

Ann Ely

THE NEW MUSEUM REGISTRATION METHODS

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INTRODUCTION

Consider the following scenarios:

- A donor offers your museum approximately 1,500 salvaged dead bird specimens, including whole carcasses, bones, and other parts.
- Your museum is borrowing a group of Kayapo headdresses for exhibition from a museum in Brazil.
- A staff ornithologist is importing scientific study skins from a museum in Peru.
- A private trophy hunter donates an imported jaguar hide and skin acquired by sport-hunting.
- You are receiving a shipment of unidentified herbarium specimens being sent from the People's Republic of China.
- An upcoming international traveling exhibition includes a contemporary sculpture containing trumpet corals.
- Your zoological park is shipping a live golden lion tamarin to a zoo in France as a breeding loan.
- A staff research scientist is importing frozen tissue samples collected in the field from an elephant in Nepal.

If any of these situations sound familiar, collection staff should know the applicable laws and permit requirements concerning fish, wildlife, and plants.

The purpose of this section is to outline federal laws and regulations concerning fish, wildlife, and plants and to assist registrars, collections managers, curators, and scientists in determining if, when, and how to apply for federal permits that allow an institution to engage in activities that are regulated under these laws. This is a general guide

and is not intended to be definitive; therefore, the specific laws and regulations should be reviewed prior to undertaking regulated transactions. In addition, wildlife laws and regulations are periodically amended. Collection staff should refer to the actual text of relevant laws and regulations as well as consult with the appropriate regulatory agency to ensure compliance with current rules. This section only addresses federal laws, including the Endangered Species Act, which implements the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). It is important to comply with all state and local laws as well. Check with state and local authorities to determine if there are any applicable laws.

BACKGROUND

Trade in endangered, threatened, and otherwise protected wildlife has had a destructive effect on the world's flora and fauna. In an effort to curtail activity harmful to the population of certain species, the United States and other nations have entered into international treaties and have passed domestic laws designed to preserve and conserve the world's species and their habitats. These laws limit and often ban specified activities involving protected species. Under certain conditions, exceptions to prohibited activities are allowed by regulation or permits for purposes such as scientific research, public display, enhancement of species propagation, or survival of the affected species.

Federal regulations concerning possession, disposition, and transportation of animals and plants are complex, and compliance can be daunting. Current regulations broadly govern commercial activities involving a relatively small number of the world's species. However, such regulations

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significantly affect the museum community. Permits may be required when collecting, especially field collecting; lending or borrowing; arranging collection exchanges; acquiring collections through gift or purchase; and transporting objects across U.S. state boundaries, across any foreign borders, or on the high seas. It is vitally important that museum staff be aware of the various laws when museum activities involve protected species. Collection staff who have authority to collect, acquire, dispose of, loan, or transport objects and specimens bear the responsibility of complying with laws and regulations applicable to wildlife and plants. Lack of compliance with wildlife laws, whether unintentional or a knowing violation, may result in delays, seizure, and confiscation of specimens, personal liability for civil and criminal penalties including fines or imprisonment, and damage to personal, professional, and institutional reputations.

Collections management policies should establish an institution's standard of responsibility regarding compliance with all applicable laws, including wildlife laws and regulations. Internal procedures should provide guidance for staff conducting research and collection activities regarding the acquisition, importation, exportation, and transportation of wildlife and plants and the necessary accompanying documentation. The institution should also clearly address the delegation and responsibility of collecting authority regarding field research.

Frequently, museum staff do not realize that some items in their collections contain plant or animal parts or products protected by various federal laws. These laws prescribe that certain requirements be met in order to acquire, take, possess, dispose, transport, import, or export specimens or articles containing plant and animal parts or products. Under these laws, many of the routine practices of museum collection activity require a permit or compliance with other regulatory requirements. Most wildlife laws cover animals and plants, live or dead, and parts and products made of, or derived from, the protected species. No matter how small the arti-

cle or how very little of a specimen consists of wildlife parts, the wildlife laws may apply. A valid permit is required before commencing any prohibited activity concerning a protected species. Prior to such transactions, it is advisable to review the laws and regulations relating to each activity.

Many species are protected under more than one law. For example, the California condor (*Gymnogyps californianus*) is listed as endangered under the Endangered Species Act, is included in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and is protected as a migratory bird under the Migratory Bird Treaty Act. Any transaction involving a California condor must comply with the requirements of each of these laws. In some cases, it is possible to file a single permit application that fulfills the requirements of the multiple laws affecting the species. Contact the appropriate regulatory agency for guidance.

Wildlife laws are written very broadly and authorize that specific regulations be promulgated. Federal statutes are cited as volume number, United States Code, and section number, e.g., 18 U.S.C. § 42. Government agencies publish regulations that implement laws in the Code of Federal Regulations (CFR). The Code of Federal Regulations is a codification of the general and permanent rules published in the *Federal Register* by the departments of the executive branch and agencies of the federal government. The code is divided into 50 titles that represent broad areas subject to federal regulation. The regulations are cited as title number, Code of Federal Regulations, part or section number. Title 50—Fish and Wildlife—contains most federal regulations regarding wildlife and plants. For example, migratory birds are listed in 50 CFR Part 10, endangered and threatened wildlife in 50 CFR Part 17, marine mammals in 50 CFR Part 18. Each volume of the CFR is revised at least once each calendar year. The code is kept up-to-date by the *Federal Register*, which is published daily. These two publications should be used together

to determine the latest version of any given regulation. The latest versions of these publications may be found on the Internet.

The Department of the Interior's U.S. Fish and Wildlife Service (USFWS) has the primary responsibility to enforce federal wildlife laws that protect most endangered species, including some marine mammals, migratory birds, fishes, and plants. The USFWS also carries out U.S. enforcement obligations of certain international agreements affecting protected wildlife and plants. For the most current information on species under the jurisdiction of USFWS, contact: U.S. Fish and Wildlife Service, Office of Management Authority. Other federal agencies have enforcement authority for certain laws and regulations discussed in this chapter, as described below.

The process of applying for and maintaining federal permits has often been surrounded by confusion and controversy. In recent years, the Association of Systematics Collections (ASC) has undertaken a dialogue with USFWS to help clarify regulations and to make them more workable for scientific and educational institutions. The ASC expressed particular concern over the regulations governing the importation and exportation of taxonomic or systematic collection specimens. In 1996, such discussion led to a Memorandum of Agreement (MOA) between ASC and USFWS that allows individuals and institutions to donate, under specified conditions, undocumented natural history collections to nonprofit research or educational institutions that maintain permanent collections of scientific specimens. The MOA was necessary because private individuals were hesitant to donate specimens, and institutions were hesitant to accept them, in cases where collecting and import permits were missing. Contact the U.S. Fish and Wildlife service for copies of the forms. The ASC is a helpful source of information and guidance on compliance with wildlife laws.

HELPFUL HINTS FOR OBTAINING PERMITS UNDER FEDERAL WILDLIFE LAWS

A. Before Beginning the Permit Process

- Identify knowledgeable staff and museum permit procedures.
- Identify the species involved to the most accurate taxonomic classification reasonably practicable (be species specific, including the scientific name, common name, and country of origin); seek expert advice if necessary.
- Determine which laws cover the species and the permit requirements under each applicable law.
- Determine the provenance of the object or specimen (compile supporting documentation).
- Determine the intended uses and purposes.
- Know the type of transaction (e.g., purchase, gift, loan, etc.).
- Know the location where the permitted activity is to occur.
- Know the point of origin, destination, and all intermediary stops for any shipment of wildlife specimens.
- When field research or collecting in a foreign country is involved, researchers must be aware of and comply with applicable wildlife laws and permit requirements of the foreign country.
- Foreign collecting and exportation/importation permits should be obtained for research materials well in advance of a proposed research project.
- Live materials may require additional permits through the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture.

B. Permit Process

- Begin the permit process as soon as possible.
- When filing a permit application, be as complete and detailed as possible.

- To expedite the permit process, consider sending the complete permit application by express mail or certified mail for proof of delivery.
- If an item qualifies for an exception, contact the federal or state agency for the required application and assistance.
- Under some circumstances, import and export of museum collections may be facilitated by a customs broker. Brokers are often familiar with permit requirements and can ensure compliance with the necessary procedures and documentation. Remember that your institution remains ultimately responsible.
- Couriers and shippers must know the permit requirements of your shipment, and the institution should have a system for monitoring their compliance.
- Maintain all records documenting importation, exportation, transportation, and subsequent disposition. Retain copies of all materials relating to permit application. It may be helpful to have multiple copies of your application and required documentation during shipment and clearance.
- Keep informed of new regulations by checking the *Federal Register* and agency publications.
- If any questions arise as to whether a permit is required, the permit process, or other related questions, contact the appropriate federal or state agency. Build a cooperative relationship with your local USFWS special agent and/or regional office.

C. Reporting

- There are procedures for using the permit that may include reporting, recording, declaration, and/or notification requirements. These requirements and instructions are often on the face of the permit or attached to it. Pay close attention to these instructions and any attachments that accompany the permit.
- It is the responsibility of the institution to make sure that timely annual reports or renewal applications are submitted.

- Any person accepting and holding a federal permit consents to and allows the entry at any reasonable hour by agents or employees of the permitting agency upon the premises where the permit activity is conducted. Federal agents or employees may enter such premises to inspect the location of any plants or wildlife kept under the authority of the permit and to inspect, audit, or copy any books, records, or permits required to be kept.

SUMMARY OF FEDERAL LAWS PROMOTING CONSERVATION OF WILDLIFE AND PLANTS

I. Lacey Act

18 U.S.C. § 42; 16 U.S.C. § 3371, *et seq.*; 50 CFR Part 14

The Lacey Act is the oldest and most comprehensive wildlife law in the United States. First enacted in 1900, the Lacey Act has been amended several times and its application expanded greatly. The Lacey Act Amendments of 1981 extended the protection of the act to all species of fish and wildlife, whether or not they are considered endangered or threatened. The Lacey Act also applies to plants but only to species indigenous to the United States and its territories that have been listed on a CITES appendix or pursuant to any state law protecting species threatened with extinction. The act establishes a single, comprehensive basis for federal enforcement of state, foreign, Indian tribal, and federal wildlife laws. The Lacey Act provides the legal authority for detailed regulations that implement the statute.¹

A. Required Compliance with All Laws Applicable to Wildlife and Plants

The Lacey Act prohibits the importation, exportation, transportation, sale, receipt, acquisition, or purchase of any fish, wildlife, or plant that was taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States or any Indian tribal law [16 U.S.C. § 3372(a)(1)]. When interstate commerce is

involved, the same prohibitions apply to fish or wildlife taken, possessed, transported, or sold in violation of any state law or regulation or any foreign law, and to plants taken, possessed, transported, or sold in violation of any state law or regulation [16 U.S.C. § 3372(a)(2)]. Under the Lacey Act, "taken" means captured, killed, or collected. Violations of the Lacey Act may result in criminal and civil penalties, including forfeiture of specimens or equipment used in connection with an unlawful act [16 U.S.C. §§ 3373-3374]. Criminal penalties require proof of a "knowing" violation of the act but civil penalties may be imposed for failure to exercise due care in compliance with the act and its implementing regulations.

B. Regulation of Importation, Exportation, and Interstate Transportation of Wildlife

The Lacey Act makes it an offense to import, export, or transport in interstate commerce any container or package containing any fish or wildlife, unless the container or package has previously been plainly marked, labeled, or tagged in accordance with regulations issued pursuant to the act [16 U.S.C. § 3372(b)]. Making or submitting false records, labels, or identifications of fish, wildlife, or plants may also violate the Lacey Act [16 U.S.C. § 3372(a)(4)].

The regulations implementing the Lacey Act requirements for importing, exporting, and transporting wildlife are found at 50 CFR Part 14. Following is a general summary of the major provisions of Part 14 that relate to importing, exporting, and transporting collection material. Of course, the actual text of the regulations should be consulted before a shipment takes place. It is important to be aware of these requirements for any wildlife shipment with which your institution may be involved. The importer or exporter of record may be held responsible for non-compliance of its agents, such as shippers, couriers, or brokers, if the importer or exporter has not provided adequate instructions or taken appropriate steps to ensure compliance by the agent.

1) Designated Ports

Except when otherwise provided by permit or specific regulation, all wildlife shipments must enter and leave this country through U.S. Customs ports designated by the U.S. Fish and Wildlife Service [50 CFR § 14.12]. Currently there are 13 designated ports: New York, N.Y.; Miami, Fla.; Baltimore, Md.; Boston, Mass.; New Orleans, La.; Dallas/Ft. Worth, Tex.; Los Angeles and San Francisco, Calif.; Chicago, Ill.; Portland, Oreg.; Seattle, Wash.; Honolulu, Hawaii; and Atlanta, Ga. Special ports have also been designated for certain shipments to or from Alaska, Puerto Rico, U.S. Virgin Islands, and Guam [50 CFR 14.19].

Dead, preserved, dried, or embedded scientific specimens imported or exported by accredited scientists or accredited scientific institutions for taxonomic or systematic research purposes may enter or exit through any U.S. Customs port or may be shipped through the international mail system. This exception does not apply to wildlife that requires a permit to be imported or exported (e.g., an endangered species), or to specimens taken as a result of sport hunting [50 CFR § 14.24].

Any article (other than scrimshaw) more than 100 years old that is composed in whole or in part of any endangered or threatened species and has not been repaired or modified with any part of an endangered or threatened species after Dec. 28, 1973, may be imported at any U.S. Customs port designated for such purpose [50 CFR § 14.22].

Marine mammals lawfully taken on the high seas and authorized to be imported under the Marine Mammals Protection Act may be imported at any port or place [50 CFR § 14.18].

Special port exception permits may be issued for scientific purposes, to minimize deterioration or loss, or for economic hardship [50 CFR §§ 14.31-14.33].

All plant shipments protected under the Endangered Species Act and CITES must be imported or exported through ports designated by the U.S. Department of Agriculture, which are listed at 50 CFR § 24.12.

2) Declaration of Wildlife Imports and Exports

At the time of importation or prior to exportation of wildlife, importers or exporters must file with the USFWS a completed Declaration for Importation or Exportation of Fish or Wildlife (Form 3-177) [50 CFR Part 14, Subpart F]. Contact the U.S. Fish and Wildlife Service for forms.

For dead, preserved, dried, or embedded scientific specimens imported or exported by accredited scientists or accredited scientific institutions for taxonomic or systematic research purposes, the importer or exporter must file Form 3-177 within 180 days of the import or export. The declaration must identify the specimens to the most accurate taxonomic classification reasonably practicable, using the best available taxonomic information, and must declare the country of origin. This exception does not apply to wildlife that requires a permit to be imported or exported (e.g., an endangered species), or to specimens taken as a result of sport hunting [50 CFR § 14.62(d)].

For other scientific specimens not included in paragraph b (e.g., wildlife that requires a permit), imported for taxonomic or systematic research or faunal survey purposes, the importer may describe the specimens in general terms on the Form 3-177, which is filed at the time of import. Within 180 days, the importer must file an amended Form 3-177 to identify the specimens to the most accurate taxonomic classification reasonably practicable, using the best available taxonomic information [50 CFR § 14.62(c)].

3) Inspection and Clearance Requirements

Wildlife imported into the United States must be cleared by a USFWS agent before it can be released from customs. Wildlife to be exported

from the United States must be cleared by USFWS before it is packed in a container or loaded onto a vehicle for export. To obtain clearance, the importer or exporter must make available to the USFWS agent all shipping documents; all permits, licenses, or other documents required under the laws and regulations of the United States or of any foreign country; the wildlife being imported or exported; and any documents and permits required by the country of export or re-export of the wildlife [50 CFR § 14.52]. In certain circumstances, wildlife may be cleared by a U.S. Customs Service officer [50 C.F.R. § 14.54].

Dead, preserved, dried, or embedded scientific specimens imported or exported by accredited scientists or accredited scientific institutions for taxonomic or systematic research purposes do not require USFWS clearance. This exception does not apply to wildlife that requires a permit to be imported or exported (e.g., an endangered species), or to specimens taken as a result of sport hunting [50 CFR § 14.55 (d)].

Any article (other than scrimshaw) more than 100 years old that is composed in whole or part of any endangered or threatened species and has not been repaired or modified with any part of an endangered or threatened species after Dec. 28, 1973, does not require USFWS clearance if it has been properly declared to and released by customs [50 CFR § 14.55(c)].

Marine mammals lawfully taken on the high seas and imported directly into the United States do not require USFWS clearance [50 CFR § 14.55(b)].

USFWS and customs officers may detain and inspect any package containing wildlife, including all accompanying documentation, upon importation or exportation [50 CFR § 14.53].

A USFWS or customs officer may refuse clearance of imported or exported wildlife upon reasonable grounds to believe: a federal law or regulation has been violated; the correct identity and country of origin have not been established; any

permit, license, or other documentation required for clearance is not available, is not currently valid, has been suspended or revoked, or is not authentic; the importer or exporter has filed an incorrect or incomplete declaration form; or the importer or exporter has not paid any fees or penalties due [50 C.F.R. § 14.53].

Prior notice (72 hours recommended) to the USFWS of all wildlife imports and exports is advisable. USFWS requires 48 hours notice to be available for inspection of live and perishable wildlife [50 CFR § 14.64].

4) Marking Requirements

All wildlife imported, exported, or transported in interstate commerce must be marked on the outside of the container with the names and addresses of the consignor and the consignee. An accurate identification of the species and the number of each species in the container must accompany the shipment. Specific marking requirements and the contents of accompanying documentation are set forth in 50 CFR Part 14 Subpart G.

II. The Endangered Species Act

16 U.S.C. § 1531 *et seq.*; 50 CFR Part 17

The Endangered Species Act (ESA) of 1973 is the most comprehensive U.S. law for the preservation and protection of species that have been determined to be in danger of extinction. The Endangered Species Act was designed to prevent the extinction of native and foreign species of wild flora and fauna. The law also provides for protection of the "critical" habitats of protected species.

The act defines an "endangered" species as any animal or plant that is in danger of extinction. A "threatened" species is defined as any animal or plant that is likely to become endangered within the foreseeable future [16 U.S.C. § 1532]. A procedure has been established under the ESA by which the USFWS determines whether a species should be listed as endangered or threatened. The determination is published in the *Federal Register*,

and the lists of endangered and threatened species are compiled annually in the Code of Federal Regulations. The Endangered Species List is found at 50 CFR § 17.11. The Threatened Species List is found at 50 CFR § 17.12. For the most current information on a given species, contact the appropriate agency with jurisdiction over the protected wildlife or plant in question.

A. Prohibitions Under ESA

The act prohibits a wide range of activities and transactions with respect to endangered species [16 U.S.C. § 1538]. By regulation these prohibitions have also been extended to threatened species [50 CFR §§ 17.21 and 17.31]. The prohibitions apply equally to live or dead animals or plants, their progeny, and parts or products derived from them.

The act and implementing regulations prohibit:

Importation into or exportation from the U.S. of any endangered or threatened species

Taking any endangered or threatened species within the U.S. or on the high seas

The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct.

Possessing, selling, or transporting any species taken in violation of the act or regulation

Delivering, receiving, or transporting any endangered or threatened species in connection with interstate or foreign commercial activity

Loans and Gifts: Lawfully taken and held endangered and threatened species may be shipped interstate as a bona fide gift or loan if there is no barter, credit, or other form of compensation or intent to profit or gain.

Selling or offering for sale endangered or threatened species in interstate commerce

Sales of legally acquired endangered or threatened species that take place entirely in one state are not prohibited by the ESA but may be regulated under applicable state laws.

B. Permits Under the ESA

Under certain conditions, scientific and educational activities may qualify for permits allowing activities that are otherwise prohibited. General permit application requirements and issuance criteria are set forth in 50 CFR Part 13. Special rules for certain species are set forth in 50 CFR §§ 17.40-17.48. Permits may authorize a single transaction, a series of transactions, or a number of activities over a specific time period.

Permits may be issued for prohibited activities for the following purposes:

Endangered species permits may be granted for scientific purposes or to enhance the propagation or survival of the affected species, and for "incidental takings" or economic hardship [50 CFR §§ 17.22 (wildlife), 17.62 (plants), and Part 222 (marine mammals)].

Threatened species permits may be granted for scientific purposes; the enhancement of propagation or survival of the affected species; zoological, horticultural, and botanical exhibition; educational purposes; or special purposes consistent with the act [50 CFR §§ 17.32 (wildlife), 17.72 (plants), and Part 227 (marine mammals)].

C. Exemptions

Certain situations may be exempt from the prohibitions of the act. In these exempt situations, a permit is not required. The burden of proof that the specimen or activity qualifies for an exemption lies with the person engaging in the relevant activity. All supporting and authenticating documentation must be maintained with the specimens, particularly when they are in transit.

Pre-act wildlife: The prohibitions applicable to ESA species do not apply in the case of wildlife, except for African elephant ivory, held in captivity or in a controlled environment on (a) Dec. 28, 1973, or (b) the date of publication in the *Federal Register* for final listing of the species as endangered or threatened, whichever is later, provided that the wildlife

has not been held in the course of a commercial activity. An affidavit and supporting documentary evidence of pre-act status is required [50 CFR § 17.4].

Antiques: Objects or specimens more than 100 years old, composed in whole or in part of any endangered or threatened species, that have not been repaired or modified since Dec. 28, 1973, with any part of a listed species, are exempt from the ESA prohibitions. The import and export of such antiques is allowed only through a designated port and must be accompanied by authenticating documentation [16 U.S.C. § 1539(h)].

Alaskan natives may take or import endangered or threatened species if such taking is primarily for subsistence purposes and is not done in a wasteful manner. Non-edible byproducts of lawfully taken species may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing [50 CFR § 17.5].

Seeds from artificially propagated threatened plants: No permits are required for interstate or foreign commerce, including import or export, of seeds from artificially propagated specimens of threatened plants. The seeds must be accompanied by a label stating that they are of cultivated origin.

Captive-bred wildlife: USFWS registrations provide exceptions allowing the importing, exporting, taking, and interstate commercial transactions, including delivery, receipt, and sale of certain living endangered and threatened species, provided the purpose is to enhance the propagation or survival of the species. The regulation covers only living animals that are not native to the United States. The regulations prescribe detailed requirements for registration of captive breeding programs and other conditions that apply to captive breeding of protected species [50 CFR § 17.21(g)].

D. Enforcement

Both U.S. Fish and Wildlife Service (USFWS) in the Department of Interior and National Marine

Fisheries Service (NMFS) in the Department of Commerce enforce the Endangered Species Act. By agreement between the USFWS and NMFS, the jurisdiction of NMFS has been specifically defined to include certain species, while jurisdiction is shared in regard to certain other species. USFWS is the primary agency that administers the ESA and has jurisdiction over most wildlife and plants. For the most current information on species under the jurisdiction of USFWS, contact the U.S. Fish and Wildlife Service, Office of Management Authority. For information on species under the jurisdiction of NMFS, contact the NMFS Office of Protected Resources.

III. The Convention on International Trade in Endangered Species of Wild Fauna and Flora

16 U.S.C. § 1531 *et seq.*; 50 CFR Part 23

The Convention on International Trade in Endangered Species of Fauna and Flora (CITES) is an international wildlife treaty that regulates the import and export of endangered and threatened animal and plant species. The USFWS oversees CITES implementation in the United States, which became a party to the treaty in June 1975. The convention, with over 130 party nations, protects over 25,000 species by establishing import and export restrictions on wildlife threatened by international trade. The United States implements CITES through the U.S. Endangered Species Act.

The animals and plants protected by CITES are divided into three lists called appendices, which are published in 50 CFR § 23.23. Amendments to species listed in the CITES appendices are published in the *Federal Register*. Consult the USFWS Office of Scientific Authority for the most current information on listed species. A species may be listed in any one of the three appendices, depending on the degree of protection deemed necessary.

- Appendix I includes species threatened with extinction that are or may be affected by trade.
- Appendix II includes species which are not necessarily under present threat of extinction

but may become so unless strictly regulated.

- Appendix III includes species for which a country party to CITES has internal regulations to prevent or restrict exploitation and needs the cooperation of other parties in control of trade.

A. Prohibitions

The U.S. laws implementing CITES prohibit the import, export, or re-export of CITES-listed species without the required permits and also forbid the possession of any specimen imported, exported, or re-exported into or from the United States in contravention of the convention. All living and dead specimens and all readily recognizable parts and derivatives are subject to the prohibitions. Note that there are some exceptions for plant parts and derivatives.

Some species protected under CITES also are protected by other U.S. laws under which permit requirements may be more stringent, such as the U.S. Endangered Species Act, African Elephant Conservation Act, Marine Mammal Protection Act, Migratory Bird Act, Eagle Protection Act, and the Lacey Act. Permit applicants must satisfy the requirements of all laws under which a particular species is protected.

B. Permits Under CITES

Permits are required to import or export wildlife or plants listed in Appendix I, II, or III. Re-export certificates are required for the export of specimens that were previously imported, including items subsequently converted to manufactured goods. Permits are issued by the management authority of nations belonging to CITES. Similar documentation is required from designated authorities of countries that are not members of CITES. The USFWS Office of Management Authority can provide information regarding the relevant foreign authorities and documentation requirements. Permit application procedures and issuance criteria are found in 50 CFR Part 23.

There are different permit requirements for importing and exporting CITES-protected species,

depending on which CITES Appendix the species fall under:

Import into the United States

CITES Appendix I species:

U.S. import permit and valid foreign export permit issued by the country of origin or a valid foreign re-export certificate issued by the country of re-export

CITES Appendix II species:

Valid foreign export permit issued by the country of origin or a valid foreign re-export certificate issued by the country of re-export

CITES Appendix III species:

Valid foreign export permit issued by the country that listed the species, a valid foreign re-export certificate issued by the country of re-export, or a certificate of origin issued by countries of origin other than the listing country

Export or Re-export from the United States

CITES Appendix I species:

U.S. export permit or re-export certificate and a copy of foreign import permit issued prior to export permit

CITES Appendix II species:

U.S. export permit or re-export certificate

CITES Appendix III species:

U.S. re-export certificate or certificate of origin

C. Exceptions

Although CITES provides exceptions relating to some wildlife or plants listed in CITES Appendices, those species may also be subject to regulation under other U.S. laws. An exception provided under CITES does not necessarily allow activities that are prohibited under other U.S. laws.

CITES permits may not be required under the following circumstances:

Pre-convention specimens: Wildlife or plants held in captivity or a controlled environment prior to listing of the relevant species in a CITES appendix do not require import or export permits. Pre-Con-

vention Certificates are required to prove that a specimen comes within this exception [50 CFR § 23.13(c)].

Captive-bred certificate/certificate for artificially propagated plants: No CITES permit is required if the specimen is accompanied by a Captive-Bred Certificate or Certificate of Artificial Propagation from the country of origin, stating that the wildlife was bred in captivity [50 CFR § 23.13(f)].

Scientific exchange program: Scientific institutions may register with the CITES Secretariat to facilitate importation and exportation of accessioned specimens as non-commercial loans, donations, or exchanges between CITES-registered institutions [50 CFR § 23]. No permit is necessary for these activities, requiring only specific labeling, reporting; a copy of both scientific institutions' Certificate of Scientific Exchange must accompany the specimen. If only one institution has a certificate, then the regular permit process must be followed. The Scientific Exchange Certificate only authorizes activities for specimens maintained in a scientific or museum collection. The certificate is not a collecting permit. Newly collected, unaccessioned specimens of listed species require full CITES documentation and permit issuance. In addition, the Certificate for Scientific Exchange only authorizes activities regulated by CITES. If a species is protected by other laws (e.g., U.S. Endangered Species Act) additional permits and authorizations are required. The USFWS Office of Management Authority can provide information about participating in the Scientific Exchange Program.

In-transit shipments: When a shipment is merely transiting a country, no import or export permits issued by that country are required, as long as the wildlife remains in customs custody. 50 CFR § 23.13(b). This may vary from country to country. For example, specimens listed under the Endangered Species Act generally may not transit the United States.

IV. Marine Mammal Protection Act

16 U.S.C. § 1361 *et seq.*; 50 CFR Part 18 subchapter C

The Marine Mammal Protection Act (MMPA), enacted in 1972, protects all marine mammals, dead or alive, and their parts and products, including, but not limited to, any raw, dressed, or dyed fur or skin. The protected species include whales, walrus, dolphins, seals, sea lions, sea otters, dugongs, manatees, and polar bears. The taking, possession, and transportation of northern fur seals for scientific research and public display is regulated separately under the Fur Seal Act [16 U.S.C. § 1153; 50 CFR Part 215].

A. Prohibitions

The act prohibits the unauthorized taking, possession, sale, purchase, importation, exportation, or transportation of marine mammals and their parts and by-products. The MMPA also authorizes the establishment of moratoria and a quota system for determining how many individuals of a marine mammal species can be taken without harm to those species or population stocks.

B. Permits issued under MMPA

Permits are granted for purposes of scientific research, public display, incidental taking, commercial fishing, and enhancing the survival or recovery of the species or stock. Permit application procedures and issuance criteria are found at 50 CFR § 518.31 and 50 CFR Parts 220-222.

C. Exceptions

Pre-act specimens: The prohibitions of MMPA do not apply in the case of marine mammal specimens or articles consisting of, or composed in whole or in part of, any marine mammal taken on or before Dec. 21, 1972. To establish pre-act status, it is necessary to file an affidavit with the agency responsible for the management of the species in question [50 CFR §§ 18.14, 18.25, 216.14].

Alaskan natives may take marine mammals for subsistence purposes or for purposes of creating and sell-

ing authentic native handicrafts and clothing to be sold in interstate commerce [50 CFR §§ 18.23, 216.23(c)].

Marine mammal parts: Collection of certain dead marine mammal parts by beach collecting may be authorized, provided specific conditions are met. 50 CFR § 216.26.

Salvaging specimen material: Regulations allow the utilization of specimen material salvaged from stranded marine mammals by authorized persons. Such salvaging must be only for the purposes of scientific research or the maintenance of a properly curated, professionally accredited, scientific collection and must be reported to the appropriate regional office of the NMFS [50 CFR § 216.22].

D. Enforcement

By agreement, the MMPA is jointly administered by the USFWS and NMFS with jurisdiction specifically defined to include certain species. USFWS issues CITES permits for marine mammals under the jurisdiction of NMFS.

V. Migratory Bird Treaty Act

16 U.S.C. § 703-712; 50 CFR Parts 13 and 21

The Migratory Bird Treaty Act (MBTA), enacted in 1918, covers any migratory bird, any part, nest, egg, or product made from a migratory bird, part, nest, or egg. The act is administered by the U.S. Fish and Wildlife Service. Protected birds are listed at 50 CFR 10.13.

A. Prohibitions

The act prohibits the taking, possession, import, export, transport, sale, purchase, barter, or offer for sale of any migratory birds, and the nests or eggs of such birds, except as authorized by valid permit [50 CFR § 21.11].

B. Permits Under MBTA

Permits may be issued for banding and marking migratory birds [50 CFR § 21.22].

Permits may be issued to import and export migratory birds [50 CFR § 21.21].

A scientific collecting permit is required before any person may take, transport, or possess migratory birds, their parts, nests, or eggs for scientific research or educational purposes [50 CFR § 21.23].

Permits may be issued for other purposes, such as taxidermy, waterfowl sale and disposal, falconry, raptor propagation, and degradations control [50 CFR §§ 21.24-21.41].

C. Exceptions

Possession or transportation of specimens acquired on or before the effective date of protection of the species under the act does not require a permit [50 CFR § 21.2(a)]. Import, export, barter, purchase, or sale of pre-act specimens is prohibited without a permit.

The MBTA provides a general exception to permit requirements for public museums, public zoological parks, accredited institutions of the American Zoo and Aquarium Association (AZA), and public scientific or educational institutions to acquire by gift or purchase, possess, transport, and dispose of by gift or sale lawfully acquired migratory birds. The specimen must be acquired from or disposed of to a similar institution, federal, or state game authorities, or the holder of a valid possession or disposal permit [50 CFR § 21.12].

The MBTA regulations, except for banding and marking permits, do not apply to the bald eagle or golden eagle [50 CFR § 21.2(b)].

VI. Eagle Protection Act

16 U.S.C. § 668; 50 CFR Part 22

The Eagle Protection Act (EPA) protects bald (*Haliaeetus leucocephalus*) and golden (*Aquila chrysaetos*) eagles, alive or dead, their parts, nests, or eggs. It was first enacted in 1940, and amended in 1962 to include golden eagles. It is administered by the USFWS.

A. Prohibitions

The act prohibits taking, buying, selling, trading, transporting, possessing, importing, or exporting

eagles or their parts, nests, eggs, or products made from them.

B. Permits Under EPA

Permits may be issued for taking, possession, and transportation of bald or golden eagles, their parts, nests, or eggs, for scientific, exhibition, and Indian religious purposes. No permits are allowed for import or export, sale, purchase, or barter of bald or golden eagles. Permit application procedures and issuance criteria are found at 50 CFR Part 22 subpart C.

C. Exceptions

A permit is not required for possession or transportation of bald eagles lawfully acquired before June 8, 1940, or golden eagles lawfully acquired before Oct. 24, 1962. Pre-act specimens, however, may not be imported, exported, purchased, sold, traded, or bartered or offered for purchase, sale, trade, or barter.

VII. African Elephant Conservation Act

16 U.S.C. §§ 4201-4245

In an effort to assist in the conservation and protection of African elephant populations, the United States passed the African Elephant Conservation Act (AECA) in 1988. This act works in conjunction with the CITES Ivory Control System to protect the African elephant and eliminate any trade in illegal ivory. Currently, the African elephant is listed in Appendix I of CITES and as such any import or export for other than commercial purposes must be accompanied by valid CITES documents.

A. Prohibitions

The act prohibits:

The import of raw African elephant ivory from any country other than an ivory-producing country (any African country within which is located any part of the range of a population of African elephants)

The export from the United States of raw ivory from African elephants

The import of raw or worked ivory from African elephants that was exported from an ivory-producing country in violation of that country's laws or the CITES Ivory Control System

The import of worked ivory from any country unless that country has certified that such ivory was derived from a legal source

The import of raw or worked ivory from a country in which a moratorium is in effect

B. Exceptions

Worked ivory may be imported for non-commercial purposes, if the item was acquired prior to the date CITES applied to African elephants (Feb. 4, 1977) and is accompanied by a valid pre-CITES certificate.

Articles more than 100 years old may be imported or exported for non-commercial and commercial purposes under a pre-CITES certificate, provided they have not been repaired or modified with elephant ivory on or after Feb. 4, 1977. Proof of antiquity must be provided.

VIII. Wild Bird Conservation Act

16 U.S.C. § 4901; 50 CFR Part 15

The Wild Bird Conservation Act was enacted in 1992 to limit or prohibit the importation of exotic birds to ensure that their populations are not harmed by trade. The act assists wild bird conservation and management in the countries of origin by ensuring that trade in species is biologically sustainable and is not detrimental to the species. The WBCA is administered by the USFWS.

A. Prohibitions under WBCA

The act prohibits the importation of any exotic bird in violation of any prohibition, suspension, or quota on importation and the importation of any exotic bird listed in a CITES appendix that is not part of an approved list, if the bird was not bred at a qualified facility. The WBCA authorizes the establishment of moratoria or quotas for import of certain exotic birds.

B. Permits issued under WBCA

Permits to import protected species may be issued if the importation is not detrimental to the survival of the species, and is for scientific research, zoological breeding or display, or cooperative breeding programs designed to promote the conservation and maintenance of the species in the wild. Permit application procedures and issuance criteria are found at 50 CFR Part 15 subpart C.

SUMMARY OF LAWS APPLICABLE TO INJURIOUS SPECIES AND PROTECTION OF LIVE ANIMALS

The laws discussed above are generally intended to promote the conservation of wildlife and plant species. Activities of museums, and especially zoos and aquaria, may also be affected by laws designed to protect against potential damage caused by injurious species or to protect live animals. These laws can be quite complex and are discussed very briefly here. Institutions that conduct activities with live animals or potentially injurious species should become familiar with these laws.

I. Lacey Act

18 U.S.C. § 42; 16 U.S.C. § 1378(d); 50 CFR Parts 14 and 16

A. Injurious Wildlife

The Lacey Act, other aspects of which are discussed above, prohibits the importation, transportation, or acquisition, without a permit, of any wildlife (or their eggs) designated as injurious to the health and welfare of humans; to the interests of forestry, agriculture, or horticulture; or to the welfare and survival of wildlife resources of the U.S. [18 U.S.C. § 42]. The species listed as injurious wildlife are found at 50 CFR Part 16, subpart B. Permits are available for importation of such injurious wildlife for zoological, educational, medical, or scientific purposes. The permit requirements do not apply to the importation or transportation of dead scientific specimens for museum or scientific collection purposes [50 CFR § 16.33].

B. Humane and Healthful Treatment of Live Animals

The Lacey Act also prohibits the transport of wild mammals or birds to the U.S. under inhumane or unhealthy conditions [16 U.S.C. § 1378(d)]. Detailed rules for humane and healthful transport required under the Lacey Act are set forth at 50 CFR Part 14, subpart J.

II. Animal Welfare Act

7 U.S.C. § 2131; 9 CFR Parts 1-4

The Animal Welfare Act (AWA) was enacted in 1966 to regulate warm-blooded animals used for research, exhibition purposes, or as pets, ensuring that they are provided with humane care and treatment. The AWA regulates aspects of transportation, purchase, sale, housing, care, handling, and treatment. Regulations provide for the licensing or registration of animal dealers, exhibitors, operators of animal auctions, research facilities, carriers, and intermediate handlers. The Animal and Plant Health Inspection Service (APHIS) of the Department of Agriculture is the agency responsible for administering the act.

III. Public Health Service Act

42 U.S.C. §§ 216, 264-272; 42 CFR Parts 71-72; 21 CFR Parts 1240 and 1250

The Public Health Service Act (PHSA) was enacted in 1944. One of the purposes of the act is to prevent the introduction, transmission, or spread of communicable diseases from foreign countries to the United States or between states. It authorizes the surgeon general to promulgate regulations necessary to carry out this purpose. Under this authority, restrictions on importation and movement of turtles, rodents, bats, psittacine birds, and non-human primates have been implemented. Permits may be issued to engage in regulated activities for exhibition, educational, or scientific purposes. The Center for Disease Control (CDC) in Atlanta, Ga., is responsible for implementing the act.

IV. APHIS Authorization Act/Animal Quarantine Regulations

21 U.S.C. §§ 101-136; 9 CFR Parts 75, 82, 92, 93-94, 98, 130

The Animal and Plant Health Inspection Service (APHIS) Authorization Act provides authority to protect the U.S. livestock, poultry, and agricultural industries against infectious or contagious diseases. The act regulates the importation and exportation of certain animals and animal products into the U.S. that are or have been affected with or exposed to any communicable disease. Permits may be issued to import or export covered species and may impose quarantine requirements and other protective measures. The Animal and Plant Health Inspection Service (APHIS) is responsible for implementing the act.

As these regulations are extremely detailed, it is important to refer to the specific sections of the regulations applicable to the species or products with which you are concerned. Permit applications and inquiries should be submitted to the APHIS Office of Import/Export.

CITES & INTERNATIONAL SHIPPING OF ART

At first glance, one might consider an art museum an unlikely place for U.S. Fish and Wildlife problems to occur. With the possible exception of ivory, many materials requiring special consideration when importing or exporting works of art might be overlooked by even a conscientious museum staff member. For example, a silver dagger with a skin-covered handle, a tortoise-shell hair ornament, or a hat adorned with colorful feathers could present potential problems if imported from a foreign country without proper documentation.

As in other endangered species situations, the time to begin asking questions is at the very beginning of any transaction involving importation or exportation. Since the export documents must originate with the foreign country, sometimes it is necessary to alert the appropriate museum officials

to the need to begin the application process. In the case of one exhibition coming to the Smithsonian's National Museum of African Art from Europe, it was necessary to go through the exhibition catalog and identify potential problems based on materials listed by each entry. A list of "problem objects" was then provided to the organizing institution, which initiated the paperwork while the exhibition was still on its premises. Many questions arose about the types of materials involved, requiring correspondence with lenders, curators, and CITES officials. When the time came to ship the exhibition to the United States, the requisite documents had been obtained and the importation proceeded smoothly.

Not so fortunate was the purchaser of a 1920s Érard piano in Paris. A concert pianist, the new owner arranged for air shipment of the instrument back to the United States, only to have it seized by U.S. Customs agents upon its arrival because it did not meet the requirements for exemption under the African Elephant Conservation Act. In spite of the owner's protests, the ivory was eventually stripped from the keys, a sad event for all concerned.

What other types of materials could be subject to CITES enforcement? For works of African art, the most common are skin and fur products, feathers, claws of mammals or raptors, primate parts (hands, feet, tails), tortoise shell, and other types of shells. Coral, which is often used in Asian works of art such as inlaid boxes and writing instruments, is another potential problem, as is rhinoceros horn, which is used in Chinese drinking vessels as well as in ceremonial dagger handles made in Yemen. Certain types of hardwood such as mahogany and rosewood could also require CITES permits.

After identification of potential problem materials, the next step is to determine specific identification, including both the common name and the scientific name of each material. This step can be very straightforward or may require consulting an expert or scientist. In one instance of a Kongo *nkisi* containing unidentified feathers, the assistance of a well-known British specialist was

needed to determine that the feathers in question were from a domestic fowl and, therefore, were not subject to CITES. In a similar situation, the crowned eagle feathers adorning a mask from the Democratic Republic of the Congo were easily identified as *Stephanoatus coronatus* by the foreign lending institution, which then applied for the required permit. If only the common name is known, one may consult the CITES Appendices for the scientific name.

Perhaps the most critical information in deciding whether one needs an export/import permit or a pre-convention certificate is the date when the object was made or collected. For many African works, the date of manufacture is unknown, although it may sometimes be assumed to date from the period of Western colonization. One solution to the dating problem is to request an examination of the lending institution's accession records. If the object has been recorded as being in the collections of a museum before 1973, then one can be assured that it is pre-convention. However, U.S. Fish and Wildlife may still require an "Expert's Affidavit." To qualify as an expert, the individual must be over 21 years of age, state his or her years of experience in the field, and swear before a witness that he or she has carefully examined the object(s) in question. The witness may be another museum staff member; the affidavit does not have to be notarized. A description of each object, including an approximate date of manufacture, must accompany the affidavit, e.g.,

Anthropomorphic face mask. Wood, pigment, animal hide, and hair (monkey, *Colobus abyssinicus uelensis*), Democratic Republic of the Congo, probably 20th century (collected between 1952-1956).

An exhibition date, if it is documented, or a publication date may also be used to prove pre-convention eligibility. Authenticating documentation must accompany the shipment. A statement by the affiant, such as the following, must also be included [50 CFR 17.4]:

To the best of my knowledge and belief, the

aforementioned objects were created before 1973 and have not been repaired or modified with any part of an endangered species on or after Dec. 28, 1973 [50 CFR 14.22]. They are therefore pre-convention and are exempt under the Endangered Species Act of 1973 [15 U.S.C. 1531-1543].

Another type of exemption that may be useful for shipping purposes is the "Exception to Designated Port." Such an exception may be made for a single shipment or for a series of shipments over a specified period of time. Unless there are special circumstances precluding their use, all wild-life shipments must enter and leave the United States through a designated customs port. Availability of direct flights, loan requirements of institutional lenders, the need for continuous supervision by museum professionals to prevent deterioration or loss, or undue economic hardship all may be grounds for an "Exception to Designated Port." In case of economic hardship, the applicant must provide a cost comparison for inland freight, customs clearance, bonding, trucking, associated fees, etc., between the designated port and the non-designated port. An exception may also be granted for scientific purposes, although this factor would not be applicable in an art museum.

In addition to federal endangered species law, some states have more restrictive laws. To determine whether a particular state has endangered species law(s), one should check with the appropriate state conservation agency prior to the transaction.

In summary, one must anticipate CITES issues well in advance of international shipping in order to allow sufficient time for research and obtaining the necessary permits. The advice of experts, including CITES officials in both exporting and importing countries, can be invaluable in preparing complete documentation. Determining the date of manufacture is of primary importance. Finally, one should consider obtaining a waiver of port, if

advantageous, and make sure all endangered species laws, both state and federal, have been reviewed for compliance.

NOTES

1. Lacey Act provisions requiring humane treatment of live animals and protection against injurious species are discussed separately.