more scientific, more countries have become Parties, and the Parties have listed more species. Stronger science is generally thought to be important and appropriate in environmental regulation. The growth in the number of Parties and listings reflects widespread support for a Convention in which the United States has consistently been a world leader, which also is a positive trend. We prefer that the report begin with a positive statement of those major developments, followed by noting complexity as a side-effect.

The report discusses CITES' recent involvement in marine fisheries and recognizes that the Food and Agriculture Organization (FAO) and other international management structures are in place to manage these species. It should be noted that CITES is working more closely with FAO on fisheries issues, including the current development of a Memorandum of Understanding, and has helped support other management bodies, as was the case with the International Whaling Commission, which requested CITES assistance. The Parties have agreed not to list species when they recognized that other management mechanisms were in place and were sufficient to preclude a CITES listing. This was the case when the Parties considered the Patagonian toothfish proposal. The CITES Parties agreed not to list this species in deference to the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR), which was the relevant governing regional fisheries organization over this issue. Unlike older regional fisheries' organizations, CCAMLR also imposes trade regulation provisions on its members. With respect to the humphead wrasse, there is no current effort by FAO or any other international management structure to manage this species. Recently, FAO convened a panel of experts to review the marine species proposals for the thirteenth Conference of the Parties (COP13) and the experts endorsed the humphead wrasse proposal. The report also omits the fact that the Convention regulates trade while international fisheries organizations and agreements focus on the regulation of harvest, so that the involvement of CITES can as easily be complementary as competitive.

The report provides an accurate portrayal of the range of views on the use of stricter domestic measures by CITES Parties and the United States. While some groups and Convention member countries are supportive of the use of stricter domestic measures, the United States has received criticisms from other groups as well as other Convention member countries for the existence of and use of stricter domestic measures in the U.S. It should be clarified that the U.S. "preference" to provide stricter protections is reflected in

Appendix I
Comments from the Department of the
Interior

law and the Department is required to implement the legislated responsibilities under its jurisdiction, including the implementation of the Endangered Species Act and the Marine Mammal Protection Act, as written.

Although we have considered the issues GAO examined in their report, we disagree with the statement that “there is no clear consensus on the effectiveness of the Convention in conserving species.” Our overall view is that CITES is an effective and highly functioning Convention which has a long history of adopting successful measures to support the conservation and sustainable use of wildlife species in trade. The United States has a long history of involvement in the Convention, has been influential in shaping its decisions and activities, and has consistently supported its decisions. The effectiveness of the Convention is demonstrated in the high number of countries who are Party to the Convention, thereby endorsing the Convention’s basic principles, and the overall success of its Conferences of the Parties in coming to agreement on very difficult species listing and Convention implementation issues. CITES has moved deliberately and thoughtfully in areas of controversy. For example, mahogany, considered for over a decade, was not put on Appendix II until the listing was supported by the majority of exporting and importing countries. A CITES working group on mahogany continues to work on the technical aspects of implementation in a cooperative manner. We maintain that CITES has significantly reduced the pressures on wild populations subject to trade and that links to protections provided under the Convention to improvements of a species’ status in the wild can be made, beginning at home with the example of the American Alligator. Two other examples include the development of crocodilian conservation programs in countries, such as Madagascar, formerly intent on eradicating such species, and regional cooperation on vicuña management in some South American countries resulting in subsequent economic benefits to local communities and a related cessation of poaching by those same countries.

Finally, in its concluding observations, the report states that there will be continued flashpoints between the Convention and other “multinational agreements.” We believe this is overly broad. The GAO study did not consider the relationship of CITES with other global multilateral agreements. The study narrowly considered issues related to regional fisheries management organizations which are a subset of “multinational agreements.” In fact, CITES trade provisions have not been questioned by other global multilateral agreements, almost all of which lack such trade provisions. FAO is the only global agreement of this type referred to in the report and the report states that cooperation between CITES and the FAO is being pursued. CITES also has already formed memoranda of understanding with the Convention on Migratory Species, Convention on Biological Diversity, and United Nations Environment Programme.

Appendix I
Comments from the Department of the
Interior

Additional comments from the U.S. Fish and Wildlife Service are enclosed. We hope our comments will assist you in preparing the final report.

Sincerely,



P. Lynn Scarlett
Assistant Secretary
Policy, Management and Budget

Enclosure

Comments from the National Oceanic and Atmospheric Administration



UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary of Commerce
for Oceans and Atmosphere
Washington, D.C. 20230

AUG 30 2004

Mr. Barry T. Hill
Director, Natural Resources
and Environment
United States Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Hill:

Thank you for the opportunity to review and comment on the Government Accountability Office's draft report entitled "Protected Species: International Convention and U.S. Laws Protect Wildlife Differently," GAO-04-964.

Enclosed are the National Oceanic and Atmospheric Administration's comments on the draft report.

Sincerely,

A handwritten signature in cursive script, appearing to read "Conrad C. Lautenbacher, Jr."

Conrad C. Lautenbacher, Jr.
Vice Admiral, U.S. Navy (Ret.)
Under Secretary of Commerce for
Oceans and Atmosphere

Enclosure

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THE ADMINISTRATOR



**NOAA Comments on the Draft GAO Report Entitled
“Protected Species: International Convention and U.S. Laws
Protect Wildlife Differently”
(GAO-04-964/September 2004)**

General Comments

We commend the GAO for this comprehensive look at how CITES is implemented and how its regulatory regime differs from domestic laws protecting wildlife species. We agree one of the most controversial issues before the CITES Parties is the regulation of international trade in marine fish species. NOAA has the expertise to participate fully in the implementation of CITES for species under NOAA’s jurisdiction.

We also recommend clarifying the difference between CITES and the Endangered Species Act (ESA) in wildlife protection on the GAO Highlights page and page 31 (under the heading “The Convention and U.S. Laws Identify Protected Species Differently...”). The purpose of the Convention is very specific – to protect species endangered due to international trade and to regulate others in order to avoid utilization incompatible with their survival. Thus, its implementing mechanisms specifically focus on trade restrictions. The purpose of the ESA is broader – to protect species and their habitats threatened or endangered for any reason. See first comment under “Technical/Editorial Comments” section.

Recommended Changes for Factual Information

Page 24, Proposals for Protection of Some Species Are Becoming Increasingly Controversial

The GAO anticipates increased controversy regarding the regulation of commercial fisheries trade pursuant to CITES. The report contends, “At the heart of the issue is whether the Convention should regulate trade in species that are typically managed by other resource management or oversight organizations, such as the Food and Agriculture Organization. A proposal to manage such species implies that the other management structures have failed, and could be considered an affront to those involved in managing the species.” Most of the marine fish species considered for listing in the CITES Appendices are not managed by any resource management or oversight organization at this time. In fact, none of the shark species now included in the CITES Appendices or subject to other discussions in the CITES Animals Committee is subject to management by any international or regional resource governance regime. Past attempts to list shark species were rejected because regulation of trade by CITES was not supported, irrespective of the type of management organization.

The position of the United States in this discussion has been to consider CITES as a useful adjunct to traditional fisheries management where the species meet the listing criteria, trade is a concern, and management is lacking or absent. In fact, we have seen in the case of the CITES Appendix II listing queen conch, regulation and collection of trade

Appendix II
Comments from the National Oceanic and
Atmospheric Administration

data by CITES has caused range states to undertake discussions which will likely lead to regional management of this species.

Furthermore, although the role of the United Nations Food and Agriculture Organization is to advise governments and regional organizations on the management of marine resources, it does not directly manage any marine fish species.

Technical/Editorial Comments

Highlights page, What GAO Found, third paragraph:

In order to complete this description of the regulatory regimes, we recommend adding a second sentence, "The purpose of the Convention is to protect species endangered due to international trade, while the purpose of the ESA is to protect species and their habitats threatened or endangered for any reason."

Highlights page, What GAO Found, third paragraph, fifth sentence:

After "such protections," add "with regard to trade."

Highlights page, left column, Why GAO Did This Study, second paragraph:

Add to end of the sentence, "with regard to trade."

Page 3, Results in Brief, end of first paragraph:

We suggest adding the following sentence, to reflect the discussion on pages 26-27: "As a way forward, the Convention membership is taking steps to cooperate with other resource management or oversight organizations."

Page 14, first bullet, last sentence:

For clarification, text from "not typically covered" to end of sentence, should be changed to "other than designated ports of entry."

Page 31, second full paragraph:

We recommend adding after the second sentence, "The purpose of the Convention is to protect species endangered due to international trade, while the purpose of the ESA is to protect species and their habitats threatened or endangered for any reason."

Page 37, Arguments Supporting Stricter Domestic Measures:

We suggest adding the following bullet:

- Stricter domestic measures allow countries to protect species for reasons beyond the scope of the Convention. For example, the Endangered Species Act protects species at risk of extinction for any reason - not just trade - and to conserve their habitats. The Convention, alone, cannot prevent the extinction of some species, let alone further their recovery, because they suffer from threats other than those posed by trade.

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