

# CITES, Eh?

## The Implementation of CITES in Canada since WAPPRIITA

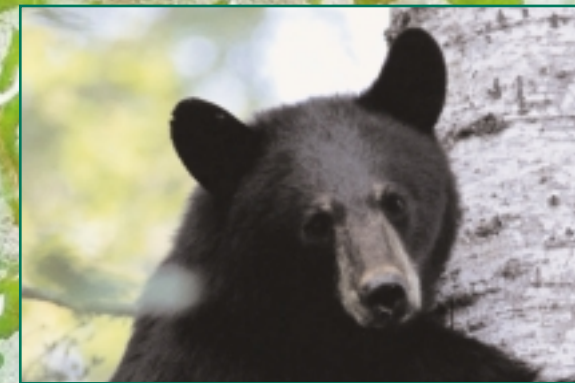
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TRAFFIC, the wildlife trade monitoring network, works to ensure that trade in wild plants and animals is not a threat to the conservation of nature. It has offices covering most parts of the world and works in close co-operation with the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

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The World Conservation Union

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## **A Review of Canada's Implementation of CITES Under WAPPRIITA**

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June 2004

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## **PREFACE**

The goal of this report is to ensure that the Convention on International trade in Endangered Species of Wild Fauna and Flora (CITES) is implemented in Canada with maximum effectiveness. It was therefore important to identify the gaps in this implementation and provide recommendations for improvement. As a result this report focuses primarily on areas that are most in need of improvement and may be perceived as

more critical than complimentary. It is not intended to disregard the progress made by the government of Canada to execute the Convention, and any such impression would be unfortunate. Similarly, any and all critical comments are directed solely at governmental processes and not at any of the individuals who are attempting to implement CITES in Canada despite very limited resources.

## **ACKNOWLEDGEMENTS**

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## FOREWORD

Wildlife is crucially important to all of us, everywhere. Plants and animals provide us with the very oxygen we breathe, with food, medicines and clothing, and with beauty, inspiration and a reminder that people aren't the only creatures on Earth. Increasingly, wildlife species are becoming the passengers on our global spaceship, largely at the mercy of the job done by the crew — people.

And by now, I suspect most people are beginning to tire of conservationists' repeated warnings that the crew, far from maintaining the ship, is jeopardizing it. Certainly the biggest threat to wildlife worldwide, namely habitat destruction, is an unshakeable human responsibility. But there are some examples of still-healthy habitats where the species that should be there are endangered or absent. Black rhinos, for example, have been extirpated from most of their range, including parks and reserves. And it isn't the ocean habitat's fault that large predators such as sharks, swordfish, tuna and toothfish have experienced significant declines. In these cases, the culprit has been over-exploitation, unsustainable use and illegal trade, hurting wildlife to be sure, but also crushing the livelihoods of communities and local economies that depend on healthy populations of these species.

However, not all wildlife trade is illegal or unsustainable. So, when coming up with an international instrument in 1973 to address the problematic side of this issue, the challenge was to also recognize the positive side. That instrument was the Convention on International Trade in Endangered Species of Wild Fauna and Flora — mercifully abridged to the acronym "CITES."

CITES now includes 164 "parties," or nations which have ratified it and this number continues to grow. All of the most active countries in terms of wildlife trade, including Canada, are parties. CITES currently prohibits international trade in more than 800 endangered species, and ensures that the trade in more than 30,000 other species is conducted

at sustainable levels. As such, the Convention could be regarded as a relative bright spot in the conservation landscape — a tool invented by the crew that is actually helping to maintain the ship. Not one species protected by CITES has become extinct as a result of trade since the Convention came into effect 30 years ago.

TRAFFIC is an independent organization, founded in 1976 by the World Conservation Union and later financially supported by World Wildlife Fund, to assist in the implementation of CITES. The following pages constitute the first TRAFFIC report issued in Canada, and predictably, it reviews how well we're doing when it comes to implementing CITES in this country.

I hope Canadians will actually read this report for three reasons. First, it is well written by someone who knows what he's talking about. Before he joined TRAFFIC North America and WWF-Canada, Ernie Cooper worked for the federal government inspecting shipping containers headed into and out of Canada, and training customs officers on how to identify illegally traded wildlife species and parts. Ernie can spot an illegal snakeskin belt from across the room.

Second, I believe most Canadians stand to be informed, and likely surprised, by what a major player Canada has become in the business of wildlife trade, by importing products from other countries, by serving as a conduit or flow-through for such products enroute to elsewhere, and by exporting wildlife products derived from Canadian species.

Finally, I hope people read this report because every Canadian can become part of the solution, by simply watching what you buy. By avoiding illegal wildlife products yourself, you cease being simply a passenger on our planet, because you will have joined the crew. Welcome aboard.

Monte Hummel  
President Emeritus  
World Wildlife Fund Canada

## LIST OF ACRONYMS

AAFC	Agriculture and Agri-Food Canada	HS	The Harmonized Commodity Description and Coding System
AZA	American Zoo and Aquarium Association	IATA	International Air Transport Association
CBSA	Canada Border Services Agency	IUCN	The World Conservation Union
CCRA	Canada Customs and Revenue Agency	JFO	Joint-Forces Operation
CEC	North American Commission for Environmental Co-operation	LEMIS	U.S. Fish and Wildlife Service's Law Enforcement Management Information System
CEPA	Canadian Environmental Protection Act	MBCA	Migratory Bird Convention Act
CFIA	Canadian Food Inspection Agency	MOU	Memorandum of Understanding
CFS	Canadian Forest Service	NAWEG	North American Wildlife Enforcement Group
CITES	Convention on International trade in Endangered Species of Wild Fauna and Flora	NEMISIS	National Enforcement Management Information System and Intelligence System
CoP	Meeting of the Conference of the Parties to CITES	NEP	National Enforcement Program
COSEWIC	Committee on the Status of Endangered Wildlife in Canada	NGO	Non-governmental organisation
CMC	Customs Mail Centre	RCMP	Royal Canadian Mounted Police
CWA	Canada Wildlife Act	SARA	Species At Risk Act
CWS	Canadian Wildlife Service	SSC	Species Survival Commission
DFAIT	Department of Foreign Affairs and International Trade	SSP	Species Survival Plan®
DFO	Fisheries and Oceans Canada (Department of Fisheries and Oceans)	UNEP	United Nations Environment Programme
EPAM	Environmental Protection Alternative Measures	UNEP-WCMC	United Nations Environment Programme World Conservation Monitoring Centre
EPB	Environmental Protection Branch (of Environment Canada)	USDA	U.S. Department of Agriculture
EPCO	Environmental Protection Compliance Orders	USFWS	U.S. Fish and Wildlife Service
EIPA	Export and Import Permits Act	WAPPRIITA	Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act
ETIS	Elephant Trade Information System	WAPTR	Wild Animal and Plant Trade Regulations
FTE	Full-time equivalent (referring to staffing)	WWF	World Wildlife Fund (known as WWF, the conservation organization outside the United States and Canada)
GATT	General Agreement on Tariffs and Trade	WTI	Wildlife and International Division [of Environment Canada]
GDP	Gross domestic product		



## EXECUTIVE SUMMARY

In 1973, 21 countries formally recognized the conservation implications of international wildlife trade and the need for international cooperation to regulate cross-border flows of wildlife by signing CITES. Canada was the tenth nation to ratify CITES, bringing the treaty into force on July 9, 1975. As of December 30 2003, 164 nations had ratified or acceded to CITES.

Canada, one of the wealthiest nations on earth, is both a major trading nation and a country of vast natural resources. Because of the importance of international trade to the Canadian economy, there is a strong border infrastructure for monitoring trade in drugs, tobacco, firearms and other potential contraband. These factors place Canada in a good position to successfully monitor trade in wildlife. The country not only has every reason to implement CITES, but it also has the resources to do so.

This report provides an overview and evaluation of Canada's implementation of CITES. It explores whether Canada's current legislative, administrative and enforcement systems comply with its CITES obligations, and identifies areas where there is need for improvement.

For the most part the basic needs of the Convention are being met, and in some areas the Canadian government is doing an exemplary job of implementing CITES. However in other areas Canada's execution of CITES is weak.

In most cases the inadequacies in Canada's CITES programme can be traced to insufficient resources directed at administering and enforcing the convention. CITES does not appear to be a priority for the Canadian government as a whole or for Environment Canada, the department charged with ensuring that the Convention is effectively implemented.

### Legislation

- The Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (WAPPRIITA) is a vast improvement over the Export and Import Permits Act (EIPA) for implementing

CITES. It contains appropriate measures to prohibit trade contrary to CITES and enforce the Convention by creating an enforcement structure and providing substantial penalties. The legislation authorizes intergovernmental agreements for co-operation, and the legislation and regulations are easily accessible to the public on the Internet.

- WAPPRIITA surpasses the threshold for domestic legislation to incorporate the non-self-executing provisions in CITES.

### Administration

- Environment Canada's public planning documents make no mention of CITES implementation.
- Environment Canada has designated both a National CITES Management Authority and a National CITES Scientific Authority, but at the time of writing, both of these offices were understaffed. This is a critical issue for the National CITES Management Authority which does not have the human and financial resources to effectively carry out all of its responsibilities.
- There is a lack of clarity regarding governmental procedures and policies for the implementation of CITES in Canada. Environment Canada does not have a basic overall policy for CITES implementation.
- Section 21(2) of WAPPRIITA requires that the government of Canada amend the Wild Animal and Plant Trade Regulations (WAPTR) not later than ninety days after any change to a CITES appendix. Since WAPPRIITA came into force, Canada has repeatedly missed deadlines related to incorporation of these changes, impacting its ability to effectively administer and enforce CITES in the country and diminishing the international effectiveness of the Convention.
- It is not clear if data from Canadian permits are being compiled consistently, and a significant quantity of data from foreign permits is not making its way to the National CITES Management Authority.
- Canada has continually failed to meet the deadlines for submitting CITES annual

reports, as required by CITES Article VIII(6)(b). Environment Canada has failed to meet the Secretariat's extensions to Canada's submission deadlines. The country's inability to submit annual reports on time is negatively affecting international efforts to evaluate wildlife trade concerns.

- Canada has not published a public CITES annual report, as required by CITES Article VIII(8), since 1992.
- Environment Canada does not have a policy in place for implementing CITES Decisions and Resolutions.
- The National CITES Management Authority is meeting the Convention's requirements to complete certain findings before issuing permits.
- The National CITES Scientific Authority is meeting the requirement to assess the capability of importers to provide appropriate husbandry for species. However the definition of appropriate husbandry is subjective and Environment Canada does not have a formal procedure in place for completing this finding.
- There has been a lack of clarity in the process by which non-detriment findings are made in Canada. There has been no standard procedure that the provinces, territories and Fisheries and Oceans Canada (DFO) are required to follow, nor have there been clear lines of national co-ordination. Environment Canada's plan to establish a national strategy for conducting non-detriment findings should resolve these issues.
- The National CITES Management Authority issues permits in a timely and efficient manner. It has maintained this level of service to the Canadian public despite an escalating workload.

## **Enforcement**

- There is the equivalent of only 18 full-time Federal Game Officers enforcing CITES in Canada. Of these officers, only 8 (approximately) are responsible for conducting inspections and ensuring that trade is conducted in compliance with CITES. These few officers are also responsible for providing training to other

government agencies, conducting public outreach activities, answering queries from importers and brokers and so forth. These numbers are insufficient for a large, wealthy country actively engaged in wildlife trade. As a result Environment Canada is unable to meet all of its enforcement responsibilities.

- The House of Commons Standing Committee on Environment and Sustainable Development has previously criticized Environment Canada for providing insufficient resources for enforcement, and in 1999 Environment Canada recognized the need for more than 100 additional wildlife enforcement staff and more than \$8 million in additional annual funding.
- Limited resources are available for targeting and examining export shipments and therefore goods are rarely inspected upon export.
- Passage of the personal and household effects exemption [WAPTR section 15] has reduced the workloads for some officers in the Wildlife Enforcement Division headquarters and certain regions. The exemption has resulted in a significant increase in the time available for these officers. At the same time WAPTR section 15 has reduced the interaction between Environment Canada and Canada Customs officers in some areas, and it has created uncertainty about the nature of the products being imported under the exemption as there are no records kept on the nature or source of the items released under the exemption.
- The personal and household effects exemption is meant to apply only to non-commercial CITES Appendix II imports from countries that do not require the prior grant of an export permit. However it is currently being treated as a blanket exemption for imports coming from any country.
- In-depth analysis of Canadian inspection results was not possible. Data are not recorded on the vast majority of imports of non-CITES wildlife and wildlife products so there are no baseline data available for calculation of inspection rates or inspection effectiveness within or among regions. Furthermore the data recorded by officers in different regions are not consistent and detailed data on the percentage of

inspections that resulted in CITES detentions and the numbers and types of products that were detained or seized were available for only the Pacific and Yukon Region.

- Environment Canada is losing the expertise to provide expert identification of wildlife and wildlife products and, as a result, its ability to effectively enforce CITES is diminishing.
- Environment Canada has done little to enforce WAPTR section 9 which requires exports of live animals or plants from Canada to be done in accordance with the IATA Live Animals Regulations and Guidelines for Transport and Preparation for Shipment of Live Wild Animals and Plants. No charges have ever been brought for violation of the regulation.
- Data entry into the National Enforcement Management Information System and Intelligence System (NEMISIS) is not consistent across Canada and the database has not been designed to meet the needs of wildlife enforcement or effectively compile and report wildlife trade data.
- The department is providing its officers with good training on the WAPPRIITA legislation, self-defence and traditional policing techniques. However it is not providing comprehensive and consistent training on CITES, permit validation, the IATA Live Animals Regulations and species and product identification.
- Environment Canada has made a significant contribution to both Canadian and international enforcement of CITES through the development and distribution of the department's series of identification guides for CITES species and products.
- Canada has not instituted the use of wildlife declaration forms so there is very little information available about Canadian wildlife trade that does not involve CITES species. This lack of data limits Environment Canada's ability to focus wildlife enforcement efforts where they are most productive and provide a baseline for measuring enforcement effectiveness and the impact of the personal and household effects exemption.
- Canada has not instituted the use of designated ports for wildlife imports and exports. Doing

so would possibly benefit some regional efforts, but it is not clear whether they would significantly assist wildlife enforcement on a national scale and Environment Canada does not currently have the resources to dedicate to such a programme.

- Canada Customs is seeking to eliminate paper permits from its activities. If successful, Canada Customs officers would no longer validate CITES permits. This would critically impact the capability of Canada to implement CITES.
- Environment Canada's response to WAPPRIITA violations has not been consistent across the country. The option to issue tickets for violations is not available in all provinces and territories and the record of prosecutions and convictions for WAPPRIITA violations does not seem to correspond to the patterns of wildlife trade into Canada. The Ontario Region, which has a significantly higher budget for wildlife enforcement than any other region, has produced half of the CITES-related convictions in Canada.
- There is no national plan for improving public awareness of CITES in Canada. Nonetheless Environment Canada has made excellent efforts in raising public awareness about CITES and wildlife trade issues by making a great deal of information available in publications, public displays and on its website.
- Environment Canada has developed good working relationships with other government departments and agencies such as Canada Customs, CFIA, DFO, RCMP and the provincial and territorial authorities. Many of the successful prosecutions of CITES-related WAPPRIITA violations were the result of enforcement actions completed in co-operation with other authorities, especially Canada Customs.
- Environment Canada has signed MOUs regarding the enforcement of WAPPRIITA with Canada Customs and with the RCMP. However Environment Canada does not have an MOU with DFO and the 1991 MOU with Department of Agriculture is outdated.
- Environment Canada has signed MOUs regarding the implementation of

WAPPRIITA with some, but not all of the provinces and territories.

- Environment Canada's regional enforcement staffs provide much of the interagency training conducted in Canada. However regional enforcement officers have not been provided with comprehensive resource materials for use in CITES training or instruction on training techniques. As a result the CITES training provided to other agencies by Environment Canada is not consistent across the country.

## Key Recommendations

The full set of recommendations resulting from this study may be found in part 7 of the report. The following (abbreviated) recommendations are the 10 most important. Execution of these would significantly improve Canada's implementation of CITES and enhance the country's role in international wildlife conservation.

1. The House of Commons Standing Committee on Environment and Sustainable Development should review the financial and human resources available for the administration and enforcement of CITES in Canada.
2. Environment Canada should ensure that all required amendments to the WAPTR regarding changes made to the CITES Appendices and are made within the 90-day period required by WAPPRIITA.
3. Environment Canada should conduct a review of trade records to ensure that the data from both Canadian and foreign permits are being collected and the data compiled for CITES annual reports meet the criteria set in CITES Article VIII(6)(b).
4. The government of Canada must meet its obligations to file CITES annual reports by the deadline of October 31 of the following year, as required by the Convention.
5. Environment Canada should develop and make public a policy and procedure for implementing CITES Decisions and Resolutions in Canada.
6. Environment Canada should develop and institute comprehensive training programmes on CITES and the identification of wildlife products for all officers actively involved in CITES enforcement.
7. Environment Canada should address the deficiencies of NEMISIS including the design and performance of the database and the process by which data are entered.
8. Environment Canada should implement the personal and household effects exemption [WAPTR section 15] as it is written. Specifically the exemption should be applied only to goods that come from countries that do not require the prior grant of an export permit for those goods.
9. Environment Canada should institute the use of wildlife declaration forms for Canada.
10. The government Canada must ensure that either Canada Customs continues to verify CITES permits, or that Environment Canada is provided with the resources required to effectively assume all responsibility for this activity.

# 1.0 INTRODUCTION

This report provides an overview and evaluation of Canada's implementation of CITES. It explores whether Canada's current legislative, administrative and enforcement systems comply with its CITES obligations and identifies areas where there is need for improvement. Drawing upon over 25 years of CITES experience held by the global TRAFFIC network, the report provides a synopsis of the existing system of implementation, highlighting successes and failures, and offers constructive recommendations for improvement.

In an in-depth review of Canada's implementation of CITES Douglas Hykle (1988) noted that there had been no comprehensive assessments of Canada's performance in implementing the Convention since its inception. The adoption of WAPPRIITA in 1996 significantly improved Canada's legislative capacity to implement CITES. WAPPRIITA has regulated the import and export of wild animals and plants into and out of Canada for more than six years. Although a few reports have considered various aspects of Canada's implementation of CITES since Hykle's work (for example Chalifour [1996]) TRAFFIC North America is

unaware of any comprehensive reviews of Canada's implementation of the Convention since WAPPRIITA was passed.

This report is divided into eight parts. This introduction concludes part 1. Part 2 describes the methods used to research the report and part 3 provides background, including a brief description of CITES and a short historical overview of Canada's CITES implementation prior to the passage of WAPPRIITA. Parts 4, 5 and 6 analyze the legislation, administration and enforcement components of CITES implementation in Canada. Part 7 concludes with an assessment of CITES implementation in Canada and provides recommendations resulting from the analysis and evaluation in this report.

The implementation of CITES in Canada is the responsibility of Environment Canada, therefore the report focuses primarily on the activities of this government department. The report does not consider how Canada implements its international participatory commitments under CITES, such as participating in meetings of the Conference of the Parties or contributing to the CITES Secretariat's budget.





## 2.0 METHODS

The information in this report was obtained through literature reviews, Internet searches and both verbal and written interviews. Published information on CITES in Canada was distinctly lacking. Public CITES annual reports have not been published for a decade, and the WAPPRIITA annual reports are lacking in detail. Much of the data provided for this report had to be obtained through personal contacts and requests for information, and many times the solicited information was unavailable or at least not easily accessible.

Information was obtained through verbal and written interviews with government staff involved in the implementation of CITES in Canada. These interviews were conducted between 1998 and 2004 with representatives from Agriculture Canada, Alberta Department of Sustainable Resource Development, British Columbia Ministry of Water, Land and Air Protection, Canada Customs, Canadian Food Inspection Agency (CFIA), Canadian Forest Service (CFS), Environment Canada, Environment Yukon, Fisheries and Oceans Canada (DFO), Manitoba Conservation, New Brunswick Dept of Natural Resources and Energy, Newfoundland and Labrador Forest Resources and Agrifoods, Northwest Territories Wildlife and Economic Development, Nunavut Wildlife Service, Ontario Ministry of Natural Resources, Prince Edward Island Department of Fisheries Aquaculture and Environment, Protection de la Faune, Société de la Faune et des Parcs, Royal Canadian Mounted Police (RCMP), and Saskatchewan Department of Environment and Resource Management

Before publication the report was offered for review to the Director General of the Canadian Wildlife Service, and David Brackett, Chair of the World Conservation Union (IUCN) Species Survival Commission and former Director General of the Canadian Wildlife Service.

In some cases data provided from government sources corresponded to the fiscal year for the Canadian government, which runs from April 1 to March 31. For example, 'fiscal year 2000–2001' would refer to the period from April 1, 2000, to March 31, 2001.

All currency figures used in this report are in Canadian dollars followed (in brackets) with the US dollar value at April 2004 conversion rates.

The name of the Canadian government body responsible for Customs operations has changed twice during the time period covered in this report. Prior to 1999 Canadian customs border services was the mandate of Revenue Canada. In 1999 the Canada Customs and Revenue Agency (CCRA) was established to administer and enforce Canadian customs and taxation responsibilities (Anon., 1999a). In 2003 the Canada Border Services Agency (CBSA) was created to integrate the Customs program from the CCRA, the Intelligence, Interdiction and Enforcement program from Citizenship and Immigration Canada, and the Import Inspection at Ports of Entry program from the CFIA (Anon., 2004a). In order to minimize confusion this report uses the generic term 'Canada Customs' in place of Revenue Canada, CCRA and CBSA.



## 3.0 BACKGROUND

Millions of wild animals and plants are traded internationally each year. The World Customs Organization reports that approximately 25 000 to 30 000 primates, 9 million to 10 million orchids, 2 million to 5 million live birds, 500 000 wild parrots and parakeets, 10 million reptile skins, 15 million furs, 7 million to 8 million cacti and more than 500 million tropical fish are traded annually across national borders (Anon., 1998). This list is voluminous, but it does not reflect the significant volume of commercial trade in timber and food fish or the countless products made from wildlife parts and derivatives.

The trade in wild animals and plants and their derivatives is estimated to be worth billions of dollars every year. The majority of this trade is conducted legally, but a significant proportion is believed to be conducted contrary to domestic and international regulations (Anon., 2001a).

For many species overexploitation, illegal hunting and collection are major conservation threats. Tigers (*Panthera tigris*), for instance, are poached for their bones, skins and other parts. Although tigers are endangered for a number of reasons, including loss of habitat, poaching is currently one of the most immediate threats to the tiger's survival in the wild (Nowell, 2000). Approximately 85 percent of the world's rhinoceroses are estimated to have been poached since 1970 for their horns, possibly giving rhinos the unfortunate distinction of being the most rapidly depleted family for commerce (Nowell *et al.*, 1992). Many other groups of species, such as crocodilians, fur-bearing mammals, parrots, primates, cacti and orchids, have been overexploited due to a demand for them as pets or trophies, or for parts or products made from them (Fitzgerald, 1989).

In 1973 21 countries formally recognized the conservation implications of international markets for wildlife and the need for international co-operation to regulate cross-border flows of wildlife by signing CITES. On July 1, 1975, it entered into force after the 10th ratification (Wijnstekers, 2001). Canada was the 10th nation to ratify CITES, bringing the treaty into force on July 9, 1975. As of December 30 2003, 164 nations had ratified or

acceded to CITES (Anon., 2003).

The aim of the Convention is to prohibit international trade in endangered species, with limited exceptions, and regulate commercial international trade in species vulnerable to overexploitation due to trade. The treaty's preamble recognizes that 'international cooperation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade' (Anon., 1973). More information about CITES may be found in Appendix A of this report.

The Convention has sometimes been hailed as the most effective international instrument in the conservation of biological diversity (Hemley, 2000). However CITES has also received its share of criticism ('t Sas-Rolfes, 2000). As is the case with most international treaties CITES' success is dependent on how well signatory countries implement the Convention's rules. Although full implementation of CITES can be complex and expensive, research and experience have demonstrated that good will, collaboration and creativity can go a long way towards making effective CITES implementation a reality (Allan, 1997).

### 3.1 Trade Volume in Canada

Canada is the second largest country in the world, with a landmass covering almost 10 million square kilometres. From east to west Canada encompasses six time zones. Its border includes three oceans, which give it the longest coastline of any country. Canada shares 8 891 kilometres of border with the United States (Anon., 2003b). The volume of trade in goods across Canada's borders is significant and increasing. In 2000 more than 12 million commercial shipments were imported into the country (that number is increasing by an average of 500 000 each year), and more than 104 million travellers were processed by Canada Customs (P. Clydesdale, Pacific Region Commercial Analyst, Intelligence and Contraband Division, Canada Customs, *in litt.* to E. Cooper, July 5, 2002). The value of the import trade in 2000 was CAD356.7 billion (USD265.4) (Anon., 2002).

Goods enter and leave the country by air, sea, rail and road and via the mail or courier services. The majority of commercial shipments and travellers typically arrive in three areas of Canada: south-western British Columbia (near the city of Vancouver), southern Ontario and southern Québec. In 1995 the busiest ports (including commercial traffic and travellers) were Vancouver International Airport, Vancouver Pacific Highway, both the Windsor Bridge and Windsor Tunnel on the Ontario border with Michigan (USA), Toronto's Pearson International Airport, and Montréal's Mirabel International Airport (Anon., 1995).

In 1997, Pearson International Airport in Toronto alone shipped 370 000 tonnes of air cargo (accounting for 44 percent of all air cargo carried into Canada) (Anon., 2001c). In fiscal year 2002-2003, Canada Customs officers at Pearson Airport processed 1 044 584 commercial shipments (an average of approximately 2900 shipments per day) (J. Laurin, Senior Program Officer, Canada Customs, *in litt.* to E. Cooper, Sept. 16, 2003). Also in fiscal year 2002-2003, 1 625 559 commercial shipments were imported through the Ambassador Bridge in Windsor, Ontario, (the busiest single port in Canada). Approximately 5000 trucks pass through this port every day (J. Laurin *in litt.* to E. Cooper, Sept. 16, 2003).

In addition to cargo shipments and goods accompanying travellers, tens of thousands of mail and courier parcels enter Canada each day. In fiscal year 2002-2003, more than 24 million courier shipments were imported into Canada (J. Laurin *in litt.* to E. Cooper, Sept. 16, 2003).

There is clearly a significant volume of traffic crossing into and out of Canada that may include CITES specimens. The high overall volume of goods poses a major challenge for ensuring that goods are being screened for compliance with CITES.

### **3.2 CITES in Canada**

Canada, like all Parties to CITES, is responsible for implementing the provisions of the Convention domestically. The fact that Canada has signed an international agreement does not automatically make all the provisions of that agreement part of its domestic legal

system. The government must incorporate the measures into its domestic law. At a minimum Canada must legislate the 'non-self-executing commitments' in CITES (de Klemm, 1993).

Every CITES Party has a unique set of factors influencing that Party's implementation of the Convention. The volume of international trade, production and consumption of wildlife products, size and state of the economy, availability of resources and political commitment to the objectives of CITES are some of the factors to consider.

Canada is a country for which international trade is very important. Exports of goods and services account for 43 percent of the country's gross domestic product (GDP) (Anon., 2000i). Rich in natural resources, Canada is an exporter of many wild animals and plants and their products, such as furs, fish and timber. It is also an importer of wild animals and plants, such as live birds, reptiles, primates, cacti and orchids, as well as products such as medicines containing derivatives of wildlife as ingredients and fashion accessories made of reptile skin (Anon., 2003k).

Under Canada's Constitution, the conservation and management of wildlife are a shared responsibility between the federal and the provincial and territorial governments. The provinces and territories have jurisdiction over wildlife within their borders, and the federal government has jurisdiction over coastal and inland fisheries (including marine mammals) and migratory birds and wildlife on federal land (i.e., national parks). The federal government also has jurisdiction over international and interprovincial trade (Anon., 1867).

Canada's vast size and large number of border crossing points, along with the jurisdictional division of powers over wildlife, increase the complexity of regulating wildlife trade in the country. However, Canada has the advantage of being a prosperous nation with resources to implement its international commitments, particularly in comparison to many of the developing nations that are Parties to CITES. In addition, because of the importance of international trade to the Canadian economy, there is already a strong border infrastructure for monitoring trade in drugs, tobacco, firearms and other potential contraband. These factors place Canada in a good position to successfully monitor trade in wildlife.

## 4.0 LEGISLATION

CITES is an international agreement to which countries join voluntarily. After joining, each country must adopt its own domestic legislation to make sure that CITES is implemented at the national level.

### 4.1 Background

From the ratification of CITES in 1975 until 1996 Canada implemented the Convention via the Export and Import Permits Act (EIPA)—legislation that existed when the treaty was ratified. The EIPA is a statute used by Canada Customs on behalf of the Department of Foreign Affairs and International Trade (DFAIT) to regulate trade in certain commodities. The EIPA contains an Export Control List and Import Control List, and the act requires trade in those commodities included on these lists to be accompanied by a permit (Anon., 1970a). Upon ratification of CITES the Canadian government added the species included on the CITES Appendices to the Control Lists, thus requiring permits for trade. It also designated Environment Canada as the lead agency for administering CITES and created Management and Scientific Authorities within Environment Canada. In addition to the EIPA the Game Export Act required permits for interprovincial transport and export of game killed in another province or territory, which could include CITES-listed species such as the American black bear (*Ursus americanus*) (Anon., 1970b).

One of the major problems with the EIPA system was that Environment Canada was designated as the lead agency for administering CITES under the EIPA, but it was not given the power to enforce the legislation. Only Canada Customs and the RCMP were authorized to enforce the EIPA. Therefore, although Environment Canada was responsible for detecting—and had the expertise to detect—violations of the EIPA relating to CITES-listed species, it did not have adequate powers of search and seizure, or the authority to bring charges for violations. Instead Environment Canada had to rely on Canada Customs and the RCMP to follow through on their work.

This resulted in inefficient and ultimately less effective enforcement, because it required continued interagency co-ordination, and CITES was not afforded high priority within Canada Customs or the RCMP (Hykle, 1988).

The Canadian government stated that reliance on the EIPA to implement CITES was a temporary measure, but it remained the primary mechanism for CITES implementation for more than 20 years. The delay in developing and implementing a system of effective CITES implementation was subject to criticism, even from within government (Hykle, 1988, Anon., 1995).

In 1992 the federal government drafted WAPPRIITA to provide the legislative basis for achieving implementation of CITES (Anon., 2003r). Although WAPPRIITA received Royal Assent in 1992, it did not come into force until May 14, 1996, when the enabling regulations—the Wild Animal and Plant Trade Regulations (WAPTR)—were passed.

In *Guidelines for Legislation to Implement CITES* (de Klemm, 1993), two main non-self-executing (requiring domestic legislation) obligations are identified in CITES:

1. CITES Article II(4) requires Parties to prohibit trade in specimens of species included in the CITES Appendices except as permitted by CITES.
2. CITES Article VIII(1) requires that Parties take appropriate measures to enforce the Convention. The Convention mandates that such measures include penalizing trade in or possession of specimens in violation of the rules and provide for confiscation or return to the state of export of specimens imported in violation of the rules.

In short, the Parties to CITES are obligated to enact legislation that prohibits trade contrary to the Convention and includes appropriate measures to enforce it. Failure to enact such legislation would be contrary to the Convention (de Klemm, 1993). Sections 4.2 and 4.3 consider how WAPPRIITA incorporates these obligations.

## 4.2 Prohibition of Trade Contrary to CITES

Subsection 6(2) of WAPPRIITA prohibits the import and export of CITES specimens except with a permit or where permitted by the regulations. In addition subsection 6(1) prohibits the import into Canada of an animal or plant, or any part thereof, that was taken or possessed in contravention of any foreign law; and section 8 makes it an offence to possess specimens which have been imported in contravention of the legislation or to offer CITES Appendix I specimens for sale (Anon., 1992b). Sections 1–7 and 13 of the WAPTR implement these elements of WAPPRIITA (Anon., 1996).<sup>1</sup>

Subsection 6(2) of WAPPRIITA alone incorporates the first of the two non-self-executing provisions in CITES. Thus subsections 6(1), 6(2) and section 8 collectively provide a legislative basis for the regulation of trade in specimens covered by CITES which goes beyond the basic obligation of prohibiting trade contrary to CITES.

In December 1999 the government of Canada passed regulatory amendments to the WAPTR which added an exemption for the import and export of personal and household effects, including tourist souvenirs. These amendments brought the regulations in accordance with the exemption allowed under Article VII(3) of the Convention (J. Robillard, Deputy CITES Administrator, Environment Canada, *in litt.* to E. Cooper, July 26, 2002).

The definitions of ‘personal effects, household effects and tourist souvenirs’ are found in section 14 of the amendments. They are as follows (emphasis added):

‘*Personal effect*’ means any of the following things that is imported into or exported from Canada for other than commercial purposes:

(a) a plant or dead animal, or a part or derivative of one, that is owned and possessed by an individual in the individual’s ordinary country of residence and that, at the time of its import or export, is part of the individual’s clothing or accessories or is contained in the individual’s personal baggage; and

(b) a tourist souvenir or a hunting trophy.

‘*Household effect*’ means a plant or dead animal, or a part or derivative of one, that is imported to or exported from Canada for other than commercial purposes and that

(a) is owned and possessed by an individual in the individual’s ordinary country of residence and that forms part of the individual’s household belongings that are being shipped to or from Canada, to the individual’s new residence; or

(b) forms part of an inheritance from an estate that is imported to or exported from Canada.

‘*Tourist souvenir*’ means a dead animal, other than a hunting trophy, or a dead plant, or a part or derivative of one, that is listed in column I of an item of Schedule I and in respect of which there is a reference to Appendix II or III of the Convention in column II of that item and that is being imported into their ordinary country of residence by an individual who acquired, owned and possessed it outside their ordinary country of residence during a sojourn from which they are returning.

Under subsection 15(1) of the amended regulations an individual does not require an import or export permit issued for a CITES-listed species (including a part or derivative) that is a personal or household effect. There are three exceptions:

1. Permits are required for tourist souvenirs from a country where they were removed from the wild and where that country requires export permits.
2. Permits are required for dead plants and animals (or parts or derivatives other than feathers) that are raw, unprocessed, semi-processed or simply dried.
3. Permits are required for hunting trophies *other* than those referred to in subsection 15(2), outlined below.

Subsection 15(2) of the amendments states that residents of Canada or the United States do not require import or export permits for black bear hides, skulls or meat, or the carcass or meat of

<sup>1</sup> Sections 1–7 and 13 cover the following topics respectively: short title, interpretation, fauna and flora listed in an appendix to the convention, importation into Canada, exportation from Canada and possession exemptions.

sandhill cranes (*Grus canadensis*). This exemption applies only to fresh, frozen or salted items that were acquired through legal hunting and only when importing or exporting between Canada and the United States.

The application of CITES to specimens that are personal or household effects is covered by CITES Article VII(3) and Resolution Conference 10.6.

CITES Article VII(3) states:

The provisions of Articles III, IV and V shall not apply to specimens that are personal or household effects. This exemption shall not apply where:

(a) in the case of specimens of a species included in Appendix I, they were acquired by the owner outside his State of usual residence, and are being imported into that State; or

(b) in the case of specimens of species included in Appendix II:

(i) they were acquired by the owner outside his State of usual residence and in a State where removal from the wild occurred;

(ii) they are being imported into the owner's State of usual residence; and

(iii) the State where removal from the wild occurred requires the prior grant of export permits before any export of such specimens; unless a Management Authority is satisfied that the specimens were acquired before the provisions of the present Convention applied to such specimens.

Based on this language, Canada's regulations for hunting trophies are narrower than the Convention's text.

CITES Resolution Conference 10.6 (which concerns control of trade in tourist souvenir specimens) recognizes that some species in both Appendixes I and II continue to be sold widely as tourist souvenirs. The resolution urges Parties to make their best efforts to comply fully with the purpose of the

Convention with respect to tourist souvenirs listed in Appendix II and in particular to control export and import of specimens of species likely to be adversely affected by heavy trade.

The wording of CITES Resolution Conference 10.6 is imprecise, but CITES Article VII(3) is clear, and the definitions provided in the WAPTR amendments conform with—or are more strict than—that text. Therefore it would appear that the obligation to prohibit trade contrary to CITES is still met as long as the amendments are appropriately administered and enforced.

### 4.3 Appropriate Measures to Enforce the Convention

Appropriate measures to enforce the Convention include a strong enforcement structure as well as penalties for violating the act that will sufficiently deter violations. WAPPRIITA clearly meets both of these requirements.

WAPPRIITA authorizes a strong enforcement structure. Section 12 of WAPPRIITA authorizes the Minister of the Environment to designate officers to enforce the act, and sections 13 and 14 confer broad powers of search and seizure, detention and inspection upon the officers (Anon., 1992b). These officers can be from Environment Canada or other government departments. Under the EIPA, only Canada Customs and the RCMP were authorized to enforce the act. The expansion of enforcement powers to Environment Canada (and potentially other government departments) was a significant change in that it allowed for the build-up of capacity with wildlife expertise.

WAPPRIITA imposes significant penalties for violating the act. Section 22 allows for contraventions of the act to be prosecuted as either summary or indictable offences.<sup>2</sup> An individual may be fined up to CAD25 000 (USD18 599), face imprisonment for up to six months or both for summary violations of the act. For indictable offences, fines can reach up

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<sup>2</sup> Indictable offences are considered to be very serious and are usually tried by federally appointed judges. Convictions result in severe sentences. Murder and sexual assault are examples of crimes which would always be treated as indictable offences. In comparison, summary offences are not considered to be as serious and result in less time-consuming legal procedures and lesser sentences. Examples of offences which would always be treated as summary offences include causing a disturbance or trespassing.



to CAD150 000 (USD111 553) or imprisonment for up to five years. Fines for corporations are even higher—up to CAD50 000 (USD37 195) for summary convictions or CAD300 000 (USD223 160) for the more serious indictable offences. A fine equal to profits gained by the illegal activity may also be imposed. In addition section 23 authorizes officers to bring charges by issuing penalty tickets on the spot for designated minor offences (Anon., 1992b).

WAPPRIITA allows fines imposed upon conviction for offences involving more than one animal, plant or derivative to be computed in respect of each specimen, as though it was the subject of a separate complaint. Subsection 22(4) allows an offence committed on more than one day to be deemed a separate offence for each day, allowing maximum fines to be imposed for each offence (Anon., 1992b). Both of these provisions can substantially raise the penalty ceiling.

The maximum penalties provided under WAPPRIITA are significantly higher than the penalties available under the EIPA. The EIPA only allows a maximum fine of CAD5000 (USD3719), imprisonment for up to 12 months or both for summary offences and a maximum fine of CAD25 000 (USD18 599), imprisonment for up to 5 years or both for indictable offences.

In December 1999 WAPPRIITA was strengthened through an amendment to the WAPTR that made specific reference to labelling. This amendment was made at least partly in response to an international effort to crack down on manufactured medicinal products (pharmaceuticals) that list CITES Appendix I species such as the tiger in their ingredients. Determining the ingredients of a manufactured pharmaceutical product through forensic analysis is not usually possible (Petrar, 1999). Therefore the packaging of these products frequently provides the only source of information as to the contents of the product.

CITES Article I(b) defines specimens of animals and plants as being ‘any readily recognizable part or derivative thereof.’

Resolution Conference 9.6 (Revised) clarifies this definition:

...that the term ‘readily recognizable part or derivative’, as used in the Convention, shall be interpreted to include any specimen which appears from an accompanying document, the packaging or a mark or label, or from any other circumstances, to be a part or derivative of an animal or plant of a species included in the Appendices, unless such part or derivative is specifically exempted from the provisions of the Convention.

Furthermore, CITES Resolution Conference 11.5 urges

d) all Parties to treat any product claiming to contain tiger specimens as a readily recognizable tiger derivative and therefore subject to the provisions relating to Appendix I species, as provided for in Resolution Conf. 9.6 (Rev.), and to enact legislation where it does not exist, to fully implement these provisions for such products;....

Section 20 of the amended WAPTR states:

Where a person imports into Canada or exports from Canada any thing that is identified by a mark, label or accompanying document that indicates that the thing is an animal or plant, or a part or derivative of one, that is listed in Schedule I [CITES Appendices I, II or III] or II, that thing is, unless there is evidence that raises a reasonable doubt to the contrary, deemed to be the thing so identified.

In other words, if a product includes CITES-listed animals or plants as ingredients on its packaging, then the ingredients will be considered accurate for the purposes of enforcement unless there is reasonable evidence to the contrary. For example the tiger is included in Appendix I of CITES. To import into Canada a medicine that listed tiger in its ingredients would require the issuance of CITES import and export permits unless there was reasonable evidence that the ingredients documentation was inaccurate.

Most Canadian law follows the principle that an accused is ‘innocent until proven guilty’. However, WAPTR section 20 creates a situation wherein importers of products listing CITES species in their ingredients are considered guilty of a violation unless they can

prove themselves innocent.<sup>3</sup> According to Environment Canada's Deputy CITES Administrator, the phrase 'unless there is evidence that raises a reasonable doubt to the contrary' was added to render the regulation in line with the Charter of Rights; otherwise it would not have been approved by Justice Canada (J. Robillard, *in litt.* to E. Cooper, July 26, 2002).

The amendment to the WAPTR improves the government's capability to enforce CITES in Canada. However the regulation does not compel the need to document the contents of a product. In other words, the easiest way to circumvent this regulation is to simply not list ingredients on packaging or ship the packaging separately from the product.

Section 20 of the amended WAPTR has been used in at least one successful prosecution (under a guilty plea) in November 2000 (see conviction number 37 in Appendix D).

#### 4.4 Other Legislation

There are other pieces of Canadian legislation in addition to WAPPRIITA that relate to the implementation of CITES. The Criminal Code contains provisions that could be applied for enforcement of CITES. For example, if fraud or concealment is involved, criminal charges

could be brought in addition to (or in lieu of) charges under WAPPRIITA (Anon., 1985a). The Customs Act is also relevant to CITES in that it empowers Customs Officers to inspect any shipments and monitor trade in any commodity at the border. The Customs Act permits Customs Officers to question travellers, commercial importers and carriers about the goods they are importing and to inspect them, as well as to seize relevant items if there is evidence the act has been contravened (Anon., 1985b).

Provincial and territorial wildlife laws also have relevance to CITES, particularly in the case of exports of native Canadian wildlife. For instance most provinces and territories in Canada require permits for exports of fur-bearing mammals and big game (see, for example, Anon., 1997c and Anon., 2000c). Some of these species, such as American black bear are listed on CITES and therefore require CITES export permits in addition. At least one province (Québec) has modified its provincial wildlife regulations so that it could use CITES export permits in lieu of its own provincial export permit to satisfy the requirements of the provincial legislation and thereby remove the necessity of having to issue two permits for the same shipment (J. Robillard, *in litt.* to E. Cooper, July 26, 2002).

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<sup>3</sup> This is an example of 'reverse onus'.



## 5.0 ADMINISTRATION

### 5.1 Background

The responsibility for administering CITES in Canada falls to Environment Canada. Since 1999 this department has been operating under a banner of four priority areas covering its entire mandate: clean environment, nature, weather and environmental predictions, and management, policy and administration. Environment Canada spent approximately CAD792 million (USD589 million) during its 1999–2000 fiscal year, with 39 percent spent on weather, 29 percent on clean environment, 18 percent on nature and 14 percent on management (Anon., 2000g).

The implementation of CITES falls within the nature section of Environment Canada's work. The nature section has three articulated goals: conservation of biodiversity (notably the establishment of the Species at Risk Act [SARA<sup>4</sup>] and managing snow geese populations), understanding and reducing human impacts on the health of the environment and conservation and restoration of priority ecosystems. CITES is not mentioned in the nature or any other section of Environment Canada's public planning documents (Anon., 2000h). An annual performance report from Environment Canada contains a summary of actions taken under WAPPRIITA (such as the number of permits issued) but does not state the CITES implementation budget, nor does it indicate where responsibility for CITES falls within the department's priorities (Anon., 2000g). In Environment Canada's *Sustainable Development Strategy 2001–2003* one of the department's identified roles in the nature priority area is 'representing Canada's interests in international arenas dealing with wildlife, ecosystem health and biodiversity', but CITES is not mentioned specifically (Anon., 2001m). Environment Canada's *Estimates 2000–2001*, which includes a part on future plans and priorities, makes no mention of WAPPRIITA or CITES except to note that the department will update Schedule I of WAPPRIITA in accordance with changes to the CITES Appendices (Anon., 2000h).

TRAFFIC North America identified the following administrative requirements for the administration of CITES in Canada:

- establishment of a CITES management authority;
- establishment of a CITES scientific authority;
- allocation of resources;
- co-ordination of national CITES implementation;
- development of legislation, regulations and policies;
- publication of the CITES Appendices and amendments;
- recording of trade data;
- production of CITES reports;
- implementation of CITES Decisions and Resolutions;
- establishment of permit forms;
- completion of findings prior to issuing permits and
- issuance of permits.

### 5.2 Management Authority

CITES Article IX(1)(a) requires that each Party designate one or more Management Authorities competent to grant permits or certificates.

In Canada the jurisdiction over wildlife management is divided between the federal government and provincial and territorial governments (Anon., 1867). As a result CITES management is also shared. The Canadian National CITES Management Authority is part of the Canadian Wildlife Service, within Environment Canada, located in Gatineau, Québec (Anon., 2001o). In addition there are Management Authorities within the federal Fisheries and Oceans Canada (formerly Department of Fisheries and Oceans [DFO]), the Canadian Forest Service (CFS) and the provinces and territories. Provinces and territories may have more than one permit-issuing office. All together there are

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<sup>4</sup> The goal of SARA is to protect Canadian wildlife at risk from becoming extinct and further the recovery of wild populations. SARA prohibits the killing, harassing or capturing of species officially listed as threatened, endangered or extirpated, as well as the destruction of their habitat (Anon., 2002s).

approximately 90 permit-issuing offices across Canada (J. Robillard, *in litt.* to E. Cooper July 26, 2002). Alberta withdrew from CITES administration in 1995 (J. Robillard, pers. comm. to N. Chalifour, March 9, 2001). However, the province does provide contact persons to assist the National Authorities in issuing CITES permits to Albertans (e.g. to answer questions related to non-detriment findings or the legality of specimens) (J. Robillard, *in litt.* to E. Cooper May 31, 2004).

Prior to 2004 the National CITES Management Authority consisted of a chief, three core staff and three support staff (J. Robillard, *in litt.* to E. Cooper, July 26, 2002). As of May 2003 the chief position had been vacant since its creation [for more than two years] (A. Sinclair, Acting Scientific Authority for CITES, *in litt.* to E. Cooper, May 6, 2003). As of January 1, 2004, the Management and Scientific Authorities were merged to form the Wildlife and International Division (WTI) and a Chief of the WTI was created. According to Environment Canada's Deputy CITES Administrator, an International Section will eventually be added to the WTI. The Management Authority position was still vacant as of April 2004, with the Deputy Administrator temporarily assuming the Management Authority responsibilities (J. Robillard, *in litt.* to E. Cooper April 19, 2004).

The National CITES Management Authority's five or six staff are responsible for publishing the CITES Appendices and amendments; compiling records of trade; compiling and publishing CITES reports; implementing Resolutions and Decisions; co-ordinating national CITES implementation; developing legislation, regulations, policies and permit forms and issuing thousands of permits and certificates per year. In addition the National CITES Management Authority responds to numerous public enquiries, provides advice on interpretation of the Convention to enforcement staff, promotes awareness of CITES in Canada, co-ordinates Management Authority functions relating to the Secretariat and other Parties and prepares for and participates in meetings of the Conference of the Parties to the Convention (CoPs) and the CITES Standing Committee (J. Robillard, pers. comm. to N. Chalifour, March 9, 2001).

The office of the head of the Management Authority within DFO is in Ottawa. DFO also has a CITES Administrator, who handles export permits and record keeping at the national level, in Winnipeg (J. Robillard, *in litt.* to E. Cooper, September 18, 2001). The DFO CITES Administrator co-ordinates and trains a team of regional designees, who have responsibility for issuing export permits for marine species. There are approximately 12 such regional designees (P. Hall, DFO CITES Administrator, Fisheries and Oceans Canada, pers. comm. to N. Chalifour, June 5, 2001).

The Management Authority for the CFS is the Senior Policy Advisor for International Affairs, in Ottawa (Anon., 2002q). The CFS, contrary to other Canadian CITES Management Authorities, does not issue CITES export permits (J. Robillard, *in litt.* to E. Cooper, July 26, 2002). Currently, the CFS Management Authority acts solely as an advisor to the National CITES Management Authority. Hypothetically, however, if a Canadian timber species was listed by CITES, and if some provincial or territorial authorities opted not to accept the responsibility for issuing export permits for that species, then the CFS Management Authority would likely assume that responsibility (M. Fullerton, Senior Policy Advisor for International Affairs, CFS, pers. comm. to E. Cooper, Feb 26, 2003).

The provincial and territorial Management Authorities are located within the wildlife departments of provincial and territorial Natural Resource or Environment Ministries (see table 5.1).

### 5.3 Scientific Authority

CITES Article IX(1)(b) requires each Party to designate one or more Scientific Authorities.

The Scientific Authority of Environment Canada works on a variety of issues—such as CITES, SARA, invasive species and so on—for which there is ad hoc staff. Prior to January 2004, the CITES Scientific Authority consisted of the CITES Scientific Authority and International Co-ordinator, who reported to the Chief of the Scientific Authority, plus two advisors on trade issues (one for plants and one for animals) on trade issues and one additional staff under contract (T. Swerdfager, Director General, Canadian Wildlife Service, *in litt.* to

**Table 5.1 Provincial and Territorial CITES Management and Scientific Authorities**

Province or territory	Management Authority	Scientific Authority
Alberta	Head of Enforcement Operations CITES management Authority Alberta Environment	Provincial Wildlife Status Biologist Fish & Wildlife Division SRD CITES Scientific Authority
British Columbia	Deputy Director Government of British Columbia Fish & Wildlife Recreation & Allocation Ministry of Water, Land & Air Protection	Endangered Species Specialist Fish & Wildlife Recreation & Allocation Ministry of Water, Land & Air Protection
Manitoba	Permits/Legislative Clerk Non-game & Endangered Species Mgt. Wildlife Branch Manitoba Conservation	Chief, Biodiversity Conservation Wildlife Branch Manitoba Conservation
New Brunswick	Executive Director Fish & Wildlife Branch Department of Natural Resources & Energy	Program Manager, Big Game & Furbearers Fish & Wildlife Branch Department of Natural Resources & Energy
Newfoundland and Labrador	Director, Inland Fish & Wildlife Division Department of Tourism, Culture & Recreation	Endangered Species & Biodiversity Section Inland Fish & Wildlife Division Department of Tourism, Culture & Recreation
Northwest Territories	Manager, Enforcement & Legislative Services Resources, Wildlife & Economic Development	Director Wildlife & Fisheries Resources, Wildlife & Economic Development
Nova Scotia	Director, Wildlife Management Department of Natural Resources	Director, Wildlife Management Department of Natural Resources
Nunavut	Senior Advisor, Legislation & Enforcement Wildlife & Environmental Protection Department of Sustainable Development	Director Nunavut Wildlife Service, DSD
Ontario	Director Fish & Wildlife Branch Ministry of Natural resources	Director Applied Research & Development Branch Ministry of Natural Resources
Prince Edward Island	CITES Management & Scientific Authority & Director Conservation & Management Division Department of the Environment & Energy	CITES Management & Scientific Authority & Director Conservation & Management Division Department of the Environment & Energy
Québec	CITES Management Authority — Animals Direction des permis et de la tarification Société de la faune et des parcs du Québec  CITES Management & Scientific Authority — Flora Direction du patrimoine écologique et du développement durable Ministère de l'Environnement	CITES Scientific Authority — Animals Direction du développement de la faune Société de la faune et des parcs du Québec  CITES Management and Scientific Authority — Flora Direction du patrimoine écologique et du développement durable Ministère de l'Environnement
Saskatchewan	Legislation Administrator Wildlife Branch Department of Parks & Renewable Resources	Legislation Administrator Wildlife Branch Department of Parks & Renewable Resources
Yukon	Director, Conservation Protection and Public Education Department of Environment	Director Fish and Wildlife Branch Department of Renewable Resources

Source: Anon. (2002q)

E. Cooper, October 14, 2003). As of May 2003 the chief position had been vacant since its creation [for more than two years] (A. Sinclair, *in litt.* to E. Cooper, May 6, 2003). As reported previously (see section 5.2, 'Management Authority') as of January 1, 2004, the Management and Scientific Authorities were merged to form the Wildlife and International Division (WTI) and the CITES Scientific Authority and International Co-ordinator now reports to the Chief of the WTI (J. Robillard, *in litt.* to E. Cooper April 19, 2004).

DFO has a Scientific Authority for advising the DFO Management Authority with respect to non-detriment findings for aquatic species (B. von Arx, CITES Scientific Authority and International Coordinator, Environment Canada, pers. comm. to N. Chalifour, March 9, 2001). Environment Canada's CITES website lists two representatives of DFO as the Scientific Authority: Scientific Advisor, Species at Risk Program; and Director, Fisheries Research Branch. The CFS also provides a Scientific Authority: the Science Advisor, Biodiversity, Science Branch (Anon., 2002q).

Scientific Authorities are also designated in the provinces and territories to determine whether the export of a specimen of a species from their jurisdictions would be detrimental to the survival of the species in question (B. von Arx, pers. comm. to N. Chalifour, March 9, 2001). The Scientific Authorities for the provinces and territories are listed in table 5.1.

## 5.4 Allocation of Resources

Currently the National CITES Management Authority has an operating budget (the costs of running the office, not including salaries—office supplies, overhead, travel and so forth) of approximately CAD100 000 (USD74 382) (J. Robillard, pers. comm. to N. Chalifour, March 9, 2001). The National Scientific Authority has an operating budget of approximately CAD30 000 (USD22 316) (B. von Arx, pers. comm. to N. Chalifour, March 9, 2001).

The DFO CITES Administrator reported in 2001 that the time spent on CITES ranges from a small proportion to more than 50 percent. There is a budget of CAD5000 (USD3719) for CITES activities, such as training for issuing permits (P. Hall, DFO CITES Administrator, Fisheries and Oceans

Canada, pers. comm. to N. Chalifour, June 5, 2001). The duties of the DFO Scientific Authority require approximately 25 percent of one full-time position (B. von Arx, pers. comm. to N. Chalifour, March 9, 2001).

Provincial and territorial Management Authorities are unlikely to spend more than 25 percent of their time on CITES issues (J. Robillard, pers. comm. to N. Chalifour, March 9, 2001). The budgets for CITES implementation are part of the provincial or territorial department budgets and vary from jurisdiction to jurisdiction.

## 5.5 Co-ordination of National CITES Implementation

According to Environment Canada's Deputy CITES Administrator, the National CITES Management Authority co-ordinates the issuance of permits by the provinces and territories through several means (J. Robillard, *in litt.* to E. Cooper, July 26, 2002):

- routine calls to and from the provincial and territorial Management Authorities;
- copies of updated information on the convention through CITES Notifications, Resolutions and Decisions;
- direction and interpretations to Canadian authorities through regular mailings and
- notifying the provincial and territorial Management Authorities of permit errors and deviations from the prescribed procedures.

The National CITES Management Authority initiated a programme of visiting and training the provincial and territorial Management Authorities in 1975. However this was suspended from 1995 until 2001 because of lack of sufficient personnel in the national CITES office. This was also a period of severe cutbacks in the budgets and personnel of all provincial wildlife services, and hiring staff in the national CITES office was stopped, thus reducing opportunities for training (J. Robillard, *in litt.* to E. Cooper, July 26, 2002).

In January 2002 the National CITES Management Authority began issuing the *CITES-Canada Monthly Newsletter* (via email and post) to the provincial and territorial Management Authorities and other interested

parties (J. Robillard, pers. comm. to E. Cooper, March 27, 2002). This newsletter was intended to include a summary of notifications from the Secretariat and other information pertinent to CITES implementation in Canada or that provincial, territorial and other federal agencies want to share (J. Robillard, *in litt.* to E. Cooper, July 26, 2002). Unfortunately the production of the *CITES-Canada Monthly Newsletter* has been sporadic.

Another positive step towards improving the coordination of national implementation has been the development of the Canadian CITES website. The website was launched in December 2001 and is maintained by the National Scientific Authority (T. Swerdfager, *in litt.* to E. Cooper, October 14, 2003). The website provides information on CITES and its administration in Canada including the overall structure of CITES (with links to official CITES documents); permit requirements; WAPPRIITA; CITES listed animals and plants; the conf of parties; relevant Canadian CITES authorities; and the CITES Control list (Anon., 2003c).

The Canadian Management Authorities met as a group in November 2001, at the 20th Meeting of the CITES Management Authorities, Scientific Authorities and Enforcement Authorities. Previously there had not been an official meeting since 1994. According to Environment Canada's Deputy CITES Administrator, the lack of meetings between 1994 and 2001 was due to 'more pressing priorities and budgetary cutbacks in the provinces and territories'. Out-of-province travel is often a problem for provincial and territorial authorities, and several representatives could not attend the November 2001 meeting. Nonetheless, 40 participants, including representatives of federal government departments other than Environment Canada, attended the meeting. The participants at the November 2001 meeting decided to have biennial meetings

from then on, approximately one year before each CoP (J. Robillard, *in litt.* to E. Cooper, December 6, 2001).<sup>5</sup> The meeting has also revived awareness of the provincial and territorial offices' need for training. It was decided that training sessions would be offered in the beginning of 2003, upon request (J. Robillard, *in litt.* to E. Cooper, July 26, 2002).

## 5.6 Development of Legislation, Regulations and Policies

The government of Canada has developed strong legislation and regulations for the implementation of CITES in the form of WAPPRIITA and the WAPTR. The texts of WAPPRIITA and the WAPTR are readily available on Environment Canada's website.<sup>6</sup> In addition amendments to the WAPTR are published in the *Canada Gazette*, the official newspaper of the Canadian government.

Since 1975 the Canadian government has provided directives and procedures on how the Convention should be implemented to all provincial, territorial and other federal departments involved in the administration of CITES. According to Environment Canada's Deputy CITES Administrator, this has been done through written communications with the different agencies on an ongoing basis and as the need has arisen (J. Robillard, *in litt.* to E. Cooper, July 26, 2002). Since the adoption of WAPPRIITA, Canada has elevated only one procedure to the policy level: the Bengali Cat Policy was approved on September 7, 1999 (Anon., 2001e).<sup>7</sup> This procedure deviated from the CITES context and therefore warranted a higher profile. The National CITES Management Authority intends to revise and consolidate all applicable procedures into one document for easier reference. At that time some procedures may need to be elevated to policies (J. Robillard, *in litt.* to E. Cooper, July 26, 2002).

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<sup>5</sup> Federal, provincial and territorial CITES authorities subsequently met again as a group in November 2003 at Environment Canada's 21st CITES Workshop.

<sup>6</sup> <http://www.cites.ec.gc.ca/wappa/homepg.htm>.

<sup>7</sup> According to the Deputy CITES Administrator, one would adopt a policy rather than a procedure when either (a) the nature of a decision is not fully in line with the Convention and responds to a particular need or circumstance in the Canadian context or (b) it is important in the context in which it is situated. Procedures are generally of lesser importance, follow the Convention guidelines and relate more to common operational needs of CITES (J. Robillard, *in litt.* to E. Cooper, March 6, 2003). November 2003 at Environment Canada's 21st CITES Workshop.



## 5.7 Publication of the CITES Appendices and Amendments

The list of animals and plants included in the CITES Appendices are published both as a component of the WAPTR and in a separate document, the *CITES Control List*. After each CoP the *CITES Control List* has been revised to include the amendments made to the Appendices at that meeting. Successive issues of the *CITES Control List* have been updated and improved, and as a result the most recent versions (July 19, 2000) are much more useful documents than earlier versions.

For example the format of the *CITES Control List* reflects the taxonomy of animals and plants. The use of this document may therefore not be intuitive for users unfamiliar with taxonomic terms and species classification. Thus the inclusion of an index to scientific names in *CITES Control List* No. 10 (1992) was an essential improvement.

The *CITES Control List* does not record every species or subspecies included in the CITES Appendices. In a case where all members of a higher taxon (for example family or order) are included in an Appendix, then the lower taxa (genus, species and so forth) are not specifically listed. Where some members of a higher taxon are included in Appendix I, and all others are in Appendix II, only the taxa in Appendix I are noted in the *CITES Control List*. For example the *CITES Control List* indicates that all species of snakes in the family Pythonidae (pythons) are included in either Appendix I or II. It goes on to record that the Indian python (*Python molurus molurus*) is included in Appendix I. Therefore, although it is not specifically mentioned, the African rock python (*Python sebae*) must therefore be included in CITES Appendix II. Considering the large number of species in some of the listed higher taxa (for example the Orchidaceae [orchids]), this format allows for the use of much less space and paper. However it also limits the usefulness of the document. For example a reader unfamiliar with snake taxonomy would not intuitively recognize that the genus *Calabaria* was part of the family

Pythonidae (using the previous example) and was thus included in CITES Appendix II. This issue was partially resolved by *CITES Control List* No. 10 (1992), which added an Addendum of Genera listed in higher taxa.

Environment Canada has not always been timely in publishing these documents. *CITES Control List* No. 8 (1989) was not published until 24 months after the amendments made at CoP 6—only three months before the start of the next CoP. Similarly, *CITES Control List* No. 9 (1991) was published 15 months after CoP 7. This issue now seems to have been resolved—the two issues of the *CITES Control List* produced prior to 2003 were each been published within 3 months of the preceding CoP.

In 2003 the *CITES Control List* was made available on the Canadian CITES website in a version identical to the legal version as written under WAPPRIITA. The usefulness of the document has been improved through the availability of a search tool (Anon., 2003f). The search feature enables a user to customize the list they wish to view or print. The user can display a list of CITES species according to selected criteria including Appendix listing, taxa, and origin (Canadian or foreign). Detailed information is provided on Canadian species (T. Swerdfager, *in litt.* to E. Cooper, October 14, 2003).<sup>8</sup>

WAPPRIITA incorporates the *CITES Control List* into Canadian law by reproducing it as Schedule I of the WAPTR. This means that when the CITES listings are amended the WAPTR must be also be amended to reflect those changes. Section 21(2) of WAPPRIITA states, ‘The Governor in Council shall make regulations specifying the animals and plants that are listed as “fauna” and “flora”, respectively, in an appendix to the Convention and shall, *not later than ninety days* [emphasis added] after any change to a list in an appendix to the Convention, amend the regulations to reflect that change.’

According to Environment Canada’s Director for the Species at Risk Branch, section 21(2) is interpreted to mean that the 90-day limit starts from the date of the notification from the Secretariat concerning changes to the CITES Appendices and not from the date at which an

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<sup>8</sup> The site does not indicate how current the database is.

amendment was approved at a CoP (L. Maltby, Director, Species at Risk Branch, CWS, Environment Canada, pers. comm. to E. Cooper, November 21, 2003).

CITES Article XI indicates that amendments to Appendices I and II are normally made during a CoP, and Article XVI states that Parties may amend Appendix III at any time (Anon., 1973). At the time of writing there have been three CoPs (CoP 10, CoP 11 and CoP 12) since WAPPRIITA came into effect (Anon., 2003n). During the same period there have been at least 13 amendments to CITES Appendix III (see table 5.2). All of these amendments have necessitated corresponding amendments to the WAPTR within 90 days. The final step of the regulatory process in Canada is to publish the amended regulations in the *Canada Gazette*.

CoP 10 was held June 9–20, 1997, at which time changes to the Appendices were agreed-to

(Anon., 2003n). The amended WAPTR reflecting these changes were published in the March 18, 1998 issue of the *Canada Gazette*—five months past the deadline set by section 21(2) of WAPPRIITA (Anon., 1998b).

CoP 11 took place April 10–20, 2000 and again the Appendices were changed (Anon., 2003n). The CITES Secretariat officially communicated these changes to the Parties in a notification dated June 15, 2000 (Anon., 2000d). On September 13, 2000 Environment Canada published the corresponding amendments to the WAPTR in the *Canada Gazette* (Anon., 2000b)—just within the 90 day deadline.

CoP 12 was held November 3–15, 2002 (Anon., 2003n). The CITES Secretariat's official notification of the changes to the Appendices made at the CoP was dated February 7, 2003 (Anon., 2003e). That

**Table 5.2 Amendments to CITES Appendix III (1998–2003)**

Species <sup>a</sup>	Listing country <sup>a</sup>	Date listed <sup>a</sup>	Date published in <i>Canada Gazette</i> <sup>b</sup>
Bigleaf mahogany ( <i>Swietenia macrophylla</i> )	Bolivia	March 19, 1998	March 18, 1998
Bigleaf mahogany ( <i>Swietenia macrophylla</i> )	Mexico	April 29, 1998	Sept. 13, 2000
Bigleaf mahogany ( <i>Swietenia macrophylla</i> )	Brazil	July 26, 1998	Sept. 13, 2000
Basking shark ( <i>Cetorhinus maximus</i> )	United Kingdom	Sept. 13, 2000	Sept. 13, 2000
Colophon beetles ( <i>Colophon</i> spp.)	South Africa	Sept. 13, 2000	Sept. 13, 2000
Bigleaf mahogany ( <i>Swietenia macrophylla</i> )	Peru	June 12, 2001	Sept. 12, 2001
Spanish cedar ( <i>Cedrela odorata</i> )	Peru	June 12, 2001	Sept. 12, 2001
Ramin ( <i>Gonystylus</i> spp.)	Indonesia	Aug. 6, 2001	Sept. 12, 2001
Bigleaf mahogany ( <i>Swietenia macrophylla</i> )	Colombia	Oct. 29, 2001	Dec. 19, 2001
Spanish cedar ( <i>Cedrela odorata</i> )	Colombia	Oct. 29, 2001	Dec. 19, 2001
Great white shark ( <i>Carcharodon carcharias</i> )	Australia	Oct. 29, 2001	Dec. 19, 2001
Almendro ( <i>Dipteryx panamensis</i> )	Costa Rica	Feb. 13, 2003	April 21, 2004
Sea cucumber ( <i>Isostichopus fuscus</i> )	Ecuador	Oct. 16, 2003	April 21, 2004

a. Sources: UNEP-WCMC Database for Animals, UNEP-WCMC Database for Plants, CITES Notification No. 2001/22.

b. Sources: *Canada Gazette* Part II, Vol. 132, No. 6 (March 18, 1998); Part II, Vol. 134, No. 19 (September 13, 2000); Part II, Vol. 135, No. 19 (September 12, 2001); Part II, Vol. 135, No. 26 (December 19, 2001); Part II, Vol. 138, No. 8 (April 21, 2004).

document informed the Parties that the new Appendices would be valid as of February 13, 2003. Environment Canada did not publish the required amendment to the WAPT in the *Canada Gazette* until April 21, 2004—more than a year past the deadline set by WAPPRIITA (Anon., 2004b).

Table 5.2 summarizes Environment Canada's record in amending the WAPTR for changes to CITES Appendix III. Most of the amendments were published in the *Canada Gazette* well within 90 days of Appendix III to CITES coming into effect. The worst exception was the Appendix III listing of bigleaf mahogany (*Swietenia macrophylla*) by Mexico in April 1998 (Anon., 2003d). The corresponding WAPTR amendments were not published in the *Canada Gazette* until September 2000, more than two years late (Anon., 2000b). Even then the Appendix III listing by Mexico was included in the text as if it had previously been published and not presented as a new listing. The National CITES Management Authority believes that the Mexican listing of bigleaf mahogany was not published in the *Canada Gazette* for such a long period because they were waiting to receive more amendments and consolidate all of them in one regulatory amendment (J. Robillard, *in litt.* to E. Cooper, July 26, 2002).

The most recent Appendix III listings (at the time of writing) have been that of the almendro tree (*Dipteryx panamensis*) by Costa Rica, effective as of February 13, 2003 (Anon., 2002i) and an Ecuadorian sea cucumber (*Isostichopus fuscus*) effective October 16, 2003 (Anon., 2003d). The Parties to CITES were informed of these listings by the Secretariat in notifications dated Nov 15, 2002 and August 15, 2003 respectively. The required amendments to the WAPT were not published in the *Canada Gazette* until April 21, 2004 (Anon., 2004b)—long past the 90 day deadline.

The Director General of the CWS suggested to TRAFFIC North America that 90 days is a very short time to make regulatory changes. He pointed out that the need to meet the obligations of the Convention must be balanced against the need for Canadian citizens to be made aware of regulatory requirements. He further indicated that this balance is achieved through extensive consultation before the

meeting and a streamlined regulatory process for the changes to the Appendices (D. Brackett, Director General, CWS, Environment Canada, *in litt.* to E. Cooper, December 5, 2001). However the Deputy Director for TRAFFIC North America has suggested that the need to comply with the Convention and the need for notice are not contrary. Complying with a 90-day deadline should enhance the public notice process, not hinder it (C. Hoover, Deputy Director, TRAFFIC North America, pers. comm. to E. Cooper, December 11, 2001).

## 5.8 Permit Forms

CITES Resolution Conference 12.3 sets out a number of criteria for standardizing CITES permits and certificates to assist inspection agencies in orderly and effective processing of wildlife shipments, as well as reduce fraud relating to permits. Annex 1 of the Resolution specifies information that permit forms are expected to incorporate, including names and addresses of importer and exporter, scientific name of the species in trade, source of the specimen, quantity and unit of measure of specimen and the signature and franking stamp of the issuing authority (Anon., 2002r). Not coincidentally this information corresponds to that required to be included in the CITES annual reports per CITES Article VIII(7) (Anon., 1973). Annex 2 of Resolution Conference 12.3 includes a standardized CITES permit form (which can be used for export, re-export, import or other purposes) that complies with the Resolution.

In January 2001 the National CITES Management Authority implemented a new form for export permits. This new form is in the recommended CITES format and on security paper (J. Robillard, pers. comm. to N. Chalifour, March 9, 2001). Previously, Canada used the EIPA form consisting of two separate documents to authorize imports and exports, neither of which conformed to the CITES format or included space for the CITES security stamp (Hykle, 1988). In late 2001 the National CITES Management Authority's office started to automate the issuance of permits in phases (J. Robillard, pers. comm. to N. Chalifour, March 9, 2001). As of April 2004 this process was almost complete. According to Environment Canada's Deputy CITES

Administrator, the remaining few CITES Certificates issued mostly to circuses, would be soon be automated (J. Robillard, *in litt.* to E. Cooper, April 19 2004).

The new permit form and automation are critical to providing conformity with CITES standards and to facilitate the collection of the data needed to produce complete CITES annual reports.

## 5.9 Records of Trade

CITES Article VIII(6) requires each Party to maintain records of trade in specimens of species included in the Appendices. Article VIII(6)(a) specifies that the records are to include the names and addresses of exporters and importers. Article VIII(6)(b) requires the records to include

- names and addresses of exporters and importers;
- number and types of permits and certificates granted;
- states (countries) with which trade occurred;
- numbers and types of specimens traded;
- names of species as listed in Appendices I, II and III and
- size and sex of specimens involved (where applicable).

These records can be compiled from the data from permits issued in Canada in addition to the data from foreign permits accompanying importations into Canada.

### **Data from Canadian Permits**

The new CITES permit forms are designed to provide all information needed to comply with CITES reporting requirements (J. Robillard, pers. comm. to N. Chalifour, March 9, 2001). Copies of CITES export permits issued by the provinces and territories are forwarded monthly to the National CITES Management Authority. Annual reports on the number of permits numbers issued by each of the provinces and territories can be compared with the actual numbers of permits received by the National CITES Management Authority to confirm that all permits have been received (J. Robillard, *in litt.* to E. Cooper, January 18, 2002).

When the National CITES Management Authority issues permits or receives copies of export permits they are filed and the data from the permits are entered in a computer database. The National CITES Management Authority is endeavouring to eliminate the backlog of permits not yet computerized (J. Robillard, *in litt.* to E. Cooper, July 26, 2002). As of April 2004, the backlog consisted of year 2000 permits (J. Robillard, *in litt.* to E. Cooper, April 19, 2004).

### **Data from Foreign Permits**

Foreign CITES export permits presented to Canada Customs are supposed to be forwarded either directly or through Environment Canada's regional offices to the National CITES Management Authority (J. Robillard, *in litt.* to E. Cooper, January 18, 2002). A report by Canada Customs and Environment Canada found that a large proportion of these permits are not forwarded as required. The report includes a case study of the trade in bigleaf mahogany. Of 233 CITES permits accompanying importations of bigleaf mahogany into Canada 114 (51 percent) were left attached to the Customs entry documents instead of being forwarded to Environment Canada (Anon., 2001d). The result is inaccurate statistical information reported to the CITES Secretariat by Environment Canada.

### **Data for Personal and Household Effects**

As a result of the requirements of subsection 15 of the amended WAPTR, personal and household effects are being imported or exported without the issuance of CITES permits, and Canadian authorities are not keeping records of the volume or nature of the items being traded (Yvan Lafleur, Director, Wildlife Enforcement Branch, Environment Canada, *in litt.* to E. Cooper, January 18, 2002). This may seem to contravene CITES Article VIII(6), which requires Parties to keep records of all imports and exports of trade in CITES-listed specimens. However, according to Environment Canada's Deputy CITES Administrator, this requirement does not include those items or specimens that are exempted through regulations when those regulations are in line with the provisions of the Convention—in this case with Article VII(3) (J. Robillard, *in litt.* to E. Cooper, July 26, 2002).

## 5.10 Publication of CITES Reports

CITES Article VIII(7) requires each Party to prepare reports on its implementation of the Convention. These reports are to consist of an annual report on the trade data required by Article VIII(6)(b) and a biennial report on the legislative, regulatory and administrative measures taken to enforce the Convention. Article VIII(8) requires that this information is to be made available to the public unless prohibited by law (Anon., 1973).

In addition, Resolution Conference 11.17 stresses the importance of annual reports as the only available means of monitoring the implementation of the Convention and the level of international trade in CITES-listed species (Anon., 2000k). The Resolution states, 'Failure to submit an annual report by 31st October of the year following the year for which the report was due constitutes a major problem with the implementation of the Convention.'

Unfortunately many countries continually fail to submit their reports in a timely fashion. In April 2000 this problem was highlighted in a report produced by the United Nations Environment Programme World Conservation Monitoring Centre (UNEP-WCMC) and presented to the 11th CoP as an annex to the Secretariat's report on national reports (Caldwell, 2001).

In 2002 Environment Canada's website listed the following points in relation to CITES annual reports

- CITES annual reports compile data on trade in CITES species based on CITES permits issued by the Management Authorities and those returned by customs. All importations, exportations and re-exportations are reported.
- Conference Resolution 11.17 provides guidelines for preparation of annual reports.
- These reports are very important because they are forwarded to the UNEP-WCMC data processing centre by the CITES Secretariat.
- The amassing of all data from all Parties allows continuous monitoring of the level

of international trade of the species listed in the Appendices.

- The annual reports must be submitted to the CITES Secretariat by October 31 of the year following the year for which the report was due.
- A concise version of these reports is normally published by the Canadian Wildlife Service, but these versions are not currently available. (Anon., 2002i)<sup>5</sup>

Despite the sentiment expressed in Environment Canada's website Canada has been consistently late in filing CITES annual reports. The government of Canada has submitted a CITES annual report on time only once since 1985 (see table 5.3) and as of September 2001 had not submitted an annual report to the Secretariat since 1997 (J. Robillard, *in litt.* to E. Cooper, September 10, 2001). The Secretariat granted Canada extensions for the 1998 and 1999 reports, moving their deadlines to November 2001 and March 2002 respectively (J. Caldwell, Trade Database Manager, UNEP-WCMC, *in litt.* to E. Cooper via A. Barden, CITES Programme Officer, TRAFFIC International, January 24, 2002). However the 1998 report was not submitted until February 2002—3 months late (J. Robillard, pers. comm. to E. Cooper, March 27, 2002)—and the 1999 report was submitted 10 months late on January 2, 2003. Environment Canada's Deputy CITES Administrator has reported that the 2000 report is expected to be completed in the summer of 2004 (J. Robillard, *in litt.* to E. Cooper, April 19, 2004). The 2001 report was submitted on May 7, 2003 (7 months late) (J. Robillard, *in litt.* to E. Cooper, July 31, 2003). Part 1 of Canada's 2002 annual report was provided to the Secretariat on November 7, 2003. The remaining data will be forwarded in June 2004 (J. Robillard, *in litt.* to E. Cooper, July 31, 2003).

Canada's failure to submit annual reports has impacted international efforts to evaluate wildlife trade concerns. For example the following statement was made in *World Trade in Crocodilian Skins, 1997–1999* (Caldwell 2001) (emphasis added):

All annual reports for the years up to 1999 should have been submitted by 31 October 2000 but, at the time of writing (June 2001), several reports that should

contain important crocodylian trade data have still not been submitted. These include Guyana (most of 1999), Israel (1997, 1998 and 1999), Madagascar (1999), Malawi (1997 and 1998), Suriname (1997 and 1998), Thailand (1998 and 1999), Uganda (1997, 1998 and 1999) and Zambia (1997) amongst the producer countries, and *Canada* (1998 and 1999) and Japan (1998 and 1999) amongst the major consumers.

The National CITES Management Authority reports that Environment Canada is trying to comply with the CITES reporting requirements, but they are very short of resources. The delay

in issuing the outstanding CITES reports is due to the backlog of data to be entered in the computer database. In 1997 the decision was taken to move the CITES permit database from a stand-alone computer to Environment Canada's wildlife enforcement database, the National Enforcement Management Information System and Intelligence System (NEMISIS), so that permit data could be available to enforcement officers. This conversion turned out to be a complicated and difficult process, which took several months to complete and was followed by months of debugging. During this time CITES permit data could not be entered. The data from tens of thousands of permits must

**Table 5.3 History of Canadian CITES Annual Reports  
(Submitted as of May 2004)**

Report year	Date due	Submission date	Status
1975	October 1976	May 1978	19 months late
1976	October 1977	May 1978	7 months late
1977	October 1978	October 1978	On time
1978	October 1979	August 1979	On time
1979	October 1980	May 1980	On time
1980	October 1981	August 1981	On time
1981	October 1982	August 1982	On time
1982	October 1983	August 1983	On time
1983	October 1984	August 1984	On time
1984	October 1985	August 1985	On time
1985	October 1986	December 1986	2 months late
1986	October 1987	December 1987	2 months late
1987	October 1988	March 1989	5 months late
1988	October 1989	March 1990	5 months late
1989	October 1990	November 1990	1 month late
1990	October 1991	December 1991	2 months late
1991	October 1992	February 1993	4 months late
1992	October 1993	November 1994	13 months late
1993	October 1994	March 1996	17 months late
1994	October 1995	August 1996	10 months late
1995	October 1996	January 1997	3 months late
1996	October 1997	September 1997	On time
1997	October 1998	February 1999	4 months late
1998	October 1999 Extended to November 2001	February 2002	3 months late
1999	Extended to March 2002	January 2, 2003	10 months late
2000	October 2001	—	<b>Overdue</b>
2001	October 2002	May 7, 2003	7 months late
2002	October 2003	Part 1 was submitted November 7, 2003	1 month late — remaining is <b>Overdue</b>

Sources: Canadian CITES annual reports, WAPPRIITA annual reports and UNEP-WCMC, J. Robillard in. litt. To E. Cooper. Pre 2002 dates confirmed by J. Caldwell, Trade Database Manager, UNEP-WCMC, in litt. to E. Cooper via A. Barden, CITES Programme Officer, TRAFFIC International, January 24, 2002.

be entered into the database every year, so a very large backlog of CITES reports accumulated (J. Robillard, pers. comm. to E. Cooper, March 27, 2002).

Once the NEMISIS database was functional, staff began entering data from both ends (the oldest and newest) of the accumulated information. As of July 2002 the National CITES Management Authority had three staff and one temporary employee entering these data, with two staff working full-time only on this project (J. Robillard, *in litt.* to E. Cooper, July 8, 2002). The National CITES Management Authority felt that using more staff would speed up the process but this could result in loss of consistency in data input (J. Robillard, pers. comm. to E. Cooper, March 27, 2002).

The National CITES Management Authority is working to improve the NEMISIS module. When the system is finally working well and all permits are completely computerized, the management authority will offer system access to all provinces (T. Swerdfager, *in litt.* to E. Cooper, October 14, 2003). Having the provinces issue permits on-line will greatly reduce the need to input data after the fact (J. Robillard, pers. comm. to E. Cooper, March 27, 2002).

CITES Article VIII(8) requires that information in a country's CITES annual report is to be made available to the public unless prohibited by law (Anon., 1973). However, the information contained in Canadian CITES annual reports is not readily available to the Canadian public. Environment Canada has not published public versions of the report since 1992, and no reports are available on the Environment Canada website (J. Robillard, *in litt.* to E. Cooper, September 10, 2001). The National CITES Management Authority intended to publish a "quinquennial" report for the years 1993 to 1997 in February 2002 (J. Robillard, *in litt.* to E. Cooper, January 21, 2002). As of May 2004 the report had not been completed.

## 5.11 Implementation of Decisions and Resolutions

The Resolutions and Decisions made at CoPs result in recommendations intended to improve CITES effectiveness. According to the Director

General of the CWS, Resolutions and Decisions are interpretations of the Convention—not obligations. Parties may choose to accept them in whole or in part. Nonetheless compliance with them is highly desirable for the effective functioning of CITES. Resolutions and Decisions are passed by a two-thirds majority of Parties at a CoP meeting.<sup>9</sup> Thus most of the Parties intend to interpret the Convention in the manner recommended, which provides a warning to any dissenting Parties. For example, Resolution Conference 10.21 ('Transport of Live Animals') recommends that Parties use the International Air Transport Association (IATA) Live Animals Regulations. The Resolution does not make it mandatory to do so, but it does give warning that an importing Party may decide not to honour an export permit that does not require these conditions (D. Brackett, *in litt.* to E. Cooper, December 5, 2001).

It is TRAFFIC North America's view that there are, in fact, some Resolutions and Decisions that rise to the level of obligations. Though most Resolutions and Decisions are recommendations that can be ignored, many Resolutions seek to define and clarify the text of the treaty. For example the definition of the term *captive bred* is contained in Resolution Conference 10.16 and is not something that can be ignored. Failure to comply with some Resolutions and Decisions can have negative repercussions on Parties that fail to properly implement the convention (C. Hoover, pers. comm. to E. Cooper, December 11, 2001).

CITES Resolutions and Decisions may be implemented in Canada by amending the WAPTR where there is a reason to do so. However, according to the CWS Director General, most often the intent of the Resolutions and Decisions is implemented through changes in policy or procedure (D. Brackett, *in litt.* to E. Cooper, December 5, 2001).

For example in January 2002 the Secretariat informed the Parties that pursuant to Decision 11.16, the CoP recommended that all Parties should refuse trade in specimens of CITES-listed species with the countries of Fiji, Vietnam and Yemen (until further notice was given) (Anon., 2002f, 2002g, 2002h). When

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<sup>9</sup> Early CoPs required only a simple majority, but every conference since the sixth has required a two-thirds majority.

queried as to how Canada would respond to this recommendation, the National CITES Management Authority indicated that in the past Canada has refused to issue CITES permits to authorize any exports to similarly identified countries and on import ensured that shipments from these countries were accompanied by all required permits and that those permits were perfect. In other words the permits would be scrutinized, and any errors, no matter how minor, would be used as grounds to invalidate them. The National CITES Management Authority has received a legal interpretation indicating that implementing these recommendations would

not be inconsistent with the 1994 General Agreement on Tariffs and Trade (GATT). According to Environment Canada's Deputy CITES Administrator, Canada could refuse to accept CITES permits from these countries because these permits would not be 'granted by a competent authority in the country of export' per WAPTR section 6.1 (J. Robillard, *in litt.* to E. Cooper, January 17, 2002).

Environment Canada does not have a specific policy in place for implementing Resolutions and Decisions, and there is no simple method available to track their implementation in Canada (L. Maltby, pers. comm. to E. Cooper, March 27, 2002).

### Box 5.1 Elephant Trade Information System

Resolution Conference 10.10 on trade in elephant specimens was adopted during the 10th CoP (June 1997).<sup>\*</sup> The Resolution called for the establishment of a comprehensive international system to monitor the illegal trade in elephant specimens. This Resolution eventually resulted in the development of the Elephant Trade Information System (ETIS), the design of which was approved during the 40th meeting of the CITES Standing Committee in March 1998 (Anon., 2003h).

In March 1998 the Secretariat circulated to all Parties an Ivory and Elephant Product Seizure Data Collection Form (Notification to the Parties No. 1998/10) to be completed and returned to the CITES Secretariat. In April 1999 the Secretariat circulated explanatory notes for the Ivory and Elephant Product Seizure Data Collection Form (Notification to the Parties No. 1999/36). These documents were recirculated in November 1999 (Notification to the Parties No. 1999/92) (Anon., 2003h).

In March 2002 the ETIS Manager contacted the Canadian office of TRAFFIC North America and requested assistance in collecting data on Canadian seizures of elephant products. At the 11th CoP the Manager had received a copy of an Executive Summary of *Stop the Clock*; a report by the Born Free Foundation. The summary contains data on

elephant poaching and illegal trade in ivory that had occurred globally since the 10th CoP in June 1997. According to the summary 143 and 275 ivory items were seized in 1998 and 1999, respectively, in Canada, and the Canadian Office of Enforcement was cited as the source of data. However the government of Canada only once officially communicated information about an ivory seizure incident to the CITES Secretariat. ETIS forms are to be completed by government authorities and sent to the CITES Secretariat within 90 days of an ivory seizure (L. Sangalakula, ETIS Manager, TRAFFIC East/Southern Africa, *in litt.* to E. Cooper, March 20, 2002).

This request was forwarded to Environment Canada's Wildlife Division Headquarters, after which the Director of the Wildlife Enforcement Branch indicated that they were not familiar with ETIS and had not been made aware of the need to complete ETIS reports (Y. Lafleur, pers. comm. to E. Cooper, March 26, 2002). The Wildlife Division then provided data on Canadian seizures by May 7, 2002. The National Chief of Inspections and Training also indicated at that time that officers will be asked to complete ETIS forms for each ivory seizure in the future (R. Charette, Chief of Inspections and Training, Wildlife Enforcement Branch, Environment Canada, *in litt.* to E. Cooper, May 7, 2002).

<sup>\*</sup> Revised at the 11th CoP



## 5.12 Findings Made Prior to Issuing Permits

There are a number of findings that must be made by the Management or Scientific Authorities of a country before CITES permits are issued. The five most vital findings are that

- an import permit has been issued for an Appendix I specimen before issuing an export or re-export permit,
- an Appendix I specimen will not be used for primarily commercial purposes,
- for live animals a specimen will receive humane treatment,
- a specimen was legally acquired and
- trade in a species will not be detrimental to the survival of that species.

The most straightforward finding is the need for a Management Authority to determine that an import permit has been issued for an Appendix I specimen before issuing an export permit [per CITES Article III(2)(d)]. In the case of a living specimen a Management Authority must also determine that an import permit has been issued for an Appendix I specimen before issuing a re-export permit [per Article III(4)(c)]. Canada does not implement exemptions for preconvention [per Article VII(2)], captive-bred or artificially propagated specimens [per Article VII(4)]. Therefore no CITES export or re-export permits for Appendix I species are issued unless the National Management Authority is satisfied that a valid import permit has been issued by the country of import. The one exception is for animals bred in captivity by Canadian registered commercial breeders (J. Robillard, *in litt.* to E. Cooper, March 31, 2003).

Other findings are not as clear or easy to complete. They are nonetheless critical to the effective implementation of the Convention. These findings are discussed in the following sections.

### **Non-Commercial Findings**

CITES Articles III(3)(c) and III(5)(c) state that an import permit or certificate for introduction from the sea for an Appendix I species shall be granted only when a Management Authority of the state of import or introduction is satisfied

that ‘the specimen is not to be used for primarily commercial purposes.’

The term *primarily commercial purposes* is defined by Resolution Conference 5.10, which includes the following text (under general principles):

2. An activity can generally be described as ‘commercial’ if its purpose is to obtain economic benefit, including profit (whether in cash or in kind) and is directed toward resale, exchange, provision of a service or other form of economic use or benefit.

3. The term ‘commercial purposes’ should be defined by the country of import as broadly as possible so that any transaction which is not wholly ‘non-commercial’ will be regarded as ‘commercial’. In transposing this principle to the term ‘primarily commercial purposes’, it is agreed that all uses whose non-commercial aspects do not clearly predominate shall be considered to be primarily commercial in nature with the result that the importation of specimens of Appendix I species should not be permitted. The burden of proof for showing that the intended use of specimens of Appendix I species is clearly non-commercial shall rest with the person or entity seeking to import such specimens. (Anon., 1985d)

Resolution Conference 5.10 also provides examples of categories of transactions which are discussed to provide guidance in and criteria for assessing the actual degree of commerciality of a particular case. The examples provided are

- purely private use,
- scientific purposes,
- education or training,
- biomedical industry,
- captive-breeding programmes and
- importation via professional dealers.

In Canada an applicant for an Appendix I import permit must complete an Environment Canada Application for Permit to Import, available on-line at Environment Canada’s CITES website (Anon., 2003c). Completion of this document provides detailed information on the source of the specimen and the purpose of

the importation: breeding of animals, reproduction of plants, education or scientific research, hunting trophy, part of a circus or travelling exhibition, enforcement purposes, biomedical research or reintroduction into the wild. For applications involving breeding of animals or reproduction of plants the application specifically asks whether the specimen is to be used for commercial purposes.

The information provided through completion of an Application for Permit to Import corresponds to the requirements of Resolution Conference 5.10 and should provide the National CITES Management Authority with enough information to determine whether a specimen is to be used for 'primarily commercial purposes'.

If after a specimen has been imported it is discovered that the specimen was being used for commercial purposes, that would violate the conditions of the permit and the importer would be in violation of WAPPRIITA section 8 (regarding possession of specimens in contravention of the act) (J. Robillard, *in litt.* to E. Cooper, March 31, 2003).

### **Humane Treatment Findings**

The text of the Convention states that an export permit [per Article III(2)(c)] or a re-export permit [per Article III(4)(b)] for an Appendix I species, an export permit [per Article IV(2)(c)] or re-export permit [per Article IV(5)(b)], or certificate for introduction from the sea [per Article IV(6)(b)] for an Appendix II species shall be granted only when a Management Authority of the state of export or re-export is satisfied that 'any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment'.

The transport of live animals is also the subject of Resolution Conference 10.21, which includes the following recommendations:

d) for as long as the CITES Secretariat and the Standing Committee agree, the IATA

Live Animals Regulations be deemed to meet the CITES Guidelines in respect of air transport;

e) except where it is inappropriate, the IATA Live Animals Regulations should be used as a reference to indicate suitable conditions for carriage by means other than air;

f) the IATA Live Animals Regulations be incorporated into the domestic legislation of the Parties;

g) applicants for export Permits or re-export certificates be notified that, as a condition of issuance, they are required to prepare and ship live specimens in accordance with the IATA Live Animals Regulations for transport by air and the CITES Guidelines for Transport of Live Specimens<sup>10</sup> for carriage by means other than air.

In Canada exporters are referred to IATA Live Animals Regulations when they receive their permits (this is indicated on the back of each permit).<sup>11</sup>

Both the IATA Live Animals Regulations and the CITES Guidelines for Transport of Live Specimens have been incorporated into Canadian legislation. Section 9 of the WAPTR states:

(1) Every person who exports from Canada a live animal shall, where it is shipped by air, prepare it for shipment and ship it in accordance with the IATA Live Animals Regulations, 22nd edition, published in 1995 by the International Air Transport Association, as amended from time to time.

(2) Every person who exports from Canada a live animal or plant shall, where it is shipped by land, sea or, in the case of a live plant, air, prepare it for shipment and ship it in accordance with the Guidelines for Transport and Preparation for Shipment of Live Wild Animals and Plants, as amended from time to time, adopted in 1979 by the Conference of Parties to the Convention on

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<sup>10</sup> CoP12 document 25, *Interpretation and Implementation of the Convention Regular and Special Reports: Transport of Live Animals* notes that 'the CITES Guidelines for transport and preparation for shipment of live wild animals and plants are widely recognized to be out of date, and often not readily available to Management Authorities or the public. According to Resolution Conf. 10.21, under RECOMMENDS, paragraph d), these guidelines should nevertheless be complied with, despite the parallel development of the IATA Live Animals Regulations for air transport'.

<sup>11</sup> The IATA Live Animals Regulations specify the minimum requirements for the international air transport of animals. They provide detailed explanations for the housing and care that must be provided by airlines, shippers, agents and so forth (Anon., 2001k).

International Trade in Endangered Species of Wild Fauna and Flora and published in 1980 under the sponsorship of the United Nations Environment Programme.

CITES Articles III(3)(b) and III(5)(b) state that an import permit or a certificate for introduction from the sea for an Appendix I species shall be granted only when a Scientific Authority of the state of import or introduction is satisfied that ‘the proposed recipient of a living specimen is suitably equipped to house and care for it’.

In addition, Resolution Conference 10.3 provides that ‘the appropriate Scientific Authority either make the findings required on the suitability of the recipient to house and care for live specimens of Appendix I species being imported or introduced from the sea, or make its recommendations to the Management Authority prior to the latter making such findings and the issuance of permits or certificates...’.

Environment Canada reports that applications to import living CITES Appendix I specimens are usually for either scientific purposes or breeding that is as part of the Species Survival Plan® (SSP) programme.<sup>12</sup> The Application for Permit to Import form that all applicants for an Appendix I import permit must complete includes sections detailing the housing and care a specimen will receive in Canada and the experience the applicant has in breeding the species. Applications are reviewed by the National CITES Scientific Authority, which assesses the capability of the importer to provide appropriate husbandry for the species and reports this finding to the National CITES Management Authority (B. von Arx, pers. comm., to E. Cooper, March 5, 2003). This may involve comparing the facilities that would be provided to suitable standards, if any exist. Alternatively they check the success the importer has had in keeping and breeding closely related species. However Environment Canada has no formal procedure established for completing this finding (B. von Arx, pers.

comm., to E. Cooper, March 11, 2003).

### **Legal Acquisition Findings**

The text of the Convention states that an export permit [per Article III(2)(b)] or re-export permit [per Article III(4)(a)] for an Appendix I species or an export permit [per Article IV(2)(b)] or re-export permit [per Article IV(5)(a)] for an Appendix II species shall be granted only when a Management Authority of the state of export or re-export is satisfied that ‘the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora’.

Environment Canada reports that before export permits are issued, the issuing office verifies that the specimens in question were acquired per provincial or territorial regulations. For marine species DFO appraises all applications to ensure that the specimens have been obtained in accordance with all applicable laws, including the Fisheries Act. For re-exports a copy of the foreign CITES export permit must be provided before a re-export permit is issued. According to Environment Canada’s Deputy CITES Administrator each application is treated and evaluated separately, and different findings may be necessary depending on each case (J. Robillard, *in litt.* to E. Cooper, March 31, 2003).

### **Non-Detriment Findings**

The text of the convention states that an export permit [per Article III(2)(a)] or certificate for introduction from the sea [per Article III(5)(a)] for an Appendix I species shall be granted only when a Scientific Authority of the state of export or introduction has advised that this action will ‘not be detrimental to the survival of that species’. Furthermore the convention states that an import permit for an Appendix I species [per Article III(3)(a)] shall be granted only when a Scientific Authority of the state of import has advised that the import will ‘be for purposes which are not detrimental to the survival of the species involved’.<sup>13</sup>

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<sup>12</sup> The SSP programme of the American Zoo and Aquarium Association (AZA) is a population management and conservation programme for selected species in zoos and aquariums in North America. Each SSP manages the breeding of a species within selected institutions to maintain a healthy and self-sustaining population that is both genetically diverse and demographically stable. (Anon., 2003p).

<sup>13</sup> There is a distinction between Article III(3)(a) and Articles III(2)(a) and III(5)(a). The exporting country must determine that an export will not be detrimental; the importing country determines if the import will be for purposes that are not detrimental. In other words the importing country’s job is not to second-guess what the exporting country does but what will be done with the wildlife in the importing country (C. Hoover, *in litt.* to E. Cooper, April 10, 2003).

The Convention also states that an export permit [per Article IV(2)(a)] for an Appendix II species shall be granted only when a Scientific Authority of the state of export has advised that this action will ‘not be detrimental to the survival of that species’. Finally the Convention states that a certificate for introduction from the sea [per Article IV(6)(a)] for an Appendix II species shall be granted only when a Scientific Authority of the state of introduction has advised that this action will ‘not be detrimental to the survival of the species involved’.

In addition Resolution Conference 10.3 presents a detailed outline of the role of Scientific Authorities and provides the following recommendations:

- g) the appropriate Scientific Authority advise on the issuance of export permits or of certificates for introduction from the sea for Appendix I or II species, stating whether or not the proposed trade would be detrimental to the survival of the species in question, and that every export permit or certificate of introduction from the sea be covered by Scientific Authority advice;
- h) the findings and advice of the Scientific Authority of the country of export be based on the scientific review of available information on the population status, distribution, population trend, harvest and other biological and ecological factors, as appropriate, and trade information relating to the species concerned;
- i) the appropriate Scientific Authority of the importing country advise on the issuance of permits for the import of specimens of Appendix I species, stating whether the import will be for purposes not detrimental to the survival of the species;
- j) the appropriate Scientific Authority monitor the status of native Appendix II species and export data, and recommend, if necessary, suitable remedial measures to limit the export of specimens in order to maintain each species throughout its range at a level consistent with its role in the ecosystem and well above the level at which the species might become eligible for inclusion in Appendix I.

In Canada most non-detriment findings for Appendix II species are made based on data compiled by the provinces and territories—or in the case of marine species, by DFO.

Each province or territory must gather data, summarize them and provide the initial analysis of relevant population, harvest and trade information applying to species in their jurisdiction. This allows for verification that a specimen was obtained in accordance with the management plan for the species (that is, within established harvest levels). Permits are then issued based on this verification. According to the CITES Scientific Authority and International Co-ordinator this process concerns species which are not at risk (listed by the Committee on the Status of Endangered Wildlife in Canada [COSEWIC] as being threatened or endangered)<sup>14</sup> and where management plans or harvest regimes are known to be consistent with sustainable use (B. von Arx, pers. comm., to E. Cooper, March 30, 2003).

The CITES Scientific Authority for DFO reports that in the past the process for issuing non-detriment findings has not been a structured process but has been based on the management regimes in place for the specific species. For Appendix II and III species, when exports involve specimens legally harvested in accordance with the conservation and management measures in place, they are allowed on the basis that they are not detrimental to the survival of the species. Applications for permits for Appendix I species are rare and are dealt with on a case-by-case basis. They tend to be very specific. One example would be a request for an import permit for DNA samples from whales that were being analysed by a company in Canada. The samples were taken by non-lethal sampling, and DFO issued a non-detriment finding on the basis that no whales had been killed to get the samples (H. Powles, Director, Biodiversity Science, DFO, *in litt.* to E. Cooper, April 15, 2003).

The CITES Scientific Authority for DFO feels that the department needs to develop a more formalized process for completing non-detriment findings for aquatic species, based at least in part on the guidelines produced by IUCN (H. Powles, *in litt.* to E. Cooper, April 15, 2003).

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<sup>14</sup> COSEWIC is a committee of experts that assesses and designates the conservation status of wild Canadian species, subspecies and populations of animals and plants (Anon., 2002u).

The National CITES Scientific Authority is not involved in conducting findings for most species, but it does annually review the data for Canadian export permits issued and the provincial and territorial management plans or harvest regimes to ensure that each species is being harvested at a non-detrimental level. Unfortunately the lack of Canadian CITES reports for recent years has hampered the ability to conduct this review. Instead the National CITES Scientific Authority has had to depend on the import data for Canadian species compiled by other Parties (B. von Arx, pers. comm. to E. Cooper, March 30, 2003).

Before 2002 the National CITES Scientific Authority had no policy or standard procedure for making non-detriment findings (B. von Arx, pers. comm. to E. Cooper, March 5, 2003). In 2002 the National CITES Scientific Authority adopted the use of a slightly adapted version of the checklist developed by the IUCN to assist in completing non-detriment findings (Rosser and Haywood, 2002). The National CITES Scientific Authority has begun using this checklist to complete national non-detriment findings for species that are considered to be “*particularly vulnerable to public attention*”. As of April 2003 these species included grizzly bear (*Ursus arctos*), golden seal (*Hydrastis canadensis*), American ginseng (*Panax quinquefolius*), yew tree (*Taxus* spp.), and opuntia cacti (*Opuntia* spp.). These taxa were chosen for different reasons: grizzly bears in response to pressure from the public and non-governmental organisations (NGOs) to complete a non-detriment finding for the species; golden seal and American ginseng because the Scientific Authority had extra expertise on those species available; yew tree and opuntia cacti as a result of discussions of these species by the CITES Plants Committee or at the 12th CoP (B. von Arx, in litt to E. Cooper, May 7, 2003). The CITES Scientific Authority and International Co-ordinator stated that these findings will be reviewed regularly, depending on the availability of time of Scientific Authority staff and the urgency of the issue (B. von Arx, pers. comm. to

E. Cooper, April 8, 2003).<sup>15</sup> National non-detriment findings for polar bear (*Ursus maritimus*) and bison (*Bison bison*) are in preparation.

According to the CITES Scientific Authority and International Co-ordinator the development of additional non-detriment findings will be based on lists of priority species (separate lists for animals and plants) based on a combination of three criteria: presence or inference of international trade, level of threat based on the assessment of COSEWIC and socio-economic importance (B. von Arx, pers. comm. to E. Cooper, March 30, 2003). As of July 2003 the draft criteria and list of priority species had been completed and distributed to the provincial and territorial Scientific Authorities for comments (A. Sinclair, *in litt.* to E. Cooper, July 30, 2003).

In November 2003, federal, provincial and territorial CITES authorities met at the 21st National CITES Workshop. During the workshop the Acting National CITES Scientific Authority made a presentation on the development of a national strategy for completing all CITES non-detriment findings using the IUCN checklist. The presentation included draft criteria to identify priority species requiring non-detriment findings and a draft list of priority species. The participants of the workshop agreed to establish a working group to develop and implement the strategy (E. Cooper, pers. obs., November 21, 2003).

Non-detriment findings for export permit applications involving Appendix I species are completed by the authority that has jurisdiction for the specimen (the province, territory or DFO) on a case-by-case basis. However there is no standardized way to complete these assessments. The CITES Scientific Authority and International Co-ordinator could not recall any examples of export permit applications for Appendix I species being accepted that did not involve scientific exchanges of dead parts or parts obtained in a non-lethal way, plus some circus specimens (B. von Arx, *in litt.* to E. Cooper, April 8, 2003).

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<sup>15</sup> The non-detriment finding for grizzly bears was completed by the province of British Columbia with the National CITES Scientific Authority, but it was mostly done by the province. All of the other non-detriment findings were completed solely by the National CITES Scientific Authority (B. von Arx, in litt. to E. Cooper, May 7, 2003).

## 5.13 Issuing Permits

A summary of the permit-issuing responsibilities of Canadian authorities is shown in table 5.4.

### Import Permits

The National CITES Management Authority issues all CITES Appendix I import permits. Before a permit is issued an applicant must complete an application form and supplementary questionnaire which aids evaluation of the legitimacy of the import request. Generally the processing time for import permits is between three and six weeks, though often they are issued faster if the paperwork is straightforward (J. Robillard, pers. comm. to E. Cooper, March 27, 2002). The number of import permits issued from 1977 to 2001 is shown in table 5.5. Import permits are most commonly issued for captive-bred species, personal effects and hunting trophies legally obtained abroad (J. Robillard, *in litt.* to E. Cooper, July 26, 2002).<sup>16</sup>

### Export Permits

The issuance of export permits is a priority for the National CITES Management Authority. According to Environment Canada's Deputy CITES Administrator, permits are normally issued within two weeks of application (J. Robillard, pers. comm. to E. Cooper, March 27, 2002). Discussions between TRAFFIC North America and a number of permit applicants in both the commercial and non-commercial sectors confirmed that this is a fair estimate of how quickly the National CITES Management Authority issues export permits.

DFO is responsible for issuing export permits for species covered by the federal Fisheries Act (Anon., 1985c). These include marine mammals, marine fish and marine invertebrates (J. Robillard, pers. comm. to E. Cooper, March 27, 2002). DFO issues permits from regional offices across the country, co-ordinated by the CITES Administrator in Manitoba. DFO has begun issuing multiple-use permits, which are preauthorized permits given to industries for

**Table 5.4 Canadian Permit Issuing Authorities**

Management Authority	Permits issued
Environment Canada (National CITES Management Authority)	<ul style="list-style-type: none"> <li>• All import permits</li> <li>• All scientific certificates</li> <li>• All temporary import/export certificates</li> <li>• Export permits for artificially propagated plants</li> <li>• Export permits for specimens not the responsibility of another Management Authority (specimens originating in Alberta or specimens of exotic species originating in British Columbia)</li> </ul>
DFO	<ul style="list-style-type: none"> <li>• Export permits for species covered by the federal Fisheries Act: marine mammals, fish and marine invertebrates</li> </ul>
CFS	<ul style="list-style-type: none"> <li>• Does not issue permits</li> </ul>
Province of British Columbia	<ul style="list-style-type: none"> <li>• Export permits for species indigenous to British Columbia</li> </ul>
Province of Alberta	<ul style="list-style-type: none"> <li>• Does not issue permits</li> </ul>
Provincial and territorial governments (other than Alberta and British Columbia)	<ul style="list-style-type: none"> <li>• Export permits for specimens originating within their jurisdiction (indigenous or exotic)</li> </ul>

<sup>16</sup> CITES Appendix I animals and plants that are captive bred or artificially propagated (respectively) are deemed to be included in Appendix II, therefore import permits are not required by the Convention [see CITES Articles VII(4) & VII(5)]. However Canada has adopted domestic requirements for the international trade in captive-bred or artificially propagated specimens that are stricter than the Convention [per CITES Article XIV(1)(a)]. In Canada the permit requirements for trade in captive-bred or artificially propagated specimens of Appendix I species are the same as any other Appendix I specimen.

their completion. A limited number of permits is provided to industries (primarily sturgeon processors), and copies must be returned to DFO (P. Hall, pers. comm. to N. Chalifour, June 5, 2001). The number of permits issued by DFO for the years 1989–2001 is shown in table 5.6. The significant increase in numbers for 1998 onwards coincides with the CITES Appendix II listing of all sturgeon species.

The provinces and territories are responsible for issuing export permits for species originating within their jurisdiction (within their borders) (Anon., 2001r). Alberta is the exception because that province withdrew from issuing export permits in 1995 (Anon., 2001o). Residents of Alberta must apply to the National CITES Management Authority for CITES permits. The British Columbia Management Authority issues permits only for indigenous species, and residents of that province wishing to export or re-export exotic species must also apply to the National CITES Management Authority for permits. Permit issuance in some provinces is centralized. Most of their district offices in other provinces are authorized to issue permits (J. Robillard, pers. comm. to N. Chalifour, March 9, 2001).

Each province and territory has one official signatory for export permits, usually the wildlife director for the jurisdiction (L. Gautier, National CITES Management Authority, pers. comm. to N. Chalifour, May 29, 2001). In Newfoundland and Labrador, Nova Scotia, Prince Edward Island and Manitoba permits are issued and authorized by the official signatory only, from one provincial office. The remaining jurisdictions preauthorize permits and distribute them to regional and district offices for issuance by officers in those offices (J. Robillard, *in litt.* to E. Cooper, March 9, 2001).<sup>17</sup> In some cases preauthorized permits are provided to commercial operators to be completed by them. The National CITES Management Authority maintains a list of the provincial and territorial officers with authority for issuing CITES permits. As of May 2001 27 persons

were authorized to issue CITES permits in Ontario, 3 in Québec, 6 in Saskatchewan, 5 in the Northwest Territories, 8 in Yukon Territory 21 in British Columbia and 1 each for the remaining jurisdictions (J. Robillard, *in litt.* to E. Cooper, July 26, 2002).

Permits are also issued by the CWS in Ontario, but only by one person. In 1992 the first Wildlife Inspector for the Ontario Region was hired from the Ontario Ministry of Natural Resources. When he moved to the CWS the province requested that he continue issuing permits for exotic species (and only in the greater Toronto area). That arrangement has remained in place since that time (J. Robillard, *in litt.* to E. Cooper, October 3, 2001).

The National CITES Management Authority issues export permits for artificially propagated plants. Agriculture and Agri-Food Canada (AAFC) used to manage this function but reversed the responsibility to Environment Canada in 1996 (Anon., 2001o). In 1997 the inspection services of AAFC, DFO, Health Canada and Industry Canada were combined into the Canadian Food and Inspection Agency (CFIA) (Anon., 1998k). Today the CFIA assists Environment Canada in processing the documentation for the export of artificially propagated plants (Anon., 2001r). In particular they assist the National CITES Management Authority in validating CITES inventory attachments to Canadian phytosanitary certificates that Canada uses as CITES certification of artificial propagation (Anon., 2000g).<sup>18</sup>

CITES Resolution Conference 12.3 (VII) recommends that any Party may consider phytosanitary certificates as certificates of artificial propagation in accordance with CITES Article VII(5), notes that such certificates must include the scientific name of the species and the type and quantity of the specimens and requires that the documents include a stamp, seal or other specific indication stating that the specimens are artificially propagated. Canada registered its

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<sup>17</sup> According to Environment Canada's Deputy CITES Administrator, pre-authorize means that blank application/permit forms are pre-stamped by the central provincial office and forwarded (couriered) to district offices where they would be completed by applicants in the district offices. These forms remain under lock and key when not in use.

<sup>18</sup> Phytosanitary certificates document the origin and inspection of plant shipments so that exports of plants and plant products meet the quarantine import requirements of other countries, thereby preventing the international spread of diseases and insects.

**Table 5.5 CITES Import Permits, Temporary Import/Export Certificates and Scientific Certificates Issued by Canada, 1977–2001**

Year	Import permits	Temporary import/export certificates	Scientific certificates
1977	30	16	38
1978	36	56	30
1979	36	74	30
1980	36	46	36
1981	52	33	40
1982	52	43	47
1983	55	39	48
1984	38	48	51
1985	52	63	47
1986	85	71	42
1987	62	87	40
1988	74	88	41
1989	74	79	38
1990	114	82	35
1991	102	111	34
1992	114	95	38
1993	131	106	38
1994	130	142	34
1995	146	315	35
1996	174	250	38
1997	160	210	36
1998	193	239	36
1999	190	247	37
2000	188	216	36
2001	160	180	36

Sources: 1986–1999 CITES annual reports for Canada; 1996–1999 WAPPRIITA annual reports; J. Robillard, CITES Deputy Administrator, Environment Canada, in litt. to E. Cooper, April 2, 2003.

phytosanitary certificate as CITES certification of artificial propagation with the CITES Secretariat in 1996 (J. Robillard, *in litt.* to E. Cooper, October 3, 2001). Phytosanitary certificates identify plants only at a higher taxonomic level, therefore attachment of a CITES inventory to properly identify the species is necessary under the Convention. This inventory is stamped by the CFIA to validate it (J. Robillard, *in litt.* to E. Cooper, March 6, 2003). The number of export permits issued by the AAFC and the number of phytosanitary certificates issued as certificates of artificial propagation (combined) in the years 1989–2001 are shown in table 5.6. The numbers for 1996 onwards include phytosanitary certificates.

In some cases the National CITES Management Authority will issue CITES permits authorizing multiple shipments (multiple-use permits). These permits are primarily for artificially propagated American ginseng and artificially propagated nursery plants. Applications involving American ginseng are only approved for cultivated ginseng when the applicants inform the National CITES Management Authority of the names and addresses of the growers they purchase from. In the case of artificially propagated plants multiple-use permits are granted only to nurseries registered in Canada with the CFIA under the Greenhouse Certification Program.<sup>19</sup> Originally under this programme certified greenhouses could not use

<sup>19</sup> An MOU was signed between AAFC and the U.S. Department of Agriculture (USDA) in January 1997 to establish the Greenhouse Certification Program that would allow low-risk, greenhouse-grown plants to move more freely between Canada and the United States (Anon., 1997a).



plants from the wild—otherwise diseases or pests could be introduced and the greenhouse would no longer be certifiable under the programme (J. Robillard, *in litt.* to E. Cooper, March 6, 2003). However greenhouses may now use material from the wild as long as the plant is grown within a greenhouse for most of their growing cycle (T. Swerdfager, *in litt.* to E. Cooper, October 14, 2003).

Since 1998 the issuance of multiple-use permits has made up a very large portion of the export permits issued by the National CITES Management Authority. Since the exemption for personal and household effects came into force in 2000, which removed the need to issue export permits for most American black bear exports, multiple-use permits have accounted for 74 percent of all export permits issued by

the National CITES Management Authority (see table 5.6).

Table 5.6 shows the numbers of CITES export permits issued by Canada from 1977 to 2001. Table 5.7 breaks down the numbers of federally issued CITES export permits issued in from 1989 to 2001 by source.

### **Scientific Certificates**

When CITES-listed species are being imported or exported for purposes of a non-commercial loan, donation or exchange between scientists or scientific institutions registered by the National CITES Management Authority, the authority is allowed under CITES to waive permit requirements and instead issue scientific certificates. The number of scientific certificates issued annually in Canada since

## **Box 5.2 Black Bear Export Permits**

In September 1991 Canada listed the American black bear in CITES Appendix III. In November 1992 the American black bear was listed in CITES Appendix II (Anon., 2003d). This listing significantly affected export permit issuance in Canada. Before 1992 the average annual number of export permits issued by the federal, provincial and territorial Management Authorities was fewer than 6000 (see table 5.6). In 1992 the number of export permits issued in Canada more than doubled.\* In 1993 more than 10 000 CITES export permits for black bears were issued for non-resident hunters (Wenting 1994). By 1999 the total number of export permits issued in Canada had increased to 22 819, and more than half were for black bears. The large number of export permits required for black bear hunting trophies severely increased the workload for permit-issuing offices (see figure 5.1) (J. Robillard, pers. comm. to E. Cooper, March 27, 2002). It was partially because of this increased workload that the province of Alberta withdrew from issuing export permits in 1995 (G. Bogdan, Chief, Wildlife Enforcement Division, Prairie and Northern Region, Environment Canada, pers. comm. to E. Cooper, September 21, 2001). This in turn greatly increased the workload of the National CITES Management Authority, which had to begin issuing permits for Alberta

(J. Robillard, pers. comm. to E. Cooper, March 27, 2002). In 1998 and 1999 more than 60 percent of the single-use export permits issued by Environment Canada were for black bears (see table 5.7).

The majority of black bear export permits issued in Canada are for personal (non-commercial) shipments destined for the United States. The exemption for personal and household effects [subsection 15(2) of the amended WAPTR], which came into force in 2000, states that residents of Canada or the United States do not require import or export permits for black bear hides, skulls or meat that are destined for the United States. As a result of the exemption the number of export permits issued in Canada has been reduced from approximately 23 000 to about 13 500 (see figure 5.1) (J. Robillard, *in litt.* to E. Cooper, July 9, 2002). If it were not for the large volume of multiple-use permits now being issued by the National CITES Management Authority, the numbers of CITES export permits issued in Canada would be close to the numbers issued before the black bear was listed (see figure 5.2).

\* This initial increase was in response to the Appendix III listing of the black bear. The Appendix II listing did not take place until late in 1992 and all subsequent CITES export permits for black bear were in response to this listing.

1977 has remained relatively constant (see table 5.5).

### Temporary Import/Export Certificate

Under CITES Article VII importers and exporters of 'specimens which form part of a travelling zoo, circus, menagerie, plant exhibition or other travelling exhibition' may be exempt from obtaining CITES permits if the specimens are pre-convention or captive bred, registered with the CITES Management Authority and appropriately cared for. Under these conditions temporary import/export certificates may be issued. The numbers of temporary import/export certificates issued in years 1977–2001 are shown in table 5.5.

### Permit Security

Because some provinces are decentralized in their permit issuance they can use the mail or a

courier service to send prestamped application forms (blank permits) to each of their district offices. The provincial headquarters office that distributes these forms maintains a record of the numbers of prestamped (and sometimes prenumbered) applications being sent out. These are kept under lock and key when not in use (J. Robillard, *in litt.* to E. Cooper, July 26, 2002).

The procedure for multiple-use permits requires permit holders to return all copies used to make shipments. According to Environment Canada's Deputy CITES Administrator files are verified for compliance with the procedure on an ad hoc basis, and a full review is performed at the time an application is received to renew a permit. If the permit holder has not fully complied with the procedure his application for renewal may be refused (J. Robillard, *in litt.* to E. Cooper, July 26, 2002).

**Table 5.6 CITES Export Permits Issued by Canada, 1977–2001**

Year	Fed	AL	BC	MA	NB	NF	NS	ON	PE	QU	SA	NT	YK	NV	TOT
1977	62	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	—	918
1978	28	34	406	136	0	0	2	171	0	1683	6	4	28	—	2498
1979	54	100	593	96	2	0	3	268	0	1881	14	12	96	—	3119
1980	95	128	771	71	1	0	0	260	0	2225	4	20	87	—	3662
1981	263	131	670	86	0	0	0	393	0	2258	9	9	118	—	3937
1982	269	99	763	101	2	0	2	607	0	1342	13	18	104	—	3320
1983	313	126	750	101	1	0	1	663	0	1342	15	22	140	—	3474
1984	306	135	825	133	1	0	2	606	0	1406	6	21	156	—	3597
1985	922	130	845	82	3	2	3	734	0	1261	13	14	174	—	4183
1986	1704	103	857	142	3	0	3	974	10	1236	22	34	168	—	5256
1987	1844	146	760	101	3	0	1	1024	25	1278	49	24	208	—	5463
1988	2231	145	707	114	2	1	4	888	11	1369	35	43	158	—	5708
1989	2264	112	703	137	0	1	1	671	14	1399	70	55	191	—	5618
1990	2384	128	765	157	3	1	2	511	35	957	42	74	163	—	5222
1991	2714	208	739	165	44	1	4	683	47	1032	48	39	164	—	5888
1992	3986	662	1399	799	536	69	9	4455	35	1941	286	38	164	—	14379
1993	3211	1254	1563	1260	957	57	24	5618	3	2697	1095	44	191	—	17974
1994	4191	1472	1615	1806	1274	80	25	5883	0	2561	1089	54	196	—	20246
1995	4950	—	1935	1690	1196	92	54	6451	2	2648	1123	76	165	—	20382
1996	6771	—	2221	1722	1154	119	52	4526	3	1990	1288	92	162	—	20100
1997	9405	—	2262	2116	1165	129	59	5446	0	1782	492	69	198	—	23123
1998	8472	—	2084	1630	1547	102	63	5697	3	1999	718	95	242	—	22652
1999	9169	—	2386	1958	1699	143	58	3490	3	2612	923	153	225	3	22822
2000	7135	—	1867	1218	403	92	34	932	1	1038	649	110	254	2	13735
2001	7039	—	1524	1099	67	116	30	1155	0	1300	726	140	196	3	13395
Total	71691	5113	29010	16920	10063	1005	436	52106	192	41237	8735	1260	3948	8	250671

Note: Fed = federal, AL = Alberta, BC = British Columbia, MA = Manitoba, NB = New Brunswick, NF = Newfoundland and Labrador, NS = Nova Scotia, ON = Ontario, PE = Prince Edward Island, QU = Québec, SA = Saskatchewan, NT = Northwest Territories, YK = Yukon, NV = Nunavut, TOT = total, N/a = not available.

Source: J. Robillard, CITES Deputy Administrator, Environment Canada, *in litt.* to E. Cooper, April 2, 2003.

**Table 5.7 Federally Issued CITES Export Permits, 1989–2001**

Date	Environment Canada			DFO	Agriculture/ phytosanitary	Total
	Single permits	Multiple-use permits	Ontario Region			
1989	24	—	n/a	51	2189	2264
1990	n/a	—	n/a	n/a	n/a	2384
1991	29	—	n/a	63	2622	2714
1992	14	—	n/a	65	3907	3986
1993	11	—	n/a	66	3134	3211
1994	11	—	126	47	4007	4191
1995	1690	—	n/a	57	3203	4950
1996	2280	—	n/a	98	4393a	6771
1997	7786	—	244	76	1299b	9405
1998	2828c	5185	279	146	34	8472
1999	3575d	4410	268	141	775	9169
2000	1340	5313	255	148	79	7135
2001	1206	5209	349	186	89	7039
<b>Total</b>	<b>20 794</b>	<b>20 117</b>	<b>1521</b>	<b>1144</b>	<b>25 731</b>	<b>71 691</b>

a. Includes 1 064 phytosanitary certificates.

b. Includes 1 299 phytosanitary certificates.

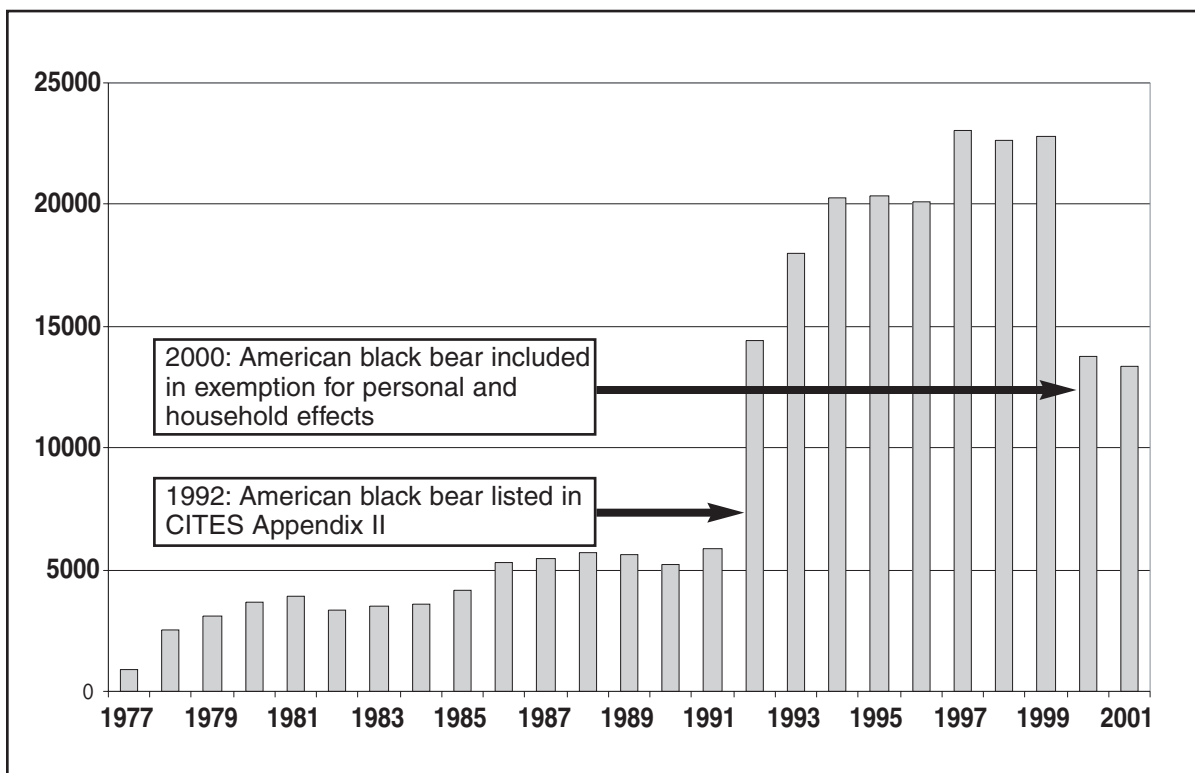
c. Includes 1 911 export permits for black bear (68 percent of all single permits issued by Environment Canada).

d. Includes 2 285 export permits for black bear (64 percent of all single permits issued by Environment Canada).

Note: N/a = not available.

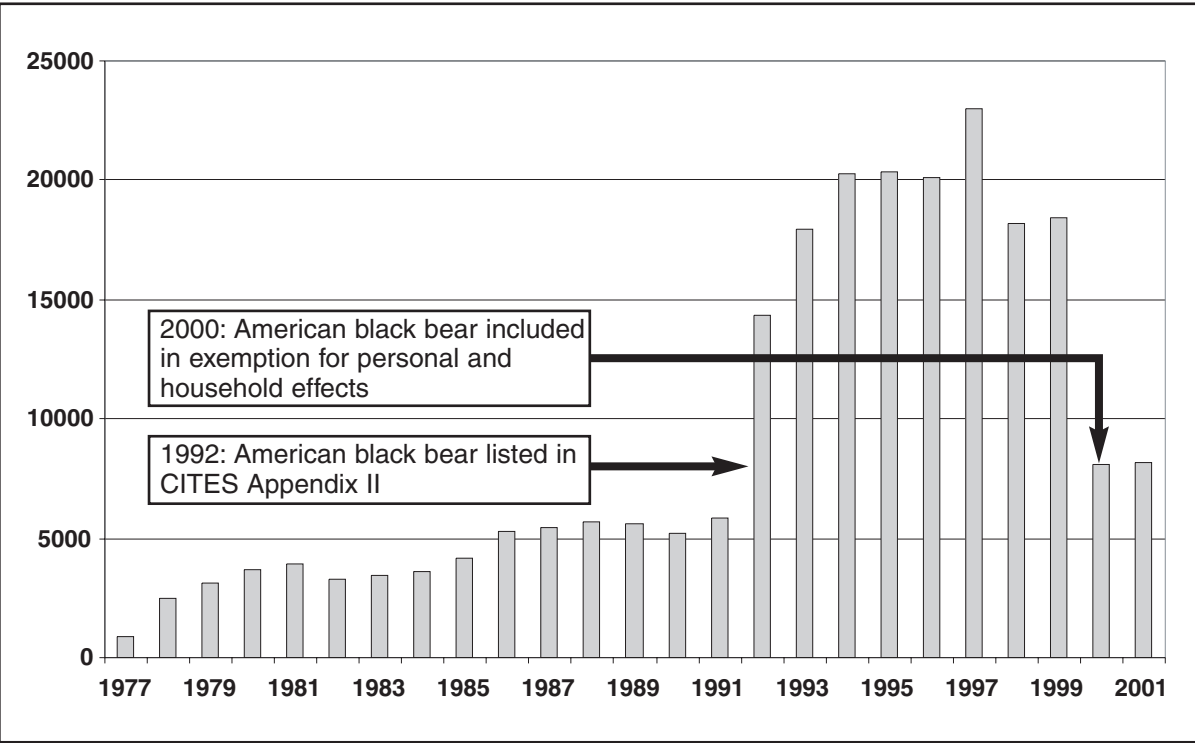
Source: J. Robillard, CITES Deputy Administrator, Environment Canada, in litt. to E. Cooper, April 2, 2003.

**Figure 5.1 Numbers of Canadian CITES Export Permits Issued Annually**



Source: Compiled from data provided by J. Robillard, CITES Deputy Administrator, Environment Canada, in litt. to E. Cooper, April 2, 2003.

**Figure 5.2 Numbers of Canadian CITES Export Permits Issued Annually (Excluding Multiple-Use Permits)**



Source: Compiled from data provided by J. Robillard, CITES Deputy Administrator, Environment Canada, *in litt.* to E. Cooper, April 2, 2003.



## 6.0 ENFORCEMENT

### 6.1 Background

CITES Article VIII(1) states:

1. The Parties shall take appropriate measures to enforce the provisions of the present Convention and to prohibit trade in specimens in violation thereof. These shall include measures:

- (a) to penalize trade in, or possession of, such specimens, or both; and
- (b) to provide for the confiscation or return to the State of export of such specimens.

Resolution Conference 11.3 further emphasizes the importance of enforcing the Convention and states that the CoP is '[c]onvinced that enforcement of the Convention must be a constant concern of the Parties if they are to succeed in fulfilling the obligations of the Convention'. Resolution Conference 11.3 goes on to make the following recommendations:

- a) all Parties:
  - i) ensure strict compliance and control in respect of all mechanisms and provisions of the Convention relating to the regulation of trade in animal and plant species listed in Appendix II, and of all provisions ensuring protection against illegal traffic for the species listed in the Appendices;
  - ii) in case of violation of the above-mentioned provisions, immediately take appropriate measures pursuant to Article VIII, paragraph 1, of the Convention in order to penalize such violation and to take appropriate remedial action;
  - iii) inform each other of all circumstances and facts likely to be relevant as regards illegal traffic and also of control measures, with the aim of eradicating such traffic.

It is difficult to analyse the effectiveness of enforcement programmes. Illegal activities are, by their nature, unreported and difficult to quantify. Accurately assessing the effectiveness of enforcement actions in preventing those activities is therefore a significant challenge. If very few violations are being caught it could indicate either that illegal activities are closely controlled or that the enforcement activities are

not effective. Conversely, if many violations are detected, it could indicate efficient enforcement or rampant illegal trade.

TRAFFIC North America identified the following requirements for the enforcement of CITES in Canada:

- establishment of Canadian enforcement authorities,
- allocation of resources,
- monitoring of trade,
- responding to violations,
- raising public awareness and
- nteragency co-operation.

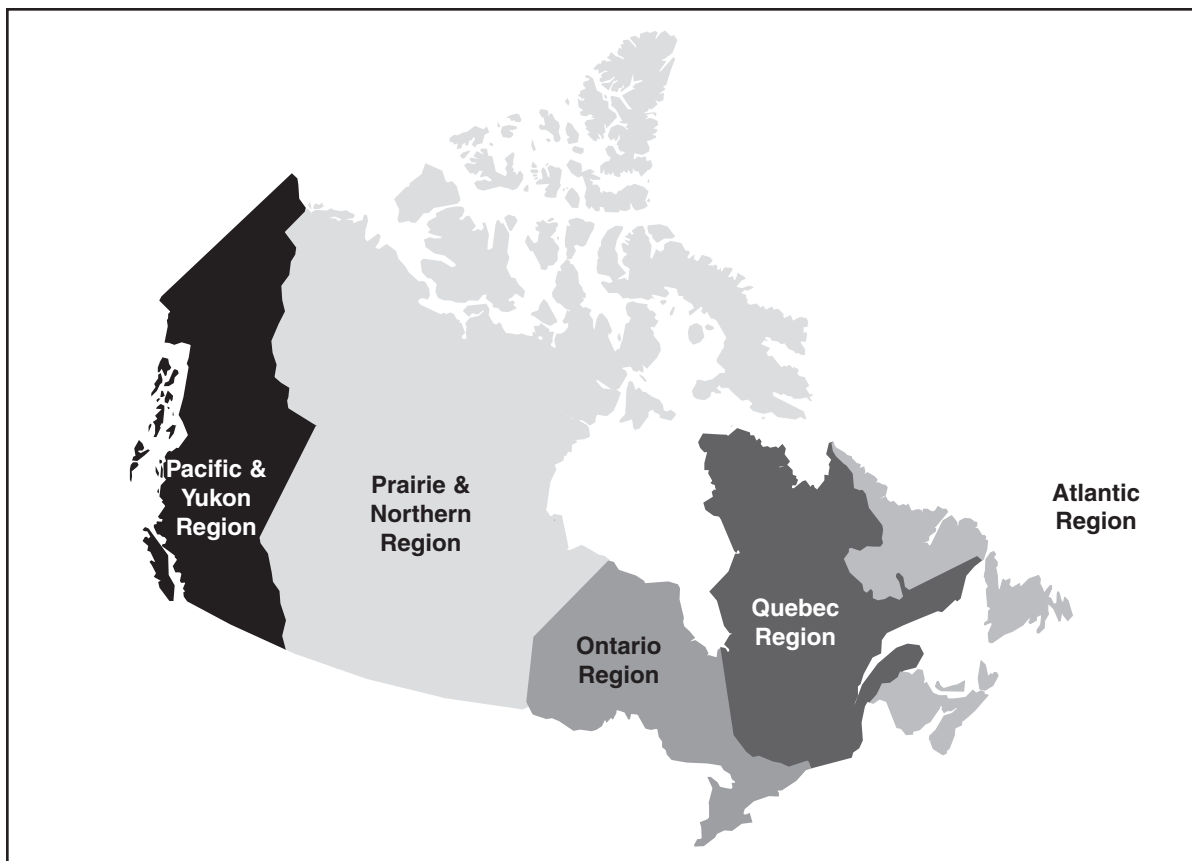
### 6.2 Enforcement Authorities

#### *Environment Canada*

Environment Canada is the lead agency for enforcing WAPPRIITA in Canada. There is approximately 60 full-time staff, including 45 to 50 full-time wildlife enforcement positions across Canada (Y. Lafleur, pers. comm. to N. Chalifour, March 9, 2001). At least 14 to 16 (depending on assignments) of these are reporting to the Wildlife Enforcement Branch headquarters in Gatineau, Québec (E. Lalonde, Environment Canada, *in litt.* to E. Cooper, June 9, 2003). The rest are distributed amongst the five regions of Environment Canada (see figure 6.1 and table 6.1). Headquarters enforcement staff (the Director of the Wildlife Enforcement Branch or the Chiefs of Intelligence, Operations or Inspections and Training) do not have line authority over the regional field officers. Regional officers report through the chain of command to a Regional Director General, who reports in turn to the Deputy Minister of the Environment.

The potential problems caused by a lack of line authority between headquarters and the regions were partially mitigated in September 2000 by the adoption of a policy to clarify the roles of the different offices (Anon., 2000j). According to this policy headquarters is responsible for the overall management of the enforcement programme—with participation from the regions—and the regional offices are responsible for coordinating and delivering

**Figure 6.1 The Five Regions of Environment Canada**



operational activities. Specifically headquarters is responsible for

- developing national policies and procedures,
- coordinating national programme activities,
- coordinating activities with central agencies and foreign countries,
- assisting the regions in fulfilling their responsibilities and
- leading the assessment of the programme.

The regions are responsible for

- implementing national policies and procedures through the delivery of inspections and investigations,
- coordinating their activities with provincial and regional agencies and
- assisting headquarters in fulfilling its responsibilities.

This policy facilitates the delivery of a national programme that is consistent in general terms. However due to the organisational structure of Environment Canada, regional priorities can affect enforcement funding and activities, resulting in a national programme that is inconsistent across the country.

Within Environment Canada WAPPRIITA was originally the responsibility of CWS. In the 1990s a decision was made to transfer the enforcement component of the CWS to the Environmental Protection Branch (EPB). By 1997 this transfer was complete at headquarters and in three regions. However the Ontario and Atlantic regions of Environment Canada did not make the transfer (Burnett, 1999). As a result the structural organisation of Environment Canada's wildlife enforcement capacity was not uniform across the country. In 2001 the decision to integrate the enforcement components of the CWS and EPB was reversed. As of April 2002 all Environment Canada wildlife enforcement personnel were

**Table 6.1 Environment Canada Regional Offices**

Region	Jurisdiction	Regional enforcement headquarters	Additional regional offices
Atlantic	Nova Scotia New Brunswick Prince Edward Island Newfoundland and Labrador	Sackville, New Brunswick	Dartmouth, Nova Scotia Moncton, New Brunswick St. John's, Newfoundland Lewisporte, Newfoundland
Ontario	Ontario	Burlington, Ontario	Ottawa, Ontario
Pacific and Yukon	British Columbia Yukon	North Vancouver, British Columbia	Prince George, British Columbia Whitehorse, Yukon
Prairie and Northern	Alberta Saskatchewan Manitoba Northwest Territories Nunavut	Saskatoon, Saskatchewan	Calgary, Alberta Edmonton, Alberta Winnipeg, Manitoba Yellowknife, Northwest Territories
Québec	Québec	Québec City, Québec	Montréal, Québec

Source: T. Kenway, Regional Intelligence Officer, Prairie and Northern Region, Environment Canada, in litt. to E. Cooper, March 15, 2002; L. Sampson, Enforcement Coordinator for Wildlife Trade, Atlantic Region, Environment Canada, in litt. to E. Cooper, March 18, 2002; M. Thabault, Federal Game Officer, Environment Canada, Québec Region, in litt. to E. Cooper, March 15, 2002; A. White, Wildlife Awareness and Outreach section, CWS, Ontario Region, in litt. to E. Cooper, March 21, 2002; J. Wong, Regional Intelligence Officer, Pacific and Yukon Region, Environment Canada, in litt. to E. Cooper, March 15, 2002.

back in the CWS (R. Charette, pers. comm. to E. Cooper, June 14, 2002).

Federal Game Officers (Environment Canada wildlife enforcement officers) are designated with the authority to enforce WAPPRIITA by the Minister of the Environment as per section 12 of the act. The powers of WAPPRIITA enforcement officers are specified in sections 13–18. Officers are responsible for enforcing both CITES and regulations for the interprovincial transport of wildlife. In addition Federal Game Officers enforce the Canada Wildlife Act (CWA) and the Migratory Bird Convention Act (MBCA) (Anon., 2001j). Table 6.2 shows that between 1998 and 2001, the vast majority of the wildlife enforcement actions reported by Environment Canada were responses to violations—or potential violations—of WAPPRIITA. The proportion of reported WAPPRIITA actions decreased from 90.1 percent of all activities in 1998–1999 to 82.7 percent in 1999–2000 and then to 72.6 percent in 2001–2002.<sup>20</sup> According to the Director of the Wildlife Enforcement Branch, MBCA actions are recorded only when a potential violation is involved, thus the actual

time spent on the two acts is closer to 50 percent WAPPRIITA and 50 percent MBCA (Y. Lafleur, *in litt.* to E. Cooper, July 23, 2002). In the near future Federal Game Officers will also be enforcing SARA (Y. Lafleur, pers. comm. to E. Cooper, July 3, 2002).<sup>21</sup>

### **RCMP**

The RCMP is the national police force of Canada. In addition to providing federal policing across Canada the RCMP provides police services to the 3 territories, 8 provinces (excluding Ontario and Québec), approximately 198 municipalities and 192 First Nations communities (Anon., 2003o). The RCMP has 15 314 officers and a budget of approximately CAD2.3 billion (USD1.7 billion) per year (Sgt. P. O'Brien, Federal Enforcement Branch, RCMP, *in litt.* to E. Cooper, June 19, 2002).

The RCMP receives its authority from the RCMP Act. Section 18 of the RCMP Act authorizes the RCMP to enforce federal acts—of which there are approximately 260, including WAPPRIITA (Anon., 1985e).

<sup>20</sup> The federal government of Canada operates on a fiscal year that runs from April 1 of one year through to March 31 of the following year.

<sup>21</sup> SARA received Royal Assent on December 12, 2002. The new act will come into force by an order in council once the regulations required under the act have been developed.



**Table 6.2 Enforcement Activities Conducted Nationally by Environment Canada, 1998–2001**

**Fiscal Year 1998–1999**

Activities	CWA		MBCA		WAPPRIITA		All Activities	
	No.	%	No.	%	No.	%	No.	%
Inspections	3	0.1	133	3.3	3938	96.7	4074	100
Investigations	2	0.2	200	18.3	888	81.5	1090	100
Prosecutions	0	0.0	142	89.3	17	10.7	159	100
Convictions	0	0.0	133	90.5	14	9.5	147	100
Others	3	0.1	250	6.5	3574	93.4	3827	100
<b>All activities</b>	<b>8</b>	<b>0.1</b>	<b>858</b>	<b>9.2</b>	<b>8431</b>	<b>90.7</b>	<b>9297</b>	<b>100</b>

**Fiscal Year 1999–2000**

Activities	CWA		MBCA		WAPPRIITA		All Activities	
	No.	%	No.	%	No.	%	No.	%
Inspections	4	0.1	82	2.6	3109	97.3	3195	100
Investigations	1	0.1	271	30.8	607	69.1	879	100
Prosecutions	1	0.2	409	94.7	22	5.1	432	100
Convictions	0	0.0	374	97.6	9	2.4	383	100
Others	2	0.0	317	9.0	3217	91.0	3536	100
<b>All activities</b>	<b>8</b>	<b>0.1</b>	<b>1453</b>	<b>17.2</b>	<b>6964</b>	<b>82.7</b>	<b>8425</b>	<b>100</b>

**Fiscal Year 2000-2001**

Activities	CWA		MBCA		WAPPRIITA		All Activities	
	No.	%	No.	%	No.	%	No.	%
Inspections	5	0.2	279	11.5	2146	88.3	2430	100
Investigations	9	1.9	253	52.8	217	45.3	479	100
Prosecutions	1	0.3	270	92.2	22	7.5	293	100
Convictions	1	0.4	239	96.0	9	3.6	249	100
Others	10	0.0	651	9.0	2157	91.0	2818	100
<b>All activities</b>	<b>26</b>	<b>0.4</b>	<b>1692</b>	<b>27.0</b>	<b>4551</b>	<b>72.6</b>	<b>6269</b>	<b>100</b>

Within the RCMP the Federal Investigation Unit focuses on public health and safety, consumer protection and environmental protection. In the area of environmental protection the unit is dedicated to the policing of WAPPRIITA (Anon., 2001i). Also the RCMP's Customs and Excise Branch is responsible for investigating smuggling in situations where items were imported but no Customs office was involved or where there are no Customs records of the importation (Anon., 2001f). This branch of the RCMP investigates offences under the Customs Act that require police techniques or involve isolated areas or aboriginal reserves.

However wildlife enforcement has not been a high priority for the RCMP, especially since the force eliminated its specialized Migratory Birds Unit in 1987 (Burnett, 1999; Y. Lafleur, *in litt.* to E. Cooper, July 23, 2002).

**Canada Customs**

Canada Customs manages 276 clearance areas for the importation of goods into Canada. These include land border offices, inland alternate service sites (essentially bonded warehouses or Customs Houses), airports, vessel clearance stations, rail border sites and Customs mail centres (Y. Lafleur, pers. comm. to E. Cooper, March 26, 2002). As of 2001

there was a total of 4844 Canada Customs staff located in these areas (Y. Lafleur, *in litt.* to E. Cooper, July 23, 2002).

Canada Customs officers are not designated as officers under WAPPRIITA and therefore cannot specifically enforce the act. However section 101 of the Customs Act allows Canada Customs officers to detain items that have been imported or are about to be exported until the officer is satisfied that the goods have been dealt with in accordance with any act of Parliament that prohibits, controls or regulates the importation or exportation of goods—including WAPPRIITA (Anon., 1985b). Canada Customs plays a crucial role in CITES enforcement. Co-operation between Environment Canada and Canada Customs is critical for effective CITES implementation in Canada.

### **CFIA**

The CFIA is separate from Agriculture and Agri-Food Canada, but the agency is the responsibility of the Minister of Agriculture and Agri-Food (Anon., 2002d). CFIA inspectors are available on a call-out basis every day, at all hours of the day, at all major ports of entry. CFIA veterinarians are on call 24 hours a day (Dr. R. Livingstone, Vancouver Regional Veterinarian, CFIA, *in litt.* to E. Cooper, March 8, 2002).

CFIA inspectors and veterinarians are not designated as officers under WAPPRIITA and have no powers to enforce the act. In the past Agriculture Canada inspectors were active in monitoring shipments of most animals and plants imported into Canada and were important partners for Environment Canada. Since the formation of the CFIA the agency is focused on animal and plant health issues and no longer inspects animal shipments of no agricultural significance (such as ornamental fish or most live reptiles and amphibians for the pet trade). Canada Customs officers often used to refer suspected CITES items to the CFIA for identification if Environment Canada staff were unavailable. This is now much less common: since the personal and household effects exemption came into effect Canada Customs officers are detaining far fewer items. As a result of these factors CFIA and Environment Canada inspection staff are interacting less, and the CFIA has much less impact on the implementation of CITES in

Canada (Dr. R. Livingstone, *in litt.* to E. Cooper, March 8, 2002).

### **Provincial and Territorial Wildlife Enforcement Officers**

There are approximately 1573 full-time and 390 part-time or seasonal provincial and territorial wildlife enforcement officers in Canada (see table 6.3). A number of provincial and territorial officers have been designated with powers of enforcement under WAPPRIITA via MOU's signed with Environment Canada. MOU's have been signed with (as of May 2004) Alberta, British Columbia, Manitoba the Northwest Territories Nunavut Prince Edward Island Saskatchewan and Yukon (Anon., 1997b, 1998a, 1998c, 1998d, 1998i, 1998j, 1999d and 2003m). These MOU accomplish several things:

- They allow Environment Canada to broaden its mandate to include the provincial agencies, thereby expanding what can be accomplished with the limited resources available.
- They create a heightened awareness within the provincial and territorial agencies and encourage greater liaison between the federal and provincial or territorial agencies, as well as the formation of joint investigations.
- They provide the provincial agencies with greater powers (and therefore investigative tools that are only available to law enforcement officers via federal legislation) which can complement their provincial statute investigations.
- They provide the opportunity to combine federal and provincial charges potentially resulting in higher penalties, including imprisonment, which serves to heighten public awareness and deter those who would commit illegal acts.

Provincial and territorial officers are important partners for Environment Canada, primarily for the enforcement of the MBCA and section 7 of WAPPRIITA (regulating interprovincial transport of wildlife). However provincial and territorial officers may also assist in efforts to enforce CITES as it applies to indigenous (CITES-listed) species taken in Canada and then exported. See for example convictions 17 (R. v. Sibbitt), 20 (R. v. Yuen) and 29 (R. v. Kaartinen) in Appendix D.

**Table 6.3 Provincial and Territorial Wildlife Officers Across Canada**

Province or territory	Description	Full-time officers	Part-time or seasonal officers
Alberta	Conservation Officers	136	
British Columbia	Conservation Officers	125	
Manitoba	Natural Resources Officers	140	128
New Brunswick	Conservation Officers	210	
Newfoundland and Labrador	140 field officers, approximately 70 of whom do enforcement	70	
Nova Scotia	Conservation Officers	33	30
Northwest Territories	There are 82 staff members appointed as officers, but only 36 Wildlife Officers actively involved in field enforcement.	36	
Nunavut	Wildlife Officers	34	
Ontario	Conservation Officers	281	
Prince Edward Island	Conservation Officers	8	
Québec	Agents de protection de la faune	330	170
Saskatchewan	Conservation Officers	158	56
Yukon	Conservation Officers	12	
	Combined Conservation Officer–technicians and senior staff who spend some time in the field.		6
<b>Total</b>		<b>1573</b>	<b>390</b>

Sources : S. Begon, Assistant to Chief Conservation Officer, British Columbia Ministry of Water, Land and Air Protection, Conservation Officer Service, pers. comm. to E. Cooper, June 2, 2003; M. Busch, Acting Director of Enforcement Services, Alberta Department of Sustainable Resource Development, pers. comm. to E. Cooper, May 27, 2003; R. Dean, Assistant Director, Operations Division Headquarters, Manitoba Conservation, *in litt.* to E. Cooper, May 16, 2003; D. Harvey, Director of Enforcement and Compliance, Saskatchewan Department of Environment and Resource Management, *in litt.* to E. Cooper, May 27, 2003; F. Lidstone, Senior Policy Planning and Research Analyst, Newfoundland and Labrador Forest Resources and Agrifoods, pers. comm. to E. Cooper, May 27, 2003; G. MacDougall, Head, Investigations and Enforcement, Prince Edward Island Department of Fisheries Aquaculture and Environment, *in litt.* to E. Cooper, May 13, 2003; J. Mombourquette, Director of Enforcement Division, Nova Scotia Department of Natural Resources, *in litt.* to E. Cooper, May 13, 2003; R. Monroe, Director of Law Enforcement, Regional Support Services Branch, New Brunswick Dept of Natural Resources and Energy, *in litt.* to E. Cooper, May 13, 2003; S. Pinksen, Senior Advisor, Legislation and Enforcement, Nunavut Wildlife Service, *in litt.* to E. Cooper, May 13, 2003; J. Russell, A/Director, Conservation Officer Services, Conservation Officer Services Branch, Environment Yukon, *in litt.* to E. Cooper, May 13, 2003; G. Sones, Director, Provincial Enforcement Branch, Field Services Division, Ontario Ministry of Natural Resources, *in litt.* to E. Cooper, May 14, 2003; D. Williams, Manager, Compliance Division, Resources, Wildlife and Economic Development, Northwest Territories, pers. comm. to E. Cooper, June 2, 2003; Éric Yves Harvey, Vice-président à la Protection de la Faune, Société de la Faune et des Parcs via N. Zinger, Directrice, Bureau du Québec, WWF, *in litt.* to E. Cooper, May 28, 2003.

### **Fisheries and Oceans Canada (DFO)**

The Conservation and Protection (C&P) directorate of DFO is responsible for enforcing the Fisheries Act of Canada and corresponding regulations. This responsibility is carried out by fishery officers and marine enforcement officers who work from Canadian Coast Guard vessels. These officers have full enforcement powers and responsibilities as outlined in the Fisheries Act, the Criminal Code of Canada and the Constitution Act when enforcing the Fisheries Act and regulations. In addition aboriginal fishery guardians are employed by their First Nations administration to enforce the aboriginal fishery for their particular

nation. The aboriginal enforcement officers have limited powers to enforce the act and regulations, and these powers vary among different areas, territories, First Nations bands, various pending agreements with the government and other parameters (B. Jubinville, Detachment Supervisor, Special Investigations Unit, Conservation and Protection, Fisheries and Oceans Canada, *in litt.* to E. Cooper, May 27, 2003).

There are approximately 500 DFO enforcement officers in Canada, stationed on all three coasts and in the interior of the country.<sup>22</sup> Many officers are term employees, and a large number of cadets in the system are

<sup>22</sup> DFO officers in the interior of the country mainly deal with habitat protection issues.

officers in training and have yet to acquire a permanent position. The number of officers varies according to funding pressures (B. Jubinville, *in litt.* to E. Cooper, May 27, 2003).

Although DFO has CITES administrative responsibilities, DFO officers are not designated as enforcement officers under WAPPRIITA and therefore have no authority to enforce the act (Anon., 1992b). The department is not actively involved in CITES enforcement (Y. Lafleur, pers. comm. to E. Cooper, March 26, 2002). However DFO does provide important administrative support for permit issuance for marine species. Their management authority supports Environment Canada investigations dealing with these specimens and contributes to CITES awareness programmes (R. Charette, *in litt.* to E. Cooper, July 23, 2002).

### 6.3 Resources

#### **Resources Available**

It is self-evident that the enforcement of CITES requires resources. A sufficient number of enforcement officers must be employed and trained, enforcement activities must be assigned some level of priority within government and suitable operational budgets must be provided.

The wildlife enforcement component of Environment Canada has approximately 60 staff, including the regional chiefs, administration and support staff. There are approximately 35 Federal Game Officers working in the field. Some of these officers work primarily on CITES issues, and others do not work on CITES at all. On average only one-half of their time is dedicated to CITES. The rest of their time is spent enforcing the MBCA, CWA and non-CITES-related sections

of WAPPRIITA (interprovincial transport). When officers are assigned to these (non-CITES) responsibilities they are not generally available for CITES-related activities. For example an officer who is in the field checking duck hunters or patrolling a National Wildlife Area cannot respond to a CITES violation at an airport elsewhere in that region. As a result there are only the equivalent of 18 full-time Federal Game Officers enforcing CITES in Canada (Y. Lafleur, pers. comm. to E. Cooper, March 26, 2002) (see table 6.4).

According to the Director of the Wildlife Enforcement Branch these officers are too busy reacting to be proactive, and as a result long-term priorities often cannot be fully delivered. There are not enough officers available to be able to commit to more than one or two long-term investigations at the same time, nor are there available resources to complete such programme goals as maintaining the present partnerships or developing a better partnership with the CFIA (Y. Lafleur, *in litt.* to E. Cooper, July 23, 2002).

Federal Game Officers are responsible for three basic activities: inspections, investigations and intelligence gathering (Anon., 2003k):

- Inspections are conducted to identify specimens, check for valid permits and detain illegal shipments.
- Investigations collect information and evidence for identifying, apprehending and prosecuting suspected offenders.
- Intelligence gathering involves collecting, evaluating, collating, analysing and disseminating intelligence on current,

**Table 6.4 Regional Federal Game Officers Dedicated to CITES Enforcement in 2002, Approximate Full-Time Equivalent (FTEs)**

Region	Inspections	Investigations	Intelligence	Total
Atlantic	0.8	0.8	0.4	2.0
Ontario	2.5	2.5	0.7	5.7
Pacific and Yukon	2.0	0.7	0.7	3.4
Prairie and Northern	1.0	1.0	0.5	2.5
Québec	2.0	2.0	0.5	4.5
Canada	8.3	7.0	2.8	18.1

Source: R. Charette, *in litt.* to E. Cooper, June 25, 2002.

suspected and potential wildlife violations as a support service for inspections and investigations.

In three regions (Pacific and Yukon, Québec and Ontario) these activities are performed by officers designated as inspectors, investigators and intelligence officers. In the other two regions (Prairie and Northern, Atlantic) officers act as both inspectors and investigators. The Prairie and Northern Region has a dedicated intelligence officer, but in the Atlantic Region this function is performed by an officer who is also responsible for inspections and investigations (L. Sampson, Enforcement Coordinator for Wildlife Trade, Atlantic Region, Environment Canada, pers. comm. to E. Cooper, June 10, 2002). The Ontario Region has put additional resources into a special operations programme. The investigations that fall under special operations are normally international, involve illegal commercial trade and are long and complicated, and the intent is to prosecute by indictment (A. Giesche, National Coordinator, Special Operations, Ontario Region, Environment Canada, pers. comm. to N. Chalifour, June 14, 2001).

Environment Canada's total budget for wildlife enforcement in Canada decreased during the 1990s, stabilized in 1997 and increased slightly to its present level. As of 2001 this budget was roughly CAD5.2 million (USD3.9 million) (Y. Lafleur, pers. comm. to N. Chalifour, March 9, 2001). These funds pay for salaries, capital costs (such as vehicles) and operational costs. Field officers require CAD15 000 (USD11 156) to CAD20 000 (USD14 874) per year to cover expenses (such as travel or equipment purchases) (Y. Lafleur, pers. comm. to E. Cooper, March 26, 2002). The projected budgets for fiscal year 2003–2004 were as follows (Y. Lafleur, *in litt.* to E. Cooper, July 23, 2002):

- Headquarters:  
CAD1 500 000 (USD1 115 476),
- Atlantic Region:  
CAD629 000 (USD467 744),
- Ontario Region:  
CAD1 400 000 (USD1 041 006),
- Québec Region:  
CAD640 000 (USD475 860),
- Prairie and Northern Region:  
CAD851 000 (USD632 805) and

- Pacific and Yukon Region:  
CAD817 000 (USD607 523).

However, the budget that is actually received by enforcement can vary greatly depending on other priorities, unexpected expenses and special projects (Y. Lafleur, pers. comm. to E. Cooper, March 26, 2002). Funds originally budgeted for enforcement may be held back and used for other purposes. As a result enforcement offices may receive less funding than they are originally budgeted for.

### **Resources Required**

It is very difficult to determine what resources are required to enforce CITES in Canada. Illegal activities are by their nature covert, and there is no way to accurately estimate the number of WAPPRIITA violations occurring in Canada annually. It is tempting to estimate the total level of illegal activity from the number of violations discovered and recorded by enforcement officers. However there is no way to know what percentage the recorded numbers are of the total number of violations. The prevalence of detected violations is therefore not a useful tool for evaluating what resources are needed to enforce CITES. According to the Director of the Wildlife Enforcement Branch a better approach is to determine the level of service that needs to be achieved and determine whether that level of service is being met (Y. Lafleur, *in litt.* to E. Cooper, July 23, 2002).

In May 1998 the House of Commons Standing Committee on Environment and Sustainable Development issued a report entitled *Enforcing Canada's Pollution Laws: The Public Interest Must Come First!* The report criticized Environment Canada's enforcement of the Canadian Environmental Protection Act (CEPA) and the pollution prevention provisions of the Fisheries Act (Anon., 1998e).

In the report the standing committee noted that at the time Environment Canada employed 60 regional pollution enforcement officers. In 1996–1997 those officers conducted 1479 inspections (701 under CEPA and 778 under the Fisheries Act), 78 investigations (53 CEPA, 25 Fisheries Act) and 10 prosecutions (5 CEPA, 5 Fisheries Act). The report went on to say that Canadians were not getting the level of environmental protection that they expected and deserved, and there was a lack of both

human and financial resources to meet the workload (Anon., 1998e).

To put this in perspective: in 1998–1999 (data were not available to TRAFFIC North America for 1996–1997) the 45 or 50 regional wildlife enforcement staff conducted 4074 inspections (3938 WAPPRIITA, 3 CWA, 133 MBCA), 1090 investigations (888 WAPPRIITA, 2 CWA, 200 MBCA) and 159 prosecutions (17 WAPPRIITA, 142 MBCA) (Anon., 2003u). It would appear that the wildlife enforcement workload was as high (or higher) as that for pollution enforcement and was being met with fewer resources. If the available resources did not meet the pollution enforcement workload, then the resources for wildlife enforcement were most likely equally insufficient.

Environment Canada apparently agreed that the resources for wildlife enforcement were insufficient. One of the standing committee's recommendations was that the Minister of the Environment should seek (and the government of Canada should grant) additional resources for enforcement of environmental legislation (Anon., 1998e). In response Environment Canada developed the National Enforcement Program (NEP) Business Case (in September 1999) which focused on the enforcement of both federal pollution and wildlife laws administered by Environment Canada. The NEP Business Case reviewed Environment Canada's wildlife enforcement programme and determined that the resources required to effectively meet the workload of the programme were far greater than present levels. As a result the NEP Business Case requested more than 100 additional staff and more than CAD8 million (USD6 million) in additional annual funding (Y. Lafleur, pers. comm. to E. Cooper, July 3, 2002).

Subsequently the Department made a request to Cabinet for additional funds for Environment Canada's Wildlife Enforcement Branch. However the request was not forwarded to the Treasury Board (T. Swerdfager, *in litt.* to E. Cooper, October 14, 2003). EPB received approximately CAD45 million (USD33 million) over five years in new funds for pollution enforcement, but nothing for wildlife enforcement (Y. Lafleur, pers. comm. to E. Cooper, July 3, 2002).

After these additional funds were received a

decision was made at a high management level of the EPB to temporarily financially assist the wildlife enforcement programme by reallocating CAD1 million (USD 0.7 million) of the new funds to wildlife enforcement. This reallocation financed the creation of 2 new enforcement positions in each region plus 2 at headquarters—a total of 12 new officers. Unfortunately the funds were committed only on an annual basis. When the wildlife enforcement programme was moved out of the EPB and back to the CWS in April 2002 it was decided that the loan would be cut in half in 2003 and terminated in 2004 (Y. Lafleur, pers. comm. to E. Cooper, July 3, 2002). If these funds cannot be recovered from other sources the result could be the loss of the 12 new officers, which will have an impact on the enforcement of CITES (Y. Lafleur, *in litt.* to E. Cooper, July 23, 2002).

When SARA comes into force additional resources will be allocated to the wildlife enforcement programme to provide for at least one new officer per region (Y. Lafleur, pers. comm. to E. Cooper, July 3, 2002). According to the Director of the Wildlife Enforcement Branch, SARA will result in increased workload and need for training, which will exceed the proposed allocation (Y. Lafleur, *in litt.* to E. Cooper, July 23, 2002).

## 6.4 Monitoring Trade

Monitoring and documenting the species and products in trade is one of the primary goals of CITES. According to the Director of the Wildlife Enforcement Branch the role of enforcement officers is to ensure that the trade is done legally and actions are taken to reduce illegal activities (Y. Lafleur, *in litt.* to E. Cooper, July 23, 2002). An associated responsibility is to document and report on the volume and composition of wildlife trade in Canada.

Wildlife trade in Canada is monitored by Environment Canada wildlife inspection staffs who work closely with Canada Customs. CITES enforcement would be unfeasible in Canada without the assistance and co-operation of Canada Customs. An important role for Environment Canada staff is to ensure that Canada Customs detects the goods that need to be inspected (Y. Lafleur, *in litt.* to E. Cooper, July 23, 2002).

There is the equivalent of 8.3 Environment

Canada Federal Game Officers conducting CITES inspections across the country (see table 6.4).<sup>23</sup> The primary job of these officers is to inspect goods imported into Canada to ensure compliance with CITES. They are also responsible for providing training to other government agencies, conducting public outreach activities, answering queries from importers and brokers and so forth (R. Charette, pers. comm. to E. Cooper, March 26, 2002).

Goods may also be inspected upon export, but this is much less common. The National CITES Management Authority can add a special condition to Canadian CITES permits (in box 5 on the permit) that would invalidate the permit if not processed by Canada Customs at the moment of export from Canada (R. Charette, pers. comm. to E. Cooper, July 12, 2002). This condition is used at the request of the Wildlife Enforcement Branch so that enforcement officers can inspect some shipments that are of special concern, such as live falcons or CITES Appendix I species (R. Charette, *in litt.* to E. Cooper, July 4, 2003).

Although Canada Customs has the authority to inspect goods being exported, the agency has a limited capability for targeting or examination of export shipments. According to Canada Customs, export examinations are generally limited to commodities that may be subject to the Export and Import Permits Act under the 'Strategic Control', 'Armaments' and 'High Technology' areas and this rarely results in materials being identified as containing CITES goods (Paul Clydesdale, Canada Customs, *in litt.* to E. Cooper, July 5, 2002).

Wildlife products may enter Canada via the mail, couriers, personal vehicles or luggage and on the person of a traveller or in commercial cargo shipments (by air, land or sea). Shipments of wildlife products range from single items to commercial importations of thousands of boxes of diverse products. In 2000 more than 12 million commercial shipments (of all commodity types, not just wildlife) were imported into Canada and more than 100 million travellers were processed by Canada Customs. The number of shipments and travellers entering Canada is increasing

each year. The number of commercial shipments alone increases by approximately 500 000 annually (P. Clydesdale, *in litt.* to E. Cooper, July 5, 2002).

Federal Game Officers responsible for monitoring trade must complete the following actions (R. Charette, pers. comm. to E. Cooper, July 12, 2002):

- Determine which imports or exports should be inspected (targeting).
- Arrange (with Canada Customs) to have imports or exports detained for inspection.
- Verify documentation of, physically inspect (with or without the assistance of Canada Customs) goods being imported or exported, or both.
- Identify wildlife or wildlife products to determine whether CITES permits are required for import or export.
- Verify that permits are valid and accurate.
- Respond to violations (such as detentions or seizures of products, initiation of an investigation, and so on).
- Complete necessary administrative duties (completing inspection reports).
- Input information on activities into NEMISIS.

In addition to inspecting imports or exports officers may also inspect goods already imported into Canada, although this is uncommon. For example in 1998 TRAFFIC North America published a report on the availability of traditional Chinese medicines containing CITES Appendix I species in major cities in North America (Gaski, 1998). In response, officers in the Pacific and Yukon Region conducted on-site inspections of 110 retail stores selling traditional Chinese medicine in Vancouver and Victoria, British Columbia (Dyck *et al.*, 1998).

### **Targeting**

It is both physically and economically infeasible to inspect every shipment that is imported to or exported from Canada annually. Shipments must be assessed to determine the risk that they might contain products of

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<sup>23</sup> Officers may be assigned to inspections duties on a part-time or full-time basis. All together these assignments total 8.3 full-time positions as shown in see table 6.4.

concern. High-risk imports are then targeted for inspection (P. Clydesdale, *in litt.* to E. Cooper, July 5, 2002).

In some cases shipments are specifically targeted for potential CITES violations. In other cases shipments considered a high risk for CITES violations may be targeted for different concerns (P. Clydesdale, *in litt.* to E. Cooper, July 5, 2002). Although the shipment is inspected for a reason other than potential CITES violations, the result may be the discovery of CITES infractions. For example one of the highest priorities for Canada Customs is the illicit drug trade. At the Customs Mail Centre (CMC) in Vancouver, British Columbia mail from certain Asian countries is considered a high risk for smuggling illicit drugs, and it is targeted accordingly. Wildlife products are often discovered in these packages when they are inspected by Canada Customs staff, and they are then referred to Environment Canada (M. Bahls, Superintendent Marine MOVAC, Canada Customs, Vancouver, pers. comm. to E. Cooper, July 5, 2002).

Canada Customs targets imports for CITES at the request of Environment Canada. They may be targeted because the importer or exporter has a history of non-compliance or because the commodities being imported are a high risk for CITES-listed species (such as traditional medicines or shipments of live reptiles). Part of the targeting process is to establish instructions for the Canada Customs officer who first encounters a targeted shipment. Typically the officer is instructed to provide Environment Canada with the details of the import so that the need for a physical inspection can be determined (P. Clydesdale, *in litt.* to E. Cooper, July 5, 2002).

TRAFFIC North America was unable to determine whether the targeting process is used consistently and effectively by Environment Canada in all regions.

### **Inspections**

Environment Canada's Compliance and Enforcement Policy for Wildlife Legislation states that the purpose of an inspection is to verify compliance with wildlife acts and regulations (Anon., 2002j). The first priority for Environment Canada's wildlife inspection

staff is to check CITES-regulated goods entering Canada to ensure compliance with the Convention (Anon., 1998f). Inspections are the most common enforcement activity conducted by Environment Canada officers (see table 6.2), and almost all WAPPRIITA inspections are CITES related (R. Charette, pers. comm. to E. Cooper, July 12, 2002).

Environment Canada's wildlife inspection personnel have broad powers. During an inspection officers may inspect wildlife or their parts or products. They may also open and examine receptacles, containers or packages; take samples and examine and copy records. They may enter and inspect premises (other than a private dwelling) if they have reasonable grounds to believe that the premises contain wildlife, their parts or products, or records relevant to WAPPRIITA or its administration. To inspect a private dwelling officers must obtain the consent of the occupant or present a warrant prepared by a justice of the peace (Anon., 2002j).

If during an inspection officers have reason to believe that a violation is occurring or has taken place, then the officers are to respond with an appropriate action. The officers may decide to act immediately or to initiate a further investigation (Anon., 2002j).

In the case of imports and exports officers must determine if permits are required. If permits are included in the shipment they must be examined to ensure that they are valid and accurate. When inspecting goods that have already entered the country (for example in a retail store) officers must determine the possibility of possession or transportation violations (Anon., 1992b, sections 6, 7 and 8; Dyck et al, 1998).

An inspection could start (and possibly end) with an examination of the paperwork accompanying a shipment, a partial inspection to find specific items or to deal with specific issues resulting from the paperwork examination, or a complete physical examination of every item in a shipment. Considering that a single commercial shipment could contain thousands of cartons and hundreds of thousands of items, a physical inspection can take days. Conversely an inspection of one item in a mailed package could take minutes. Inspections of imports and



exports in customs bonded areas are typically conducted with Canada Customs staff in attendance (R. Charette, pers. comm. to E. Cooper, July 12, 2002).

The effort directed at inspecting wildlife shipments entering or exiting Canada is not consistent across the country. This inconsistency is the result of several factors:

- The regional reporting structure of Environment Canada results in differing regional enforcement priorities (R. Charette, pers. comm. to E. Cooper, July 12, 2002) (see section 6.2, 'Enforcement Authorities: Environment Canada', in this report).
- Imports may be targeted using different criteria in the different regions (P. Clydesdale, *in litt.* to E. Cooper, July 30, 2002).
- The type of imports and exports and the country source of imports vary among regions (P. Clydesdale, *in litt.* to E. Cooper, July 30, 2002).
- Shipments are not necessarily inspected in the region for which they are destined. For example shipments of traditional Chinese medicines destined for Ontario may be inspected in the Pacific and Yukon Region, where they first land in Canada (L. Sampson, pers. comm. to E. Cooper, June 10, 2002).
- The working relationship between Environment Canada and Canada Customs may differ among regions, which affects the efficiency of the inspection process either positively or negatively (R. Charette, pers. comm. to E. Cooper, July 12, 2002).
- The number and experience of inspection staff vary among the regions (see 'Inspections and Biological Expertise' below).

The numbers of WAPPRIITA inspections conducted in Canada for fiscal years 1999–2000 and 2000–2001 are shown by region in table 6.5.<sup>24</sup> Two kinds of inspections

were originally recorded in NEMISIS (see 'Data Management' below): field or site inspections, and administrative or verification inspections. Apparently the definitions of these two actions were not clear, and officers across Canada were inconsistent in entering their inspections data. In 2002 the definition of an inspection was rewritten, and the two kinds of inspections became on-site inspections and off-site inspections (Anon., 2002o). The definition of an inspection was rewritten as follows:

An inspection is a process that involves verification of compliance with the environmental or wildlife legislation administered, in whole or in part, by Environment Canada (EC). The Enforcement Officer (EO) must have reasonable grounds to believe that, on the premises or in the documents that he/she intends to inspect, there are activities, markings, materials, substances, records, books, electronic data or other documents that are subject to the environmental or wildlife legislation.

...For an activity to be considered an inspection, the EO must have reasonable grounds to believe that, on the transport/vehicule [sic] or in the documents that he/she intends to inspect, there are markings, materials, substances, records, books, electronic data, or other documents that are subject to the environmental or wildlife legislation.

An on-site inspection was defined as '...one or more visits to the site of a facility or a plant, or in a vehicle, a ship or a transporter (all owned, leased or controlled by the regulatee) to conduct any activity/operation required to verify the regulatee's compliance with one regulation/permit/ manifest. Visits can also take place at an airport, a border or a port of entry'.

An off-site inspection was defined as '...any activity that is not conducted at the site of a facility/plant/vehicle/ship/transporter (that is owned, leased or controlled by the regulatee)

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<sup>24</sup> This table was compiled from data provided by Environment Canada. It was then offered for review by the regions. The Ontario Region subsequently indicated that the original figures used by Environment Canada were inaccurate and provided corrections which were incorporated in the final table (R. Charette, *in litt.* to E. Cooper, March 27, 2002). As a result the total number of WAPPRIITA inspections shown in table 6.5 does not precisely match the total number of WAPPRIITA inspections shown in table 6.2.

or at the airport/border/port of entry to verify compliance with one regulation/permit/manifest. For example, inspections done at the Enforcement Officer's place of work or in a laboratory'.

Both on-site and off-site inspections can involve physical verification, document verification or both.

Table 6.5 shows that between fiscal years 1999–2000 and 2000–2001 the numbers of inspections recorded in the Prairie and Northern, Ontario, and Atlantic regions dropped substantially (by at least one-half). This drop was primarily due to the personal and household effects exemption [WAPTR section 15] coming into force. In the case of Ontario staff changes (loss of inspection staff and replacement with less experienced personnel) also may have had an effect. The number of inspections completed in the Pacific and Yukon and Québec regions rose slightly during this period. The efforts of these regions were already focused on commercial wildlife shipments and international mail before the personal and household effects

exemption. As a result the exemption had much less effect on the number of inspections conducted in these regions (Y. Lafleur, pers. comm. to E. Cooper, March 26, 2002).

Further analysis of Canadian inspection results is not possible. Data are not recorded on the vast majority of imports of non-CITES wildlife and wildlife products, so the total number of wildlife shipments imported into Canada is not known. Without these baseline data it is not possible to calculate an inspection rate or use inspection figures as a tool to measure effectiveness within or between regions. For example one region could conduct twice as many inspections as any other region, but the significance of that fact would differ greatly if that region had 10 times more or 10 times fewer wildlife shipments.

In addition the inspection data recorded by officers in different regions are not consistent. For example if Canada Customs refers the paperwork for a shipment to Environment Canada for review, but no physical examination is conducted, officers in the

**Table 6.5 Environment Canada WAPPRIITA Inspections**

**Fiscal Year 1999–2000**

Region	Field or site inspections	Administrative or verification inspections	Total	Percentage of all inspections
Pacific and Yukon	864	4	868	27%
Prairie and Northern	675	20	695	22%
Ontario	584	506	1192	37%
Québec	282	43	325	10%
Atlantic	126	5	131	4%
<b>All Canada</b>	<b>2531</b>	<b>578</b>	<b>3211</b>	<b>100%</b>

Source: Anon. (2002x) (with corrections).

**Fiscal Year 2000-2001**

Region	Field or site inspections	Administrative or verification inspections	Total	Percentage of all inspections
Pacific and Yukon	902	5	907	42%
Prairie and Northern	315	3	318	15%
Ontario	248	281	544	25%
Québec	337	16	353	16%
Atlantic	29	10	39	2%
<b>All Canada</b>	<b>1831</b>	<b>315</b>	<b>2161</b>	<b>100%</b>

Note: These data could include inspections conducted for enforcing both CITES and the interprovincial transport (of provincially and territorially regulated wildlife) components of WAPPRIITA and WAPTR. However most (if not all) of these data refer to activities related to CITES enforcement.

Source: Anon. (2002y) (with corrections).

Pacific and Yukon Region would not record this as an inspection (R. Graham, *in litt.* to E. Cooper, July 12, 2002), whereas officers in Ontario would record this as an administrative inspection (L. Coot, Environment Canada, pers. comm. to E. Cooper, July 11, 2002).<sup>25</sup>

Detailed data on WAPPRIITA inspections in Canada—such as the percentage of inspections that resulted in CITES detentions or the numbers and types of products that were detained or seized—were not available from Environment Canada.<sup>26</sup>

However, data for the Pacific and Yukon Region were available in the form of a series of regional documents which summarize the detentions made by Canada Customs in the region (Merz, 1996; White, 1997, 1998, 1999, 2000, 2001). Data from these documents for the years 1995–2000 are summarized in table 6.6. These data provide a glimpse of the volume of trade in CITES species and products into Canada. They also suggest that a very high percentage of the inspections conducted in the Pacific and Yukon Region result in CITES detentions. This high ‘hit’ rate is likely the result of effective targeting and not indicative of the proportion of wildlife shipments that involve CITES violations. However this cannot be confirmed without data on the total number

of wildlife shipments imported into the region.<sup>27</sup>

### **Inspections and Biological Expertise**

Once enforcement officers find wildlife or wildlife products they must identify them to determine whether the species is regulated by CITES. Without accurate identification further enforcement actions cannot proceed and wildlife trade cannot be monitored. The approximately 30 000 species of animals and plants listed by CITES may be traded as live or dead specimens, raw parts or products of great diversity (such as clothing, tourist curios, timber, foodstuffs, medicines, jewellery and so on). Table 6.7 provides examples of the diversity of forms in which a single species (American alligator [*Alligator mississippiensis*]) may be traded. Identifying wildlife and wildlife products requires a level of biological expertise—at the very least knowledge of taxonomy (the classification of animals and plants) and morphology (anatomy). This expertise needs to be developed and updated as new species and new products are routinely introduced into trade and species are added to the CITES Appendices.

In 1992 Environment Canada began hiring WAPPRIITA inspection staff in anticipation of WAPPRIITA coming into force. The first wildlife inspector was hired in the Pacific and

**Table 6.6 Inspection Results in the Pacific and Yukon Region, 1996–2000**

	1996	1997	1998	1999	2000
Shipments referred by Canada Customs	1718	2215	2204	2146	2538
Shipments of CITES-listed items	896	922	756	765	451
Items examined	185 224	160 815	226 981	130 217	202 976
Items detained for CITES violations	165 776	125 720	51 141	92 932	96 753

Source: Merz, 1996; White, 1997, 1998, 1999, 2000, and 2001.

<sup>25</sup> This issue is under review as the department looks at standardizing NEMISIS input across the country (R. Graham, *in litt.* to E. Cooper, July 12, 2002). See also the discussion under ‘Data Management’ elsewhere in this report.

<sup>26</sup> Goods that are held by the authorities until it is determined whether or not they imported, exported or possessed in violation of WAPPRIITA are considered detained. For example if a traveller entering Canada declared a snakeskin purse to Canada Customs, the purse may be detained until the species of snake is identified and its status under CITES is determined. Goods that are discovered in clear violation of the act may be seized. For example if an elephant ivory carving (CITES Appendix I) was found concealed in the luggage of a traveller entering Canada in a clear attempt to smuggle, then the item would be seized and prosecution could result.

<sup>27</sup> These data also suggest that almost everything that is examined is found to be in violation of CITES, giving the false impression that CITES violations are the norm for wildlife shipments into the region. For most commercial shipments only the number of items detained or seized were recorded, not the total number of items in the shipment.

**Table 6.7 American Alligator (*Alligator mississippiensis*) Products and Similar Products from Other Species**

Products Imported	Similar Species or Products
Whole stuffed or dried animals, dried heads	Other crocodylians, large lizards
Hunting trophies (for example heads, skulls, skins)	Hunting trophies from other crocodylians
Leather items (coats, bags, purses, shoes, wallets)	Leather from other crocodylians, other reptile leathers (lizard, snake, turtle), other exotic leathers (ostrich, scaly anteater), textured cowhide, manufactured imitations
Claws and feet (as curios or used as belt buckles)	Claws and feet from other crocodylians, large lizards
Teeth (as curios or used in jewellery)	Teeth from other crocodylians; canine teeth from bears, large cats, primates, pigs, seals and sea lions; manufactured imitations
Fresh meat	Meat from other species of animals
Dried meat	Meat from other species of animals
Meat products (such as sausage)	Meat products from other species of animals
Other foodstuffs (such as canned chilli)	Meat from other species of animals
As ingredients in packaged medicine	Ingredients from other species of animals

Sources for Alligator products: Anon., 2002a; Anon., 2002b; Anon., 1999c; Anon., 2003a; Anon., 2003i.

Yukon Region in 1992. By 1994 there were inspectors in the Pacific and Yukon, Québec and Ontario regions. Each was a biologist with experience with CITES and wildlife trade. By 1999 there were seven biologists working as wildlife inspectors—two in the Québec Region, three in the Ontario Region, one in the Pacific and Yukon Region and one at headquarters (the Chief of Inspections and Training). These officers played a key role in supporting enforcement actions and providing expertise to less experienced officers and to partners. As of July 1, 2002 only the two in Québec and one at headquarters remained. The others have left wildlife enforcement and have been replaced by non-biologists with limited identification experience. This extensive loss of expertise in CITES and the identification of wildlife and wildlife products has led to a loss of credibility for Environment Canada with some of their partners (Y. Lafleur, *in litt.* to E. Cooper, July 23, 2002).

**Wildlife Transport Requirements**

WAPTR section 9 requires that anyone who exports live animals or plants from Canada must do so in accordance with the IATA Live Animals Regulations and Guidelines for Transport and

Preparation for Shipment of Live Wild Animals and Plants (see ‘Humane Treatment Findings’ under section 5.12 of this report, ‘Findings Made Prior to Issuing Permits’).<sup>28</sup>

Environment Canada officers do not receive training on the application of the IATA Live Animals Regulations or the Guidelines for Transport and Preparation for Shipment of Live Wild Animals and Plants. Copies of the IATA Live Animals Regulations are distributed to regional offices by headquarters when new editions are published, and copies of the guidelines have been distributed when received from the National CITES Management Authority (R. Charette, *in litt.* to E. Cooper, July 4, 2003).

Environment Canada officers have the authority to inspect and stop shipments in transit through Canada if the specimens are threatened by the conditions of their transport. This has happened only once, and the importer corrected the situation (R. Charette, *in litt.* to E. Cooper, July 4, 2003).

Limited resources mean that very few wildlife exports are ever inspected by Environment Canada, and as noted previously officers do

<sup>28</sup> The Guidelines for Transport and Preparation for Shipment of Live Wild Animals and Plants were originally adopted by the Parties at the second CoP in San José, Costa Rica in 1979, and their use was reinforced in Resolution Conference 10.21 (Anon., 1997e).

not receive training on live animal and plant transport requirements. As a result there is minimal, if any, enforcement of this regulation. As of July 2003 no charges had been made for violation of WAPTR section 9.

### **Data Management**

NEMISIS is the electronic database used by Environment Canada for tracking and managing enforcement activities. Federal Game Officers are required to enter the results of all enforcement activities into the database. Results of inspections include the location and reason for the inspection, transport details, information on the importer, the volume and nature of the species and products involved and the outcome of the inspection. The outcome would include details about any violations

detected, the items that were detained or seized (if any) and the final actions of the officer (such as referral of the case for investigation, see table 6.8) (R. Charette, pers. comm. to E. Cooper, July 2, 2002).

Officers should be able to track the results of enforcement activities across Canada and generally coordinate their activities nationally through NEMISIS. For example an officer should be able to very quickly determine whether an importer has a record of CITES violations. NEMISIS should provide a complete and detailed record of their activities, and a search of the database should provide complete data on enforcement results (the number of inspections conducted in a region, number of products detained, and so forth)

**Table 6.8 Final Actions Taken as a Result of Enforcement Activities, as Entered into NEMISIS**

<b>Code</b>	<b>Action</b>
32	Ministerial order
34	EPCO
35	EPAM
1010	Referred to investigations
1020	Referred for compliance promotion
1021	Referred to U.S. Environmental Protection Agency
1030	Referral to municipal government department
1040	Referral to provincial government department
1050	Referral to foreign government
1060	Referral to other federal government department
1070	Referral to other agency
2010	Inspector's verbal direction
2020	Inspector's written direction
2030	Inspector's verbal warning
3010	No action taken
3020	Limitation period expired
3030	Seizure
3040	Written warning (warning letter)
3050	(null)
3060	Removal order
3070	Offence notice
3080	Forfeiture
3090	No violation
4001	Prosecution
5010	Ticketed
6010	Compliance letter
7050	Unsolved
7060	Warning retracted

Source: R. Charette, in. litt. to E. Cooper, June 3, 2003

(R. Charette, pers. comm. to E. Cooper, July 2, 2002). A key requirement for NEMISIS is the capability to record data on the different species of animals and plants listed by CITES (approximately 30 000) and the multitude of different products and derivatives that they may be traded as.

In January 2002 TRAFFIC North America requested information on the regional enforcement activities for the years 1999–2000 and 2000–2001 from Wildlife Enforcement Branch headquarters. This should have required a simple search of NEMISIS. However the initial NEMISIS search results were inaccurate, and the data had to be circulated to the different regions to be corrected and verified. The entire process took weeks and required a great deal of effort by enforcement staff. In April 2002 TRAFFIC North America made a request for information on Canadian seizures of elephant ivory. Again the initial NEMISIS report was inaccurate, and the data were collected only after input from the regional offices (R. Charette, pers. comm. to E. Cooper, March 26, 2002). In June 2003 TRAFFIC North America requested the numbers of items detained or seized by each region as a result of CITES enforcement for the years 1998–2001. Headquarters staff could not provide this information from NEMISIS, and three regions (Ontario, Prairie and Northern, and Pacific and Yukon) responded that they would only respond to an Access to Information Request through the Access to Information Act because they could not afford to do the search (R. Charette, *in litt.* to E. Cooper, June 20, 2003).

All officers in all regions have not been entering data routinely, and not all of the data have been recorded in a consistent format. Different regions and different officers have entered their data using different strategies and definitions. NEMISIS has been in operation since the mid-1990s, but some regions did not require complete data input until 1999 or 2000. As of 2000 NEMISIS allowed officers to search for information on Canadian CITES permits, but as of April 2004 there was still a backlog of permits from 2000 which had not been entered into the system (J. Robillard, *in litt.* to E. Cooper, April 19, 2004).

A critical problem with NEMISIS is that it was

designed to meet the data management needs for all of the acts enforced by Environment Canada (the CWA, the MBCA, WAPPRIITA and CEPA). These acts are dissimilar in language and scope, require different enforcement activities and therefore have diverse data management requirements. For example WAPPRIITA enforcement necessitates the collection of taxonomic data on the approximately 30 000 species of animals and plants listed by CITES plus information on the form in which they are traded (live, dead, parts or products). None of the other acts have this requirement. Unfortunately it appears that the data management requirements for CEPA are the priority for the development of NEMISIS, and as a result the needs for wildlife enforcement are not being effectively met.

Wildlife Enforcement Branch headquarters reports that they are attempting to correct the problems with NEMISIS. They are working to standardize definitions of the terms used and the format of data entry. They would like one person in each region to be responsible for data entry into NEMISIS in an effort to ensure consistent data and also free up time for enforcement officers. In addition a committee (with representation from each region and headquarters) has been established to discuss the types and content of regular NEMISIS reports to be produced for distribution (for example four seasonal reports and one annual report in addition to reports in response to specific requests) (R. Charette, pers. comm. to E. Cooper, March 26, 2002).

### **Departmental Training**

Environment Canada has a policy requiring all enforcement personnel to receive continuing, comprehensive training to assist them in carrying out their duties. The department also states that it recognizes that training is important at every level, from field officers to management (Anon., 1998e).

Starting in 1996 Environment Canada Federal Game Officers were required to complete a multiweek advanced wildlife enforcement officer course at the RCMP training depot in Regina, Saskatchewan (the training provided by the RCMP). After being run twice the course was cancelled because its content did not meet the needs of Environment Canada's officers (R. Charette, pers. comm. to E.

Cooper, July 3, 2002). To be appointed a wildlife enforcement officer, however, Environment Canada policy requires each new officer to have a wildlife enforcement course or the equivalent training plus experience (R. Charette, *in litt.* to E. Cooper, July 24, 2002).

In 1997 Environment Canada headquarters, in consultation with the regions, developed a course on WAPPRIITA and the WAPTR. Completion of this three-day course is required for all personnel before they can be designated as enforcement officers for WAPPRIITA. Initially the course was held in Toronto, Montréal and Vancouver to allow officers from different regions to attend. Currently the course is presented to new officers as required (R. Charette, pers. comm. to E. Cooper, July 3, 2002). The contents of the course have been changed slightly since 1997. The contents as of 2002 were as follows (R. Charette, *in litt.* to E. Cooper, July 24, 2002):

- Module 1: Introduction,
- Module 2: The Legal Framework for WAPPRIITA,
- Module 3: The Powers of a WAPPRIITA Officer,
- Module 4: Import Offences,
- Module 5: Export Offences,
- Module 6: Interprovincial Transport Offences,
- Module 7: Possession Offences,
- Module 8: New Regulations,
- Module 9: Regulatee Responsibilities,
- Module 10: Permits,
- Module 11: The Classification of Animals and Plants,
- Module 12: Taking Care of the Evidence,
- Module 13: Prosecutions,
- Module 14: Working Relationships and
- Module 15: Course Review, Written Test and Course Evaluation.

The majority of Federal Game Officers carry side-arms and are therefore required to complete training in non-lethal force (such as use of batons and pepper spray) and handguns before

they are issued weapons. All officers must then pass an annual qualification to ensure their competency to carry a handgun (R. Charette, pers. comm. to E. Cooper, July 3, 2002).

There is no nationally compulsory training required for Federal Game Officers who enforce CITES other than WAPPRIITA and weapons training. However officers must receive training in traditional enforcement activities—such as conducting surveillance or covert investigations—before they may be involved in those activities (R. Charette, pers. comm. to E. Cooper, July 3, 2002).

Although CITES is a complex international instrument regulating the trade in more than 30 000 species which are traded in a multitude of parts and products, the last comprehensive national CITES training workshop was held in the Pacific and Yukon Region in 1993 (R. Charette, pers. comm. to E. Cooper, July 3, 2002). Environment Canada officers receive only a one-hour introduction to CITES as part of their WAPPRIITA training. The WAPPRIITA course also provides only one hour of training on animal and plant taxonomy (Anon., 1997f).

Some, but not all, officers have attended one-week training sessions on the safe handling of reptiles and on the identification of butterflies, turtles and crocodylians (R. Charette, pers. comm. to E. Cooper, July 3, 2002). In 1997 some officers completed a specialized course on health and safety issues related to inspecting wildlife trophy shipments (Anon., 2001p).

The U.S. Fish and Wildlife Service (USFWS) provides an annual in-service training programme for wildlife inspectors to maintain and improve their wildlife law enforcement techniques and skills. The course reviews national and international law enforcement activities, policies, significant legal issues and officer safety techniques (Anon., 2002n). According to the National Chief of Inspections and Training, since 1996 or 1997 Environment Canada has had an agreement with the USFWS to send one or two Canadian officers to this training (if space is available). These officers may participate as trainees or trainers (R. Charette, pers. comm. to E. Cooper, July 3, 2002).

Environment Canada officers are provided with

a CD-Rom on Customs training which includes instructions on permit validation (T. Swerdfager, *in litt.* to E. Cooper, October 14, 2003). However many officers have not received comprehensive training on permit validation or species and product identification, and the officers that have been trained do not receive regular opportunities to maintain or upgrade their expertise (R. Charette, pers. comm. to E. Cooper, July 3, 2002). These same officers are currently conducting inspections, identifying wildlife products, validating permits and training other government personnel (for example Canada Customs). This contradicts Environment Canada's stated policy requiring that all enforcement personnel receive comprehensive training to assist them in carrying out their duties.

### **Reference Materials**

The *CITES Control List* (see part 5.7 of this report, 'Publication of the CITES Appendices and Amendments') is available to all enforcement officers. Canada Customs officers have access to internal memoranda which provide specific information pertaining to CITES and WAPPRIITA and include basic instructions on how to process CITES documents, exportation requirements of CITES-controlled goods, the addresses and telephone numbers for the regional and headquarters offices of Environment Canada and so forth (Anon., 2001g; Anon., 2001h).

Environment Canada has also produced a number of identification guides for CITES species and products, illustrating the types of goods that may be encountered. To date identification guides for birds, crocodilians, turtles and tortoises, butterflies, sturgeons and paddlefish, tropical woods and hunting trophies have been published. One copy of each published guide has been distributed to all CITES Management Authorities and copies are available (for a fee) to the general public and all developed countries offering training to enforcement officers. Less developed countries only need to pay for handling and shipping costs. These guides are also available on the Internet (Anon., 2003j).

### **Personal and Household Effects Exemption**

The job of monitoring compliance at the

border changed with the passage of the personal and household effects exemption in December 1999 [WAPTR section 15] (see also section 4.2 of this report). The exemption affected CITES enforcement in a number of ways, both positively and negatively:

- The personal and household effects exemption has made WAPPRIITA more complicated to enforce.
- The exemption is not being implemented correctly.
- Products made from CITES Appendix I species may be entering Canada as a result of misidentifications.
- The exemption creates an opportunity for smugglers to 'launder' commercial goods as personal goods.
- As a result of the exemption contact between Environment Canada officers and Canada Customs officers at airports and border crossings has been reduced.
- The exemption has reduced the workload for some Environment Canada officers.

These issues are discussed in detail below.

*WAPPRIITA is more complicated to enforce.* The personal and household effects exemption has undoubtedly made the enforcement of WAPPRIITA more complicated. This is especially true for Canada Customs officers stationed at the airports and border crossings across the country, who are responsible for the initial inspection of personal goods being imported into Canada. Before the exemption came into force these officers needed to determine whether an item was made from a species listed by CITES. If they were not sure the item could be detained until an Environment Canada officer could examine it. Now Canada Customs officers must not only determine whether a specimen is from a CITES-listed species, but they must also ascertain whether it is for personal or commercial use, which appendix it belongs to, whether it fits the definition of a tourist souvenir, whether the species requires a permit from the originating country and whether the species was taken from the wild. They also have to know that the exception does not apply to live specimens. Environment Canada has responded to this issue by producing and



distributing a chart explaining the application of WAPTR section 15 (see section 6.7, 'Interagency Co-operation' and Appendix E in this report).

Environment Canada feels that rather than being more complicated, the personal and household effects exemption allows Canada Customs officers to concentrate on violations involving CITES Appendix I species—which should be the priority for every country—and training can concentrate on the CITES Appendix I species that are most frequently brought before the officers involved (Y. Lafleur, pers. comm. to E. Cooper, March 26, 2002). But this suggests that personal

CITES Appendix II items are entirely exempt under WAPTR section 15 and that enforcement of Appendix II is no longer a concern.

*The exemption is not being implemented correctly.* According to WAPTR section 15(1)(a) the personal and household effects exemption does not apply to goods from countries that require the prior grant of an import permit for those goods. Thus the opportunity for Canada Customs officers to concentrate on Appendix I species should apply only to exports from countries that *do not* require the prior grant of an import permit. However WAPTR section 15(1)(a) is being enforced only when an inspecting officer has

### Box 6.1 WAPTR Section 14 Definitions

These definitions apply to WAPTR sections 14 to 19.

**Commercial purpose:** 'any activity related to the sale, offering for sale, purchase, trade or barter of any animal or plant, or any part or derivative of one, without regard to its quantity or weight, including

- a) any display, performance or exhibit of such a thing for gain or profit; and
- b) the use of any such thing for the purpose of soliciting sales.'

**Customs officer:** 'has the meaning assigned to the word "officer" in subsection 2(1) of the Customs Act.'

**Household effect:** 'a plant or dead animal, or a part or derivative of one, that is imported to or exported from Canada for other than commercial purposes and that

- a) is owned and possessed by an individual in the individual's ordinary country of residence and that forms part of the individual's household belongings that are being shipped to or from Canada, to the individual's new residence; or
- b) forms part of an inheritance from an estate that is imported to or exported from Canada'.

**Hunting trophy:** 'a dead animal or a part or derivative of one that an individual acquired and possessed through legal hunting'.

**Personal baggage:** 'where an individual uses a commercial passenger conveyance to enter

or depart from Canada, all hand-carried items and all checked baggage of the individual and, where an individual uses any other type of conveyance to enter or depart from Canada, baggage that is being carried in or on the same vehicle, vessel or aircraft as the individual.'

**Personal effect:** 'any of the following things that is imported into or exported from Canada for other than commercial purposes:

- a) a plant or dead animal, or a part or derivative of one, that is owned and possessed by an individual in the individual's ordinary country of residence and that, at the time of its import or export, is part of the individual's clothing or accessories or is contained in the individual's personal baggage; and
- b) a tourist souvenir or a hunting trophy'.

**Pet:** 'a living animal that an individual owns as a personal pet and that is listed in Part I of Schedule I but not in Schedule II.'

**Tourist souvenir:** 'a dead animal, other than a hunting trophy, or a dead plant, or a part or derivative of one, that is listed in column I of an item of Schedule I and in respect of which there is a reference to Appendix II or III of the Convention in column II of that item and that is being imported into their ordinary country of residence by an individual who acquired, owned and possessed it outside their ordinary country of residence during a sojourn from which they are returning'.

prior knowledge that a permit is required or at the request of the exporting country. Officers are not provided with a list of countries to which the exemption does or does not apply, and they do not normally verify whether exporting countries require import permits. Because of the diversity of legislation in foreign countries Environment Canada's Wildlife Enforcement Branch usually only acts under this section at the request of the country of origin (Y. Lafleur, *in litt.* to E. Cooper, January 18, 2002). In other words the personal and household effects exemption is being applied to non-commercial CITES Appendix II items coming from any country. Thus WAPTR section 15 is essentially being used as a blanket exemption, which is not how the regulation is written.

*Products made from CITES Appendix I species may be entering Canada.* Most CITES-listed personal goods entering Canada are not examined by Environment Canada officers, and it seems very likely that Appendix I items may be entering the country as a result of misidentifications by inexperienced Canada Customs officers. The lack of documentation about the items allowed into Canada under the exemption makes it impossible to know one way or the other.

*Smugglers may 'launder' commercial goods as personal goods.* This is a difficult issue to address because the definitions of commercial, personal and household effects in the WAPTR are imprecise and leave it up to an inspecting officer to determine whether an importation is for personal or commercial purposes. If the definitions provided by WAPTR section 14 provided a number of items (such as six or eight) at or above which the shipment would be presumed commercial, then the burden to prove otherwise would shift to the importer.

*Reduced interaction between the Environment Canada and Canada Customs officers.* As stated previously, Canada Customs officers are responsible for the initial inspection of personal goods being imported into Canada, and as a result of the personal and household

effects exemption the majority of CITES Appendix II items are now being released by these officers. This has reduced the need for interaction between Environment Canada and Canada Customs at locations where commercial imports are not common (such as passenger airports and some border crossings). The consequences are a lowered profile for CITES and an impaired capability for Environment Canada to ensure that goods are being correctly identified and the exemption is being properly implemented.

In 2003 the Pacific and Yukon Region began a project to raise the profile of Environment Canada with their enforcement partner agencies at the Vancouver International Airport. The region located an inspector at the airport during normal office hours, Monday to Friday, for a six-month trial period starting the third week of April. For other hours they implemented a duty officer pager programme that operates seven days a week from 7 A.M. until 10 P.M. Environment Canada's Supervisor of Inspections for the region felt that having a person on site at the airport would cut down their response time for doing inspections as well make their partners less wary about calling them (R. Graham, *in litt.* to E. Cooper, May 22, 2003).

*Effect on the workload of Environment Canada officers.* The personal and household effects exemption has had a positive impact on the workloads of officers in at least certain regions of the country. The number of inspections and other enforcement actions decreased dramatically in the Prairie and Northern, Atlantic and Ontario regions after the implementation of WAPTR section 15 (see tables 6.6, 6.10, and 6.11). In the Atlantic Region this has meant that officers can direct more time towards investigating significant violations (L. Sampson, pers. comm. to E. Cooper, June 17, 2003). The effect was much less in the Pacific and Yukon and Québec regions because a greater proportion of the workload in these regions involved commercial imports and international mail (Y. Lafleur,

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<sup>29</sup> Before WAPPRIITA came into force CITES enforcement focused primarily on international mail and personal importations. In the 1990s increased effort was applied in the Pacific and Yukon Region towards commercial importations, but this did not decrease the effort on international mail and personal importations. However the total number of inspections, and of items detained or seized, increased dramatically and a smaller percentage of this total was a result of personal importations.

pers. comm. to E. Cooper, March 26, 2002).<sup>29</sup> Prior to the personal and household effects exemption Wildlife Enforcement Branch headquarters had one person dealing full-time with complaints about detentions. According to the Director of the Wildlife Enforcement Branch the number of complaints has been reduced by 90 percent since the exemption came into effect. As a result of the reduced workload they no longer require a full-time position to answer complaints, and have been able to add one full-time equivalent (FTE) to the intelligence programme. Overall the opinion of headquarters staff is that as a result of the exemption more officers can concentrate on more serious cases (Y. Lafleur, pers. comm. to E. Cooper, March 26, 2002).

### **Declaration Forms for Wildlife Imports**

In the United States most imports or exports of wildlife and wildlife products require the completion of a wildlife declaration form. Failure to do so is a violation of U.S. legislation and can result in prosecution. These forms require the importer or exporter to provide names of the species being traded and details on the source, purpose, quantity, transport, port of entry and so on of the shipment (C. Hoover, *in litt.* to E. Cooper, June 18, 2003).

The data gathered through this process are entered into the USFWS's Law Enforcement Management Information System (LEMIS). Access to this system allows U.S. authorities to analyse the flow of wildlife into and out of the country and focus targeting, inspection and investigation efforts where they will be the most productive. These data also provide a baseline against which the effectiveness of wildlife enforcement can be measured. This system also provides one of the few sources of data on the trade in non-CITES species, which is invaluable for identifying species for possible inclusion in the CITES Appendices (C. Hoover, *in litt.* to E. Cooper, June 18, 2003).

The use of wildlife declaration forms would be especially valuable to Canadian authorities because of the limited number of Federal Game Officers in the country. Wildlife declaration forms could also provide a method to record the volume and nature of the goods imported into Canada under the personal and household effects exemption [WAPTR section 15].

The use of wildlife declaration forms is

provided for in section 19 of WAPPRIITA. Section 19(1) states [emphasis added]:

“Any individual who imports into Canada or exports from Canada an animal or plant, or a part or derivative of one, and who is exempt from holding a permit under these Regulations shall, on the request of an officer or a customs officer under subsection (2), make a declaration at the time of import or export on a form provided for that purpose by the Minister.”

Section 19(2) states [emphasis added]:

“The officer or customs officer shall request a declaration where the Minister requires it in order to obtain information relating to the implementation of the Convention.”

Section 19(3) provides a comprehensive list of the data to be provided on such a form.

There are no plans to implement the use of wildlife declaration forms in Canada, although the Director of the Wildlife Enforcement Branch feels that the potential exists to develop forms to address issues regarding species of specific concern (Y. Lafleur, pers. comm. to E. Cooper, March 26, 2002).

### **Designated Ports for Wildlife Imports**

Some countries have designated ports for imports of live animals which allow for identification, permit checking and health controls to be focused where appropriate expertise and facilities are available (C. Allan, Regulation Support Co-ordinator, TRAFFIC International, *in litt.* to E. Cooper, March 18, 2002). The United States has designated specific ports through which all shipments of wildlife must be imported or exported (C. Hoover, Deputy Director, TRAFFIC North America, *in litt.* to E. Cooper, March 18, 2002). If Canada did likewise it would theoretically allow Environment Canada to concentrate resources at these points, thereby maximizing the enforcement capability of the department as it is applied to CITES. This concentration of resources and expertise would also ensure that commercial importers and exporters would have access to efficient service in processing shipments. According to the Director of the Wildlife Enforcement Branch designated ports could allow legal wildlife trade to be processed faster and more easily, but illegal trade would still be the

problem it is now (Y. Lafleur, pers. comm. to E. Cooper, March 26, 2002).

Most of the Environment Canada enforcement officers that routinely deal with CITES issues are already stationed in or near the major Canadian cities that would be obvious choices as designated ports (see table 6.1), and most likely the majority of all wildlife products imported into Canada already enter through these locations. It is unclear how much benefit would be gained by designating ports in Canada. The benefit would likely be greatest in Ontario, which has many busy border crossings with the United States (Marlatt, 2003). However an in-depth analysis of the trade through the various Canadian ports and the availability of enforcement officers is needed before the value of designated ports can be ascertained.

### ***Harmonized Commodity Description and Coding System***

The Harmonized Commodity Description and Coding System (referred to as the Harmonized System or HS) is an international goods classification system (Antweiler, 1995). An HS Code or tariff classification for a specific commodity has 10 digits. In the Canadian Customs Tariff the first 6 digits are international (used by all countries), the 7th and 8th are Canadian (established by the Department of Finance Canada) and the 9th and 10th are the statistical suffix generated by Statistics Canada (H. Gerson, Senior Program Officer, Admissibility Programs Division, Canada Customs, *in litt.* to E. Cooper, March 19, 2002).

In Canada traders are required to account for all of the goods they import. This includes reporting the correct 10-digit HS Codes for all importations valued at more than CAD1 600 (USD1190). Specific HS Codes at the 6-digit international level for some CITES species groups, such as primates, cetaceans and reptiles (live and meat), are in the 2002 Customs Tariff. There are also some 10-digit HS Codes that are specific to CITES species (such as for mahogany [*Swietenia* spp.]), and there are many HS Codes that include CITES goods (for example dried shark fin). HS Codes may not be required at time of release of goods, but must be submitted after goods have entered the country, so the use of HS Codes to flag CITES specimens is not helpful at this

time. As of the spring of 2002, however, mandatory 10-digit HS Codes were required before release of commercial shipments valued at CAD1 600 (USD1190) or more, thus this could become an important tool for screening shipments for CITES relevance (H. Gerson, *in litt.* to E. Cooper, March 19, 2002).

A joint Canada Customs–Environment Canada study of CITES-related reporting and compliance identified errors in HS Code reporting that are sufficiently inaccurate to be a cause of concern (Anon., 2001d). An examination of accounting records, including HS Codes, for more than 1000 records of tropical wood imports revealed a 65 percent error rate for HS Codes reported. Country of origin was also incorrectly reported on 23 percent of the reviewed records for tropical woods, and quantities of tropical woods imported were incorrectly reported on 57 percent of the records. Quantity errors were significant. For example the quantity of bigleaf mahogany sawn wood imported during 1999 that was *reported* on accounting documents was more than 15 times greater than the *actual quantities imported* as determined from the review of the invoices, and the quantity of bigleaf mahogany veneer reported was actually 4.5 times less than the actual quantity imported. Reasons for these large discrepancies in quantities include different types of punctuation used by different countries, improper or no use of conversion factors for different units of quantities reported and frequent use of the numeral “1” to fill in the quantity field.

If the problem of inaccurate coding were to be addressed, then HS Codes could offer an important tool for simplifying the process of screening for CITES goods and compiling accurate wildlife trade data. However HS Codes would first have to be amended to provide separate codes for various CITES goods. Changes at the 6-digit level require international co-operation, and it can take as long as seven years to implement changes to the Customs Tariff. Changes at the 7th and 8th digit level require legal changes by the Department of Finance Canada and would take about one year. Changes at the statistical suffix level (9th and 10th digits) can be made quickly and easily once the recommendations are submitted to Statistics Canada (H. Gerson, *in*

*litt.* to E. Cooper, March 19, 2002).

### **Verification of CITES Permits**

Canada Customs officers routinely verify CITES permits without input from Environment Canada staff. The operational policy guidance for Canada Customs officers includes a series of instructions in the Customs D-Memorandum relating to verification of CITES permits. The memorandum instructs officers to verify the permit quantity and description against the goods or Customs documents, check dates and ensure the permit is an original and that it has been signed by the appropriate issuing agency. Where there are doubts concerning validity, Canada Customs officers are to detain the goods and contact Environment Canada. When a permit is verified it is stamped by the officer (to cancel the permit) and is to be forwarded to the National CITES Management Authority (M. Bahls, pers. comm. to E. Cooper, March 12, 2002).

There is a very limited number of Federal Game Officers, and Environment Canada has little choice but to rely on Canada Customs officers to verify most CITES permits. Unfortunately Canada Customs officers receive limited and nationally inconsistent training on CITES (see 'Interagency Training' under section 6.7, 'Interagency Co-operation', in this report). Furthermore a report by Canada Customs and Environment Canada found that permits are not always forwarded as required (see 'Data from Foreign Permits' in section 5.9, 'Records of Trade', in this report). Of 233 CITES permits accompanying importations of bigleaf mahogany into Canada 114 (51 percent) were not forwarded to Environment Canada (Anon., 2001d). Few wildlife exports are inspected before they leave the country so the extent to which Canadian CITES import permits are verified is unknown.

In May 2004, Canada Customs published a notice that as of May 17, 2004, the agency would cease to collect permits for certain programs administered on behalf of Health Canada (Anon., 2004c). The notice included

the following text:

[Canada Customs] has reviewed the work it has undertaken on behalf of Other Government Departments (OGD) at the border and, in line with our strategy for the border, we want to eliminate paper permits from border processes in favour of targeting based on risk management principles and sharing information from our database.

If Canada Customs succeeds in eliminating paper permits from its activities, that would mean that Canada Customs officers would no longer validate CITES permits.

## **6.5 Responding to Violations**

According to Environment Canada's Compliance and Enforcement Policy for Wildlife Legislation, enforcement officers have a number of ways to respond to an alleged violation of WAPPRIITA (Anon., 2002j):

- no action,
- warnings,<sup>30</sup>
- directives to remove wildlife from Canada,<sup>31</sup>
- tickets,
- seizure of goods and
- prosecutions.

The choice of response depends in part on the nature of the violation and the intent of the alleged violator (Anon., 2002j). For example a technical omission on a CITES permit requires a far less serious response than the deliberate smuggling of Appendix I species.

The responses to WAPPRIITA violations that were taken by Environment Canada in fiscal years 1999–2000 and 2000–2001 are summarized in tables 6.9, 6.10 and 6.11.<sup>32</sup>

Between these years the number of actions completed in the Prairie and Northern, Ontario, and Atlantic regions dropped substantially. Much of this drop was due to WAPTR subsection 15 (personal and household effects

<sup>30</sup> There is no legal provision within WAPPRIITA or the WAPTR that allows for warnings. A warning would be given for a minor technical violation that does not warrant a more serious response.

<sup>31</sup> Per WAPPRIITA section 18. This removal must take place in accordance with the WAPTR.

<sup>32</sup> Note that the data in these tables are from NEMISIS. The enforcement responses described in NEMISIS are not exactly the same as the responses listed in the Compliance and Enforcement Policy for Wildlife Legislation.

**Table 6.9 Environment Canada Responses to WAPPRIITA Violations: Investigations, Prosecutions and Convictions**

**Fiscal Year 1999–2000**

Region	Investigations	Prosecutions	Convictions
Pacific and Yukon	70	5	3
Prairie and Northern	483	10	7
Ontario	29	7	7
Québec	13	0	0
Atlantic	12	0	0
<b>All Canada</b>	<b>607</b>	<b>22</b>	<b>17</b>

Source: Anon. (2000w).

**Fiscal Year 2000–2001**

Region	Investigations	Prosecutions	Convictions
Pacific and Yukon	11	3	2
Prairie and Northern	149	3	2
Ontario	21	7	3
Québec	13	1	1
Atlantic	23	10	1
<b>All Canada</b>	<b>217</b>	<b>22</b>	<b>9</b>

Note: Includes CITES and interprovincial transport violations.

Source: Anon. (2002y).

exemption) coming into force (Y. Lafleur, pers. comm. to E. Cooper, March 26, 2002).

Table 6.10 shows the numbers of responses by Environment Canada to WAPPRIITA violations in addition to investigations and prosecutions for fiscal years 1999–2000 and 2000–2001.<sup>33</sup> Note that the data in this table are from NEMISIS, and the enforcement responses described do not match the responses listed in the Compliance and Enforcement Policy for Wildlife Legislation (see above).

The “other” category in table 6.10 includes any of the actions listed in table 6.8 other than investigations, prosecutions directives, referral to others or written warnings (R. Charette, *in litt.* to E. Cooper, June 3, 2003). Examples could be where no action was taken or where a ticket was issued. Considering that actions listed in the “other” category far outnumber all other actions it would be far more informative if Environment Canada presented its data with this category broken down. In particular it

would be valuable to know how many tickets were issued for WAPPRIITA violations. To date the option for issuing tickets is available only in Manitoba, New Brunswick, Nova Scotia, Ontario, Prince Edward Island and Québec (Anon., 2003s). In these jurisdictions tickets may be issued for offences that pose no serious or continuing threat to Canadian ecosystems or to the survival of the species involved. Offences that could be ticketed include failure to comply with terms and conditions of permits or failure to maintain records as required by regulation.<sup>34</sup>

Tickets are issued through provincial and territorial court procedures under the authority of the Contraventions Act (Anon., 1992a). For Environment Canada to be able to issue tickets an agreement has to be signed with each of the provinces and territories. According to the Director of the Wildlife Enforcement Branch the Department of Justice is responsible for negotiating these agreements, and Environment Canada has no say in these negotiations (Y.

<sup>33</sup> These responses could be a result of an investigation.

<sup>34</sup> Ticketable offences are described in the Contraventions Act (Anon., 1992a).

**Table 6.10 Environment Canada Responses to WAPPRIITA Violations  
Other than Investigations and Prosecutions**

**Fiscal Year 1999–2000**

Region	Directives	Referral to others	Written warnings	Other	Total
Pacific and Yukon	1	21	49	812	883
Prairie and Northern	0	461	2	647	1110
Ontario	1	2	86	846	935
Québec	1	4	0	169	174
Atlantic	86	6	1	13	106
<b>All Canada</b>	<b>89</b>	<b>494</b>	<b>138</b>	<b>2487</b>	<b>3208</b>

Source: Anon. (2000w).

**Fiscal Year 2000–2001**

Region	Directives	Referral to others	Written warnings	Other	Total
Pacific and Yukon	0	4	2	884	890
Prairie and Northern	0	132	8	288	428
Ontario	0	14	58	450	522
Québec	0	8	0	262	270
Atlantic	6	6	0	22	34
<b>All Canada</b>	<b>6</b>	<b>164</b>	<b>68</b>	<b>1906</b>	<b>2144</b>

Source: Anon. (2002y).

Lafleur, *in litt.* to E. Cooper, June 12, 2003).

**Investigations**

Environment Canada's Compliance and Enforcement Policy for Wildlife Legislation directs enforcement officers to conduct investigations when they have reasonable grounds to believe that an offence has been, is being or is about to be committed under WAPPRIITA (Anon., 2002j).

According to the Justice Institute of British Columbia (Anon., 1998h) the objectives of an investigation include:

- determining whether an offence was committed or disproving the allegation,
- determining whether the evidence gathered will be admissible in court,
- establishing the appropriate burden of proof and
- formulating the grounds to bring a charge.

Investigations may be a straightforward process that can be concluded by a single

officer, or they may be complex and require significant resources. For example Operation REVERENCE involved marketing waterfowl and illegal guiding operations (not CITES-related) in the Wallaceburg, Ontario area. The investigation was conducted by the special operations programme of the Ontario Region over many years. In the concluding year the investigation used 28 outside undercover officers plus several support staff (A. Giesche, *in litt.* to E. Cooper, June 14, 2001). Another example is the investigation that resulted in *R. v. Deslisle* (see conviction no. 38 in Appendix D) which involved authorities in three countries (J. Dyke, Supervisor of Investigations, Pacific and Yukon Region, Environment Canada, pers. comm. to E. Cooper, July 15, 2001).

Not every investigation results in a prosecution. For example Table 6.9 shows that in 1999–2000 Environment Canada nationally conducted 607 investigations, which resulted in 22 prosecutions (17 convictions) of individuals or companies. The number of investigations dropped in 2000–2001 to 217, although the

## Box 6.2 NEMISIS Definitions for Responses to Violations

Environment Canada provided the following definitions of these responses (R. Charette, *in litt.* to E. Cooper, April 2 and June 3, 2003):

**Investigation:** ‘an investigation is the gathering and analyzing, from a variety of sources, of evidence and information relevant to a suspected violation where there are reasonable grounds to believe that an offence has, is or is about to occur with regards to the environmental or wildlife legislation administered, in whole or in part, by Environment Canada. An investigation results from an on-site or an off-site inspection, or an occurrence, and where there is reasonable ground to believe that an offence has, is or is about to occur.’

For reporting purposes, one investigation potentially encompasses multiple components: acts, regulations, permits, sites, regulatees, alleged offenses and counts that are linked, or perceived to be linked.

The Start Date of the investigation is the date the investigation is approved by management.

For statistical purposes: prior to the fiscal year 1998–1999, no national standard was applied. From fiscal year 1998–1999 to fiscal year 2001–2002 (inclusively), investigations were compiled by regulation and by suspect.’

**Verbal Direction:** ‘a verbal administrative order from the Enforcement Officer which

obliges the regulatee responsible for a possible violation of the environmental protection legislation administered, in whole or in part, by EC to take all reasonable emergency measures to remedy any dangerous condition and/or to reduce any danger to the environment. A verbal direction must be followed by a written direction.’

**Written Direction:** ‘a written administrative order from the Enforcement Officer which obliges the regulatee responsible for a possible violation of the environmental protection legislation administered, in whole or in part, by EC to take all reasonable emergency measures to remedy any dangerous condition and/or to reduce any danger to the environment.’

**Referral to others:** ‘transfer of information on a case to another agency.’

**Written Warning:** ‘a formal written notice to inform the regulatee that a field/site inspection, an administrative verification and/or an investigation was conducted for which a violation under the environmental legislation administered, in whole or in part, by EC was observed. In addition, this notice of violation includes the request for corrective action to be undertaken by the regulatee.’

**Others:** ‘any other enforcement action not described in NEMISIS.’

number of prosecutions remained steady at 22. The drop in the number of investigations initiated in the Prairie and Northern Region was due to WAPTR subsection 15 (the personal and household effects exemption) coming into force (B. Petrar, Regional Special Investigations Coordinator, Environment Canada, *in litt.* to E. Cooper, March 18, 2002). This is likely true for the drop reported by other regions.

It is important to note that each region does not use the same definitions of an investigation. For example Table 6.9 shows that the Prairie and Northern Region seems to record more

activities as investigations than the other regions do.<sup>35</sup> This suggests that Environment Canada does not have a clear definition of what constitutes an investigation, and as a result TRAFFIC North America has concerns about the consistency and accuracy of the data provided by the department.

### **Prosecutions**

The most serious response to a violation is prosecution. According to Environment Canada’s Compliance and Enforcement Policy for Wildlife Legislation prosecution may be recommended under the following conditions:

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<sup>35</sup> The Prairie and Northern Region attributes their higher numbers to discrepancies in data entry methods among regions (B. Petrar, *in litt.* to E. Cooper, May 22, 2003).



- there is or has been serious damage to a Canadian ecosystem or species;
- the actions of the accused are or have been detrimental to the survival of the species or the management of the site involved;
- the accused knowingly committed an offence or provided false or misleading information, pretending to comply with an Act; or
- the accused obstructed an officer in carrying out duties or responsibilities under legislation (Anon., 2002j).

The potential penalties for violating WAPPRIITA are discussed in section 4.0 of this report ('Legislation'). It is important for penalties to be sufficient to act as a deterrent against further violations. To date the extent to which sufficiently severe penalties have been handed down has been mixed. For example in *R. v. Chow* (see conviction no. 2 in Appendix D) the accused received only a CAD10 000 (USD7438) fine for smuggling tortoises with an estimated value of CAD250 000 (USD185 938) (Wenting and Johnson, 1996). By contrast the highest penalty for a CITES-related violation to date has been a fine of CAD50 000 (USD37 195) plus 90 days in jail, three years' probation, 50 hours' community service and a three-year prohibition on the importation of birds (see *R. v. Flikkema*, conviction no. 31 in Appendix D of this report). This case was the result of an investigation by the Ontario Region's special operations programme (A. Giesche, *in litt.* to E. Cooper, June 14, 2001).

Table 6.11 lists the numbers of CITES-related WAPPRIITA convictions in the years

1996–2002 by region. During this period there were a total of 56 convictions across Canada. Overall one would expect that the number of convictions in Canada would be lowest in 1996 (the year WAPPRIITA was implemented) and would increase in later years. This is more or less what has happened for the first few years. The number of convictions peaked in 2000 and then declined in 2001 and 2002.

More than one-half (55 percent, 31 convictions) of the convictions in Canada have occurred in the Ontario Region. The Ontario Region has also put significantly more resources towards CITES investigations and prosecutions than any other region (R. Charette, pers. comm. to E. Cooper, June 14, 2002).

In contrast only 9 percent (5 convictions) of the convictions in Canada have occurred in the Québec Region. This is surprising considering that the volume of wildlife trade into Québec is considered to be second only to Ontario (R. Charette, pers. comm. to E. Cooper, June 14, 2002). Convictions are not necessarily an accurate indicator of enforcement effort; however the Québec Region has consistently recorded a low number of enforcement actions in comparison to most other regions (see tables 6.9, 6.10 and 6.11). These data could indicate a low level of CITES violations in Québec, but they are more suggestive of the lack of resources devoted towards CITES enforcement in the region.

It is worth noting that in the years since section 20 of the WAPTR (the labelling provision) came into effect only one conviction under that section has been concluded. The one

**Table 6.11 Annual Convictions for CITES-Related WAPPRIITA Violations, by Region**

Region	1996	1997	1998	1999	2000	2001	2002	Total	Percentage of all convictions
Atlantic	0	0	0	2	0	0	1	3	5%
Québec	0	1	1	1	1	0	1	5	9%
Ontario	4	1	1	3	8	10	4	31	55%
Prairie and Northern	0	0	2	2	3	0	1	8	14%
Pacific and Yukon	1	1	2	1	3	1	0	9	16%
<b>All Canada</b>	<b>5</b>	<b>3</b>	<b>6</b>	<b>9</b>	<b>15</b>	<b>11</b>	<b>7</b>	<b>56</b>	<b>100%</b>

Source: compiled from case precedent information (see Appendix D).

conviction recorded was *R. v. Uniglobe Import and Export Company Ltd.* (see conviction no. 37 in Appendix D). In a second case the charge was contested and, as part of the defence, the labelling provision was challenged as a violation of the Canadian Charter of Rights and Freedoms. If it had been successful the challenge could have resulted in the repeal of section 20. However the judge ruled on November 9, 2001 that there was reasonable doubt as to whether the defendant committed the offence as charged. The defendant was acquitted and the constitutionality of WAPTR section 20 was not ruled upon (Low, 2001).

There may have been a reluctance to prosecute under WAPTR section 20 while the constitutionality of the regulation was in question. Now that this issue is no longer pending it would seem reasonable to expect further prosecutions for importing products listing CITES species in the ingredients.

Unfortunately there are concerns about the accuracy of the data provided by Environment Canada. Reviews of the information listed in Appendix D of this report and Environment Canada's WAPPRIITA case history summary (Anon., 2003t) found that between March 31, 1999 and April 1, 2000 (the fiscal year for Environment Canada) there were 11 convictions for CITES-related violations and 2 convictions for interprovincial transport violations of WAPPRIITA.<sup>36</sup> Between March 31, 2000 and April 1, 2001 there were 13 convictions for CITES-related violations and 5 convictions for interprovincial transport violations. In total there were at least 13 WAPPRIITA convictions in fiscal year 1999–2000 and 18 convictions in fiscal year 2000–2001. However the data provided to TRAFFIC North America (table 6.9) list 17 WAPPRIITA convictions in 1999–2000 and only 9 convictions in 2000–2001. The discrepancy for fiscal year 1999–2000 could be due to gaps in the information listed in Appendix D and Environment Canada's WAPPRIITA case history summary. However Environment Canada's data for fiscal year 2000–2001 appear to be incomplete.

## 6.6 Raising Public Awareness

Environment Canada's Compliance and Enforcement Policy states that provision of thorough information, education and consultation with the public is the most effective way of ensuring they abide by the law. Environment Canada therefore has a public awareness programme aimed at promoting WAPPRIITA. Environment Canada officials meet regularly with other federal and provincial agencies, as well as industrial, aboriginal, environmental and other groups and the general public to exchange information about WAPPRIITA (Anon., 2002j).

There is, however, no national approach for improving CITES awareness. Most awareness efforts have been achieved through ad hoc projects of enthusiastic officers (Y. Lafleur, *in litt.* to E. Cooper, July 23, 2002).

In February 2002 the North American Wildlife Enforcement Group (NAWEG) of the North American Commission for Environmental Cooperation (CEC) held a trilateral (Canada, the United States and Mexico) Wildlife Enforcement Activities and Public Participation conference in Washington, D.C. The goal of the conference was to look at opportunities and mechanisms for public participation in wildlife enforcement issues in the participating countries and to 'develop recommendations for building partnerships between agencies and the public' (Anon., 2001n). As a result of this conference the Office of Enforcement (Gatineau) has designated a staff person as a contact for NGOs in an effort to improve communications between enforcement and the public (Y. Lafleur, pers. comm. to E. Cooper, March 26, 2002).

### **Publications**

DFAIT issues a brochure entitled 'Bon Voyage, But...Information for the Canadian Traveller' to all recipients of new passports (Anon., 2001p). The CFIA publishes a brochure entitled 'Be Aware You Must Declare'. Both brochures provide information on WAPPRIITA and CITES, and both are widely circulated in airports and other government offices across Canada (A. White, Wildlife Awareness and Outreach section, CWS, Ontario Region, *in litt.* to E. Cooper, March 13, 2002).

<sup>36</sup> Note that Appendix D of this report includes several CITES-related convictions that are not listed in Environment Canada's document (Anon., 2003t).

Environment Canada has produced a number of materials aimed at increasing public awareness of CITES. In 1994 the National CITES Management Authority and the Pacific and Yukon Region jointly produced a full-colour brochure entitled 'CITES and the Traveller' which provided basic information on CITES implementation in Canada. The brochure has been distributed nationally ever since. It was originally produced in French and English and has been translated into Vietnamese, Chinese, Japanese, Korean and Spanish (Anon., 2001o). In 2001 the brochure was revised and updated.

The department has produced and distributed nationally two full-colour posters promoting compliance with CITES and WAPPRIITA. The posters have been translated from French and English and distributed in Vietnamese, Chinese, Japanese and Korean, and they are commonly seen at Canada Customs offices and border crossing points.

In 1995 the Pacific and Yukon Region produced a short video (approximately five minutes long) also entitled 'CITES and the Traveller'. The video was distributed nationally for use in training and awareness efforts and was made available in French, English, Vietnamese, Chinese, Japanese and Korean.

In 1997 the Ontario Region developed and produced a brochure entitled 'Rules and Regulations for Endangered species—Import and Export' (in English and French) for national distribution. The brochure focused on providing information to commercial importers and exporters of wildlife and wildlife products (Anon., 2001p). The brochure was revised in 2002. In 1997 Environment Canada, Ontario Region, in partnership with World Wildlife Fund Canada Canada, produced a trilingual (English, French, Chinese) brochure that explained WAPPRIITA and discussed how the act applies to traditional medicines containing wildlife ingredients (Anon., 2001p). These brochures are still being distributed, but they are in very limited supply—approximately 100 were still available in the Ontario Region in 2003 (A. White, *in litt.* to E. Cooper, April 14, 2003).

### **Internet**

Environment Canada has made a great deal of

information available on its Internet website (Anon., 2003c). The site provides information about CITES, WAPPRIITA, permit requirements and so forth.

The websites for DFAIT (Anon., 2002c), the CFIA (Anon., 2002d) and Canada Customs (Anon., 2002p) mention CITES and refer viewers to Environment Canada.

### **Permanent Exhibits**

Environment Canada regional offices have placed exhibits about CITES in most major Canadian airports and at many U.S.-Canada border crossing points.

The Pacific and Yukon Region has two displays at the Vancouver airport that provide viewers with the option of watching a short video (an abbreviated version of the video referred to above) in a choice of different languages. The region also has displays at the Pacific Highway border crossing, the Pacific Environmental Science Centre and the Vancouver Passport Office.

The Prairie and Northern Region has displays at all five regional international airports and at all major border crossings (G. Bogdan, Chief, Wildlife Enforcement Division, Environment Canada, Prairie and Northern Region, *in litt.* to E. Cooper, March 13, 2002).

In Québec the Mirabel and Dorval airports have displays in the passenger departure areas and at commercial customs. Another display is located in the commercial customs area at the Lacolle port of entry between Québec and the state of New York (the busiest border crossing in Québec) (M. Thabault, Federal Game Officer, Environment Canada, Québec Region, *in litt.* to E. Cooper, March 14, 2002).

In Ontario there are two interactive displays (created in partnership with WWF Canada) at Pearson International Airport in Toronto. These displays gather information from the travellers via a touch screen—computer interface. Other displays are located at Canada-U.S border crossings and permanent travel awareness posters are displayed in all passport offices in Ontario (Anon., 2001p).

The Atlantic Region has a display in place at Halifax International Airport. Additional displays have been set up at the Nova Scotia

Museum of Natural History (Halifax, Nova Scotia), the Shubenacadie Wildlife Park (Shubenacadie, Nova Scotia), the Oaklawn Farm Zoo (Aylesford, Nova Scotia), the Magnetic Hill Zoo (Moncton, New Brunswick) and the Cherry Brook Zoo (St John, New Brunswick) (Anon., 2002w).

### **Outreach**

The regional offices also conduct outreach to various constituencies. Staff members are active in making presentations at diverse public trade shows and providing interviews with local media (Anon., 2001p). Officers field hundreds of telephone calls from members of the public seeking information on CITES, WAPPRIITA and wildlife trade. The Québec Region has a toll-free line to a communications staff person who has received basic training on CITES and WAPPRIITA (M. Thabault, *in litt.* to E. Cooper, March 14, 2002).

In the Prairie and Northern Region much effort has been directed to the Asian community and the trade in traditional medicine (G. Bogdan, *in litt.* to E. Cooper, March 13, 2002). In 1998 the Pacific and Yukon Region conducted inspections of 110 retailers of traditional Chinese medicine in Vancouver and Victoria. Each outlet was provided with a package containing information in English, French and Chinese on CITES and WAPPRIITA (Dyck *et al.*, 1998).

The Ontario Region is unique in that it has established a full-time public outreach position. The purpose of this position is to initiate and foster cooperative partnerships for promoting compliance with federal wildlife protection legislation. This staff person contributes to a variety of public information and outreach projects and activities, including the co-ordination of events, exhibit organization, responding to public enquiries as well as developing outreach programme information, products and activities (A. White, *in litt.* to E. Cooper, March 13, 2002).

## **6.7 Interagency Co-operation**

The importance of interagency co-operation is emphasized in CITES Resolution Conference 11.3, 'Compliance and Enforcement', which makes the following recommendation: 'a) Management Authorities coordinate with

governmental agencies responsible for enforcement of CITES, including Customs and Police, by arranging training activities and joint meetings, and facilitating the exchange of information through, for example, the establishment of inter-agency committees at national level...'.

The importance of interagency cooperation was also noted by the House of Commons Standing Committee on Environment and Sustainable Development. Recommendation No. 13 of the standing committee's report on pollution enforcement (Anon., 1998e) stated, 'The Committee recommends that the Minister of the Environment, in negotiating partnerships with other departments or agencies such as Canada Customs and the RCMP, ensure as a matter of priority that adequate resources and mechanisms are put in place to enable the parties to effectively discharge their obligations and responsibilities.

Environment Canada works internationally with the authorities of the United States and Mexico through participation in NAWEG, which also represents North American wildlife enforcement with Interpol and the Trilateral Committee for Conservation and Management of Wildlife and Ecosystems (Anon., 2001r).

Nationally (as discussed previously) a number of federal, provincial and territorial departments are involved in activities that may have a direct bearing on the efficient and effective enforcement of WAPPRIITA. These include Canada Customs, CFIA, DFO, RCMP and the provincial and territorial authorities. Environment Canada states that WAPPRIITA is enforced in co-operation with all of these agencies (Anon., 2001r). Furthermore the development of partnerships with other enforcement agencies is part of Environment Canada's Compliance and Enforcement Policy (Anon., 2002j). A common mechanism for coordinating activities between two or more departments is an MOU, which provides a clear statement of the responsibilities and roles of each jurisdiction, ensuring efficient use of limited resources.

Other than Environment Canada, only the RCMP has the authority to enforce WAPPRIITA. Historically the RCMP has not focused much attention on WAPPRIITA for a number of reasons: limited dedicated

resources, other priorities, a vague MOU with Environment Canada, training problems and a lack of understanding of WAPPRIITA. Also the federal government's downsizing initiative during the 1990s created a period of uncertainty for officers of both the RCMP and Environment Canada. The responsibilities of the two departments were brought into question, and the threat of job losses surfaced. The result was reduced opportunities and less interest in cooperation (Sgt. P. O'Brien, *in litt.* to E. Cooper, March 26, 2002).

On February 21, 2003 a new MOU between Environment Canada and the RCMP regarding WAPPRIITA (and also CEPA, the MBCA and the CWA) was signed (Sgt. T. O'Neil, Federal Enforcement Branch, RCMP, *in litt.* to E. Cooper, April 11, 2003). This MOU defines the basis on which the parties will co-operate and provides opportunities for co-operation between Environment Canada and the RCMP; it confirms the commitment of the parties to co-ordinate continuing efforts in specific areas such as criminal investigations, regulatory inspections, exchange of intelligence and delivery of training. These are positive steps which broaden the mandates of both parties and allow for extended co-operation, which has been lacking previously. Under the MOU Environment Canada has primary responsibility for WAPPRIITA, but the RCMP is responsible for organized crime involvement (organized crime is a priority for the RCMP) or when special investigative techniques are required. Investigations can shift jurisdictions or involve organized crime groups without the knowledge of the investigators, thus it will be important for Environment Canada and the RCMP to join in more joint-forces operations (JFOs). These operations will allow for a show of good faith by both groups and provide the framework for a more co-operative relationship. Developing the new MOU has resulted in new contacts and discussions for working together and identifying possible training needs (Sgt. P. O'Brien, *in litt.* to E. Cooper, March 26, 2002).

Environment Canada has an MOU with Canada Customs covering common issues and a specific MOU with Canada Custom's investigations section (Y. Lafleur, pers. comm. to E. Cooper, March 8, 2002). An MOU that would allow the appointment of some Canada

Customs investigators as officers under WAPPRIITA has been under negotiation (R. Charette, *in litt.* to E. Cooper, July 24, 2002). Environment Canada signed an MOU with the Department of Agriculture (now Agriculture and Agri-Food Canada) in 1991, which has not been altered since the passage of WAPPRIITA and the creation of the CFIA. It was originally planned that annexes addressing specific projects or area of activities would expand the MOU. However the resources have not been available to complete the work and design these annexes (Y. Lafleur, pers. comm. to E. Cooper, March 8, 2002). Environment Canada does not have an MOU with DFO to enforce WAPPRIITA (Y. Lafleur, pers. comm. to E. Cooper, March 8, 2002).

Environment Canada has signed MOUs with eight provincial or territorial jurisdictions: Saskatchewan (1997), Yukon (1997), Alberta (1998), Manitoba (1998), the Northwest Territories (1998), British Columbia (1998), Prince Edward Island (1999) and Nunavut (2003). These MOUs define the roles and responsibilities of the Canadian and provincial or territorial governments for implementing WAPPRIITA and provide guidelines for consultation, public awareness, information sharing, financial considerations, supplemental agreements, administration and annual review, reporting and (with the exception of those with Manitoba and Nunavut) conflict resolution. They specify that the provinces and territories will normally lead enforcement activities related to the export and interprovincial transport of species listed in their respective wildlife acts while Canada will normally lead activities related to the import of wildlife (Anon., 1997b, 1998a, 1998c, 1998d, 1998i, 1998j, 1999d and 2003m).

According to the *WAPPRIITA 2001 Annual Report* MOUs are being developed with most of the remaining provincial and territorial jurisdictions (Anon., 2003s). As of October 2003, no additional MOUs had been signed (T. Swerdfager, *in litt.* to E. Cooper, October 14, 2003).

A review of the successful prosecutions of CITES-related WAPPRIITA violations (see Appendix D) found numerous references to enforcement actions completed in co-operation with other federal departments (notably

Canada Customs), provincial and territorial authorities and foreign governments. There is no mention of any co-operative activities between Environment Canada and the RCMP. However the majority of cases related to unlawful imports and occurred at the Canadian border or international postal points. WAPPRIITA violations discovered by Canada Customs officers at these points would be passed directly to Environment Canada. These cases may suggest a lack of co-operation between Environment Canada and the RCMP, but that is not accurate. There have been joint operations when the activities under investigation were related to other criminal activities or when work needed to be done in other countries where RCMP officers were available (Y. Lafleur, pers. comm to E. Cooper, March 8, 2002).

Although the CFIA is not involved with CITES implementation there is an overlap of interests between the agency and Environment Canada. One particular issue that needs to be dealt with is the use of euthanasia to dispose of detained animals. CFIA inspectors may euthanize CITES-listed animals or destroy products because they do not have the appropriate health or phytosanitary certificates for compliance with CFIA import requirements. *R. v. Alicandro* (see conviction no. 44 in Appendix D) is an example. The live birds that were the subject of the prosecution were euthanized by the CFIA.

In many cases when CITES-listed species are detained, according to the Director of the Wildlife Enforcement Branch, the options are to destroy the animals or go through a long, complex process to house the specimens outside the country. Returning an animal to the country of origin or sending it to another country is difficult: CITES requirements must be met, as well as the costs of transportation and permits or certificates required by other departments. As a result the costs may be out of proportion with the importance of the specimens when the limited resources available to enforcement officers are considered (Y. Lafleur, pers. comm. to E. Cooper, March 8, 2002).

The Vancouver Regional Veterinarian reports that in general CFIA staff make an effort not to destroy CITES species that have been taken from the wild or have particular value (Dr. R.

Livingstone, *in litt.* to E. Cooper, March 8, 2002). CITES species have often been detained and quarantined at local zoos or aquariums. However the decision whether to destroy an animal is up to the individual because it is not covered by the original MOU between Environment Canada and the Department of Agriculture (Y. Lafleur, pers. comm. to E. Cooper, March 8, 2002).

In most cases euthanasia of CITES species is counter-intuitive to the conservation goals of CITES. Guidelines for the disposal of confiscated live animals (including euthanasia) are provided in CITES Resolution Conference 10.7 (Disposal of confiscated live specimens of species included in the Appendices).

### **Interagency Training**

It is apparent that effective and productive interagency co-operation on CITES enforcement necessitates that the staff of each department or agency has some level of knowledge of CITES and wildlife trade. Given the small number of Federal Game Officers, and the reliance on the assistance of other agencies (especially Canada Customs), interagency training should be a priority in Canada.

Basic training for entry-level Canada Customs officers is conducted at the Canada Customs College in Rigaud, Québec. Officers receive one seminar on CITES that is approximately four hours in duration (R. Charette, pers. comm. to E. Cooper, June 24, 2002). Despite recommendations to increase the training time on CITES (Hykle, 1988; Chalifour, 1996) and the passage of WAPPRIITA the time spent on CITES has remained the same constant.

Environment Canada's Office of Enforcement has been working with Canada Customs to develop a website that will provide a three-hour interactive training course on CITES enforcement for Canada Customs officers. The course provides basic CITES information, a review of the major taxonomic groups listed by the Convention, fraud detection and procedures for permit validation. The Canada Customs website has been developed in the three official languages of CITES (English, French and Spanish) and is available to other countries. A compact disk version is also available (R. Charette, pers. comm. to E. Cooper, March 27, 2002).

In addition Environment Canada's Office of Enforcement has provided training on the personal and household effects exemption [WAPTR section 15] and has distributed a chart explaining the application of these regulations (R. Charette, pers. comm. to E. Cooper, March 27, 2002) (see Appendix E).<sup>37</sup>

The Ontario Region publishes a short, biannual newsletter for distribution to Canada Customs officers and staff of other relevant government departments. The intent is to keep other government department officers up to date on CITES, permit-related issues, tips, prosecutions and answers to questions (A. White, *in litt.* to E. Cooper, April 25, 2002).

Much of the interagency training conducted in Canada is provided by regional Environment Canada enforcement staff. For example in 1998 the following regional training was provided across Canada:

- Atlantic Region: 5 training sessions given to Canada Customs officers (Anon., 1999e);
- Ontario Region: 22 training sessions to Canada Customs personnel at various Customs offices in the region (Anon., 2001p);

- Prairie and Northern Region: training provided to 107 Canada Customs officers, 4 RCMP officers, 10 Saskatchewan Conservation Officers, 2 USFWS officers and 2 U.S. Customs officers (B. Petrar, *in litt.* to E. Cooper, March 25, 2002) and
- Pacific and Yukon Region: training in Whitehorse, Yukon for Yukon territorial Conservation Officers, Parks Canada wardens, RCMP officers and Canada Customs officers, plus training for summer students assigned to Customs cruise ship terminals in Vancouver (Anon., 2001p).

Regional training has specific benefits: It promotes regional interagency co-operation and communication and develops links between individual officers, and the training syllabus can focus on regional issues and priorities. The risk attached to regionally focused efforts is that the training content and facilitation provided may not be consistent across Canada. Environment Canada has not provided regional enforcement officers with comprehensive educational materials for use in CITES training, nor have officers received instruction on training techniques.

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<sup>37</sup> This document makes no mention that the personal and household effects exemption applies only to imports from countries that do not require the prior grant of an import permit. This furthers concern that Environment Canada is treating this as a blanket exemption for all non-commercial CITES Appendix II items rather than the more narrow intent of the specific language.

## 7.0 CONCLUSIONS AND RECOMMENDATIONS

In 1975 Canada became one of the first countries to bring CITES into force. By now the country should not be merely meeting all of the requirements for executing the Convention; it should be doing so in a manner that sets an example for Parties that are still developing their own programmes.

For the most part the basic needs of the Convention are being met, and in some areas the Canadian government is doing an exemplary job of implementing CITES. However in other areas Canada's execution of CITES is weak.

In most cases the inadequacies in Canada's CITES programme can be traced to insufficient resources directed at administering and enforcing the convention. CITES does not appear to be a priority for the Canadian government as a whole or for Environment Canada, the department charged with ensuring that the Convention is effectively implemented.

### 7.1 Legislation

WAPPRIITA is a vast improvement over the EIPA for implementing CITES. It contains appropriate measures to prohibit trade contrary to CITES and enforce the Convention by creating an enforcement structure and providing substantial penalties. The legislation authorizes intergovernmental agreements for co-operation, and the legislation and regulations are easily accessible to the public on the Internet.

WAPPRIITA surpasses the threshold for domestic legislation to incorporate the non-self-executing provisions in CITES. The penalty and enforcement structure in WAPPRIITA provides a model approach that other Parties should be encouraged to follow.

TRAFFIC North America has no suggestions for changes to WAPPRIITA. Possible amendments to the WAPTR are discussed under the administration and enforcement topics that follow.

#### **Recommendation:**

1. Other Parties to CITES should consider WAPPRIITA as a model for developing or strengthening domestic legislation for implementing CITES.

### 7.2 Administration

Environment Canada's public planning documents make no mention of CITES implementation. Because detailed information on CITES implementation is not included in its planning documents, Environment Canada is not allowing the public to see where CITES implementation falls within the department's relative priorities.

#### **Management and Scientific Authorities**

Environment Canada has designated both a National CITES Management Authority and a National CITES Scientific Authority, but in recent years neither office has had a full complement of staff. Even with all positions filled, both of these offices are understaffed. This is particularly critical for the National CITES Management Authority, which does not have the human and financial resources to effectively carry out all of its responsibilities. As a result Canada is not meeting all of its obligations under CITES.

#### **Co-ordination of National CITES Implementation**

The restoration of national meetings of Canadian CITES authorities, the creation of the *CITES-Canada Monthly Newsletter*, the development of the Canadian CITES website and the possible reinstatement of training sessions for provincial and territorial authorities were all positive steps towards improving the co-ordination of national CITES implementation. Unfortunately the capability of the National CITES Management Authority to provide comprehensive training without additional resources is doubtful. Insufficient staff restricted the capability to provide training from 1995 to 2001, and no additional personnel have been added since.

#### **Development of Legislation, Regulations and Policies**

Environment Canada can be commended for the efforts that have been made to develop legislation and regulations for implementing CITES in Canada. However there is still a lack of clarity regarding governmental procedures and policies for the Convention. The planned revision of CITES procedures into one



document will be a good step towards resolving this concern. Currently Environment Canada has put in place only one CITES policy (on Bengali cats). The department does not have a basic overall policy for CITES implementation.

### ***Publication of the CITES Appendices and Amendments***

The *CITES Control List* is a very well designed document that meets a need for anyone involved in CITES administration or enforcement. Its inclusion on the Canadian CITES website has made it both readily available and more useful due to the search features provided.

Section 21(2) of WAPPRIITA requires the government of Canada to amend the WAPTR not later than ninety days after any change to a CITES appendix. Since WAPPRIITA came into force CITES Appendices I and II have been changed at CoP 10, CoP 11 and CoP 12. Environment Canada met the ninety day deadline for the changes made at CoP 11. However the department missed the deadline for the changes made at CoP 10 and CoP 12 by five months and over a year (respectively).

Environment Canada has had a better record of meeting the deadlines for amending the WAPTR in regard to CITES Appendix III listings. However, the department failed to publish the CITES Appendix III listing of bigleaf mahogany until more than two years after the species was listed by Mexico and in 2003/2004 it missed the deadlines for the Appendix III listings of an Ecuadorian sea cucumber and the almendro tree by six months and over a year (respectively).

Administration and enforcement of the CITES Appendices is a basic and critical requirement of CITES. Failure to meet the ninety day deadline to amend the WAPTR restricts the capability of Canadian authorities to meet this requirement, compromises the conservation goals of the Convention and violates Canadian law.

### ***Records of Trade***

It is not clear if data from Canadian permits are being compiled consistently, and a significant quantity of data from foreign permits is not making its way to the National CITES Management Authority. The

computerization of the permit issuance process will help to resolve the first issue, especially if the provinces and territories begin to issue permits on the same system (NEMISIS).

### ***CITES Annual Reports***

Canada's continued inability to meet the deadlines for submitting CITES annual reports, as required by CITES Article VIII(6)(b), means it is failing to fulfill a fundamental obligation of the Convention. This process has been hampered by the conversion of the permit database to NEMISIS. However Canada's history of submitting CITES reports was poor long before the conversion, and Environment Canada has failed to meet the Secretariat's extensions to Canada's submission deadlines. The country's continued failure to submit annual reports on time is detrimentally affecting international efforts to evaluate wildlife trade concerns.

A second and related concern is that Canada has not published a public CITES annual report since 1992, as required by CITES Article VIII(8).

### ***Implementation of Decisions and Resolutions***

Implementation of Decisions and Resolutions is integral to the effectiveness of CITES, however the Parties are not obligated to implement them under the Convention. It seems unlikely that the government of Canada would legislate on issues or situations that are not yet known and that could conceivably go against Canadian interests. Therefore Environment Canada's assertion that Decisions and Resolutions are best implemented by the Canadian government through changes in policy or procedure is a reasonable position.

Unfortunately there is a gap between Environment Canada's position and the department's actual capability to implement Decisions and Resolutions effectively and consistently. Environment Canada does not have a policy in place for implementing Decisions and Resolutions. The result has been poor application of some Decisions and Resolutions (for example Resolution Conference 10.10: Trade in Elephant Specimens and ETIS) and the public's inability to track Canada's implementation of Decisions and Resolutions.

### ***Findings Made Prior to Issuing Permits***

The National CITES Management Authority is meeting the Convention's requirements to complete certain findings before issuing permits. It ensures that an import permit has been issued before issuing export or re-export permits for Appendix I specimens, that Appendix I specimens will not be used for primarily commercial purposes and that specimens were legally acquired. Exporters are referred to the IATA Live Animals Regulations, and applicants for Appendix I import permits are required to provide information detailing the housing and care a specimen will receive in Canada.

The National CITES Scientific Authority is meeting the requirement to assess the capability of importers to provide appropriate husbandry for species. However the definition of appropriate husbandry is subjective and Environment Canada does not have a formal procedure for completing this finding.

Historically there has been a lack of clarity in the process by which non-detriment findings have been made in Canada. There was no standard procedure that the provinces, territories and DFO were required to follow, nor were there clear lines of national co-ordination. It was therefore difficult to determine whether the process was consistent across the country. This concern was exacerbated by the difficulty in reviewing the data for permits issued in Canada (due to the lack of current CITES reports) and the unavailability of non-detriment findings to the public. Environment Canada's plan to establish a national strategy for conducting non-detriment findings using the IUCN checklist should resolve these issues.

### ***Permit Issuance***

The National CITES Management Authority issues permits in a timely and efficient manner. It has maintained this level of service to the Canadian public despite an escalating number of permit requests created by the CITES listing of the American black bear and the decisions of Alberta, British Columbia (partially) and the CFIA to stop issuing permits.

### ***Recommendations***

2. Environment Canada should explicitly include CITES implementation as one of the

activities in the nature section of its public planning documents and articulate the CITES budget and programmatic activities in those documents.

3. The House of Commons Standing Committee on Environment and Sustainable Development should review the financial and human resources available for the administration of CITES in Canada. The review should include consultation with appropriate government departments, agencies and stakeholder groups and consider the resources presently allocated versus the resources needed to effectively administer and co-ordinate the implementation of CITES in Canada; the impact of past budget cuts and the impact of non-CITES-related responsibilities on the ability of staff to administer the Convention.
4. The National CITES Management Authority should institute a comprehensive training program for provincial and territorial staff involved in the issuance of CITES permits.
5. Environment Canada should develop a general policy for implementing CITES in Canada, expedite the revision of CITES procedures and ensure that all CITES policies and the revised CITES procedure document are available to the public.
6. Environment Canada must streamline the process for amending the WAPTR regarding changes made to the CITES Appendices and ensure that all required amendments are made within the 90-day period required by WAPPRIITA.
7. Environment Canada should annually conduct a review of trade records to ensure that the data from both Canadian and foreign permits are being collected and the data compiled for CITES annual reports meet the criteria set in CITES Article VIII(6)(b).
8. Environment Canada should facilitate access to NEMISIS by all federal, provincial and territorial CITES permit-issuing offices and provide the training and infrastructure to ensure that all Canadian CITES permits are issued via that database.
9. Environment Canada should work in partnership with Canada Customs to develop and implement an effective strategy to

ensure that all foreign permits are promptly forwarded to the National CITES Management Authority.

10. The government of Canada must meet its obligations to file CITES annual reports. Environment Canada needs to provide the National CITES Management Authority with the resources to
  - accelerate the completion of outstanding CITES annual reports and ensure that future reports are completed by the deadline of October 31 of the following year, as required by the Convention;
  - expedite the completion and publication of outstanding Canadian public CITES reports and ensure that in future these reports are published annually.
11. Environment Canada should develop and make public a policy and procedure for implementing CITES Decisions and Resolutions in Canada.
12. The National CITES Scientific Authority should ensure that a national strategy for conducting non-detriment findings using the IUCN checklist is established and that all non-detriment findings completed for Canadian species should be made available to the public.

### **7.3 Enforcement**

Canada has met the most basic requirements for enforcing the Convention. The means to enforce CITES and prohibit trade in specimens in violation of the Convention, as well as measures for penalizing violations, are in place. However CITES is not enforced with sufficient effectiveness or consistency across Canada.

#### ***Resources***

The greatest impediment to CITES enforcement in Canada is insufficient resources.

18 full-time Federal Game Officers enforcing CITES is woefully insufficient for a large, wealthy country like Canada which is actively engaged in wildlife trading. As a result Environment Canada is unable to meet all of its enforcement programme goals, and long-term priorities are not being fully delivered. This situation is likely to worsen in coming years. The volume of trade into Canada rises every

year, and CITES becomes more complex to enforce each time new species are included in the Convention. Furthermore the workloads of Federal Game Officers will increase with the passage and implementation of SARA, and the Wildlife Division is facing the loss of CAD1 million (USD0.7 million) in funding that has been provided as an annual loan from the Environmental Protection Branch since 2000.

The House of Commons Standing Committee on Environment and Sustainable Development has already criticized Environment Canada for providing insufficient resources for enforcement, and Environment Canada has recognized the need for more than 100 additional wildlife enforcement staff and more than CAD8 million (USD5.9 million) in additional annual funding.

Additionally, regional enforcement budgets may be used for non-enforcement priorities, further negatively affecting Environment Canada's ability to successfully implement CITES.

#### ***Monitoring Trade***

Environment Canada has focused its enforcement efforts primarily on monitoring the importation of wildlife and wildlife products into Canada.

Among the approximately 18 full-time Federal Game Officers enforcing CITES in Canada there is the equivalent of 8.3 officers responsible for conducting inspections and ensuring that trade is conducted in compliance with CITES. These officers are also responsible for providing training to other government agencies, conducting public outreach activities, answering queries from importers and brokers and so forth. If it was not for the assistance and co-operation of Canada Customs, CITES enforcement would not be possible in Canada.

Goods may also be inspected upon export, but this is much less common. Both Environment Canada and Canada Customs have limited resources for targeting and examining export shipments.

#### ***Targeting***

It is not possible for Canadian authorities to inspect every shipment that is imported to or exported from Canada. Therefore shipments must be assessed to determine the risk that

they might contain products of concern and high-risk imports are targeted for inspection. Canada Customs will target imports for CITES at the request of Environment Canada because the importer or exporter has a history of non-compliance or the commodities being imported are a high risk for CITES-listed species. Unfortunately whether the targeting process is used consistently and effectively by Environment Canada in all regions was not determined.

### ***Inspections***

Under WAPPRIITA Environment Canada's Federal Game Officers have broad powers to conduct inspections of wildlife. The most common enforcement activity conducted by these officers is the inspection of wildlife products entering Canada to ensure compliance with CITES.

Between fiscal years 1999–2000 and 2000–2001 the numbers of inspections recorded in three regions (Prairie and Northern, Ontario and Atlantic) dropped substantially as a result of the entry into force of the personal and household effects exemption [WAPTR section 15]. The number of inspections completed in the other regions (Pacific and Yukon, Québec) did not decline during this same period because the efforts of these regions were already focused on commercial wildlife shipments and international mail.

In-depth analysis of Canadian inspection results was not possible. Data are not recorded on the vast majority of imports of non-CITES wildlife and wildlife products, thus there are no baseline data available for calculation of inspection rates or inspection effectiveness within or among regions. Furthermore the data recorded by officers in different regions are not consistent, and detailed data on the percentage of inspections that resulted in CITES detentions and the numbers and types of products that were detained or seized were available for only the Pacific and Yukon Region.

The summaries produced by the Pacific and Yukon Region for detentions made by Canada Customs during the years 1995–2000 are very useful documents. It is unfortunate that similar documents are not available for later years and for all regions.

### ***Inspections and Biological Expertise***

The ability to accurately identify animals, plants and the myriad of different products derived from them is crucial for a country to mount an effective wildlife inspection programme. This capability needs to be developed and updated to match changes in wildlife trade and the CITES Appendices.

In recent years Environment Canada's Wildlife Enforcement Division has lost the majority of the regional officers who had biological training and expertise in taxonomy and morphology. These officers have been replaced with officers of limited experience. Environment Canada is losing the expertise to provide expert identification of wildlife and wildlife products and, as a result, its ability to effectively enforce CITES is diminishing.

### ***Wildlife Transport Requirements***

WAPTR section 9 requires that anyone who exports live animals or plants from Canada must do so in accordance with the IATA Live Animals Regulations and Guidelines for Transport and Preparation for Shipment of Live Wild Animals and Plants.

Other than distributing copies of the IATA regulations and the guidelines to regional offices Environment Canada has done little to enforce WAPTR section 9. Federal Game Officers do not receive training on the application of these documents, and, because of limited resources, few wildlife exports are inspected. No charges have ever been brought for violation of the regulation.

### ***Data Management***

NEMISIS is the electronic database used by Environment Canada for tracking and managing enforcement activities.

Between January 2002 and June 2003 TRAFFIC North America submitted requests to Environment Canada for information on regional enforcement activities, Canadian seizures of elephant ivory and the numbers of items detained or seized by each region from 1998 to 2001. None of these requests could be met via NEMISIS.

Data entry into NEMISIS is not consistent across Canada, and the database has not been designed to effectively meet the needs of wildlife enforcement or efficiently compile and

report wildlife trade data. NEMISIS is not meeting the data management needs of Environment Canada.

Wildlife Enforcement Branch headquarters has reported that they are attempting to correct the problems with NEMISIS, and a committee of regional and headquarters staff has been formed to establish the types and content of regular NEMISIS reports to be produced for distribution.

### ***Departmental Training***

Environment Canada has stated that it has a policy requiring all enforcement personnel to receive comprehensive training to assist them in carrying out their duties.

The department is providing its officers with good training on the WAPPRIITA legislation, self-defence and traditional policing techniques. However it is not providing comprehensive and consistent training on CITES, permit validation, the IATA Live Animals Regulations and species and product identification. Federal Game Officers are not receiving the training they need to meet their responsibilities for monitoring wildlife trade and providing advice and training to other government departments and agencies.

### ***Reference Materials***

Environment Canada has made a significant contribution to both Canadian and international enforcement of CITES through the development and distribution of the department's series of identification guides for CITES species and products.

### ***Personal and Household Effects Exemption***

Passage of the personal and household effects exemption [WAPTR section 15] has both benefited and impaired the enforcement of CITES in Canada.

The greatest benefit has been the reduction in workloads for some officers in the Wildlife Enforcement Division headquarters and certain regions. The exemption has resulted in a significant increase in the time available for these officers to spend on important cases.

At the same time WAPTR section 15 has reduced the interaction between Environment Canada and Canada Customs officers in some

areas, and it has created uncertainty about the nature of the products being imported under the exemption. As a result of the exemption CITES Appendix I specimens may be entering the country or commercial goods may be being 'laundered' as personal goods. Unfortunately these concerns cannot be resolved because there are no records kept on the nature or source of the items released under the exemption.

The greatest problem is in the way the personal and household effects exemption is being enforced. The exemption is meant to apply only to non-commercial CITES Appendix II imports from countries that do not require the prior grant of an export permit. However it is currently being treated as a blanket exemption for imports coming from any country. This is not how the exemption is written, and to treat it as such is a misapplication of both WAPPRIITA and CITES.

### ***Declaration Forms for Wildlife Imports***

Canada has not instituted the use of wildlife declaration forms despite the legal authorization to do so provided by section 19 of WAPPRIITA. As a result there is very little information available about Canadian wildlife trade that does not involve CITES species. This lack of data limits Environment Canada's ability to focus wildlife enforcement efforts where they are most productive and provide a baseline for measuring enforcement effectiveness and the impact of the personal and household effects exemption. The lack of data collection also prevents Canada from sharing information on the trade in non-CITES species which would be of great value to international efforts to implement the Convention.

### ***Designated Ports for Wildlife Imports***

Designated ports for wildlife imports would possibly benefit some regional efforts, but it is not clear whether they would significantly assist wildlife enforcement on a national scale. Designated ports would potentially allow the concentration of resources at these points, but Environment Canada does not currently have the resources available to dedicate to these locations. Furthermore it is not clear if commercial importers and exporters would receive more efficient service in processing shipments or if they would be subjected to

increased costs by having to route shipments through inconveniently located ports.

### ***Harmonized Commodity Description and Coding System***

The use of HS Codes has the potential to assist efforts towards compiling wildlife trade data and enforcing CITES in Canada. However the problems of inaccurate coding would need to be solved and HS Codes would need to be amended to target commodities of highest priority.

### ***Verification of CITES Permits***

The verification of CITES permits is a fundamental requirement for the effective enforcement of the Convention. CITES permits in Canada are commonly verified by Canada Customs officers, who receive minimal training on the Convention. Few wildlife exports are inspected, and there is evidence that a large proportion of foreign CITES permits that accompany wildlife imports are not correctly dealt with.

If Canada Customs is successful in eliminating the verification of paper permits from its activities the capability of Canada to implement CITES will be critically impacted given the limited number of Environment Canada Federal Game Officers available to assume this responsibility.

### ***Responding to Violations***

Environment Canada's response to WAPPRIITA violations has not been consistent across the country. The option to issue tickets for violations is available only in Manitoba, New Brunswick, Nova Scotia, Ontario, Prince Edward Island and Québec. Furthermore the record of prosecutions and convictions for WAPPRIITA violations does not seem to correspond to the patterns of wildlife trade into Canada. This may be symptomatic of the lack of sufficient resources available for CITES enforcement by Environment Canada. The Ontario Region, which has a significantly higher budget for wildlife enforcement than any other region, also produces half of the CITES-related convictions in Canada.

Environment Canada is not actively enforcing section 20 (on labelling) and (as noted previously) section 9 (wildlife transport requirements) of the WAPTR.

Environment Canada does not collect and distribute data on WAPPRIITA violations consistently and accurately. The different regions do not use the same definition of an investigation, and the data provided by the department for fiscal year 2000–2001 were incomplete (see also 'Data Management' above).

### ***Raising Public Awareness***

Environment Canada's Compliance Policy states that provision of thorough information, education and consultation with the public is the most effective way of ensuring they abide by the law. There is, however, no national plan for improving CITES awareness. Most awareness efforts have been achieved by regional officers and on an ad hoc basis. Nonetheless Environment Canada has made excellent efforts towards raising public awareness about CITES and wildlife trade issues by making a great deal of information available in publications and public displays and on its website. The websites for DFAIT, the CFIA and Canada Customs also refer to CITES. Both DFAIT and the CFIA publish and circulate brochures that provide information on WAPPRIITA and CITES.

Currently outreach is handled primarily by regional Federal Game Officers, and this takes them away from their primary responsibilities. The exception is in the Ontario Region, which has established a full-time public outreach position, thereby allowing officers to concentrate on enforcement activities.

### ***Interagency Co-operation***

Environment Canada has developed good working relationships with other government departments and agencies such as Canada Customs, CFIA, DFO, RCMP and the provincial and territorial authorities. The partnership with Canada Customs has been particularly effective. Many of the successful prosecutions of CITES-related WAPPRIITA violations were the result of enforcement actions completed in co-operation with other federal departments (notably Canada Customs), provincial and territorial authorities and foreign governments.

Environment Canada has signed an MOU with Canada Customs covering common issues and a specific MOU with the Canada Custom's

investigations section. Environment Canada has signed an MOU with the RCMP that defines the basis on which the parties will co-operate regarding WAPPRIITA enforcement.

Environment Canada does not have an MOU with DFO, and the 1991 MOU with the Department of Agriculture was established before the passage of WAPPRIITA and the creation of the CFIA. As a result CFIA inspectors may euthanize CITES-listed animals or plants because they do not have the appropriate health or phytosanitary certificates for compliance with CFIA import requirements. The destruction of living specimens should only be considered in consultation with the guidelines provided in CITES Resolution Conference 10.7 (Disposal of confiscated live specimens of species included in the Appendices).

Between 1997 and 2003 Environment Canada signed MOUs with five provinces and all three territories. As of May 2004 MOUs have still not been signed with Ontario, Quebec, Nova Scotia, New Brunswick or Newfoundland and Labrador.

### ***Interagency Training***

To date the CITES training provided to Canada Customs has been insufficient. This problem has been partially addressed through the on-line, interactive CITES training course that has been developed by Environment Canada and Canada Customs. Environment Canada has also provided training to Canada Customs staff on the personal and household effects exemption [WAPTR section 15].

Environment Canada's regional enforcement staff provide much of the interagency training conducted in Canada. This promotes regional interagency co-operation and communication and develops links between individual officers, and the training syllabus can focus on regional issues and priorities. However regional enforcement officers have not been provided with comprehensive resource materials for use in CITES training or instruction on training techniques. As a result the CITES training provided to other agencies by Environment Canada is not consistent across the country.

### ***Recommendations***

13. Environment Canada should ensure that the CAD1 million (USD0.7 million) loan for

wildlife enforcement from the Environmental Protection Branch is continued or replaced from another source

14. The House of Commons Standing Committee on Environment and Sustainable Development should review the financial and human resources available for the enforcement of CITES in Canada. The review should include a consultation exercise with appropriate government departments, agencies and stakeholder groups and consider the following:
  - the resources presently allocated versus the resources needed to effectively enforce WAPPRIITA,
  - the impact of past budget cuts,
  - the impact of non-CITES-related responsibilities on the ability of staff to enforce WAPPRIITA as it applies to CITES and
  - the financial and human resource needs for wildlife enforcement as documented in Environment Canada's National Enforcement Business Plan.
15. Environment Canada should ensure that regional enforcement budgets are not cut to fund non-enforcement priorities and that regional enforcement offices receive their total annual budget.
16. Environment Canada and Canada Customs should work together to expand their inspection efforts to include a greater emphasis on wildlife exports.
17. Environment Canada should work with Canada Customs to ensure that the process for targeting high-risk wildlife shipments is used to maximum effectiveness across Canada.
18. Environment Canada should prepare and distribute annual reports that summarizes the data compiled from CITES inspections in each region, including the numbers, types and origins of species and products examined, detained or seized.
19. Environment Canada should develop and institute comprehensive training programmes on CITES and on the biological and taxonomic expertise required for the identification of wildlife

- products. The former should be mandatory for all officers involved with CITES enforcement, and the latter should be required for all officers actively involved in conducting inspections and making species identifications.
20. Environment Canada should provide officers with training on the wildlife transport requirements provided by the IATA Live Animals Regulations and actively enforce section 9 of the WAPTR.
  21. Environment Canada should address the deficiencies of NEMISIS:
    - A review of the design and performance of the database should be conducted, and NEMISIS should be modified to better meet the needs of wildlife enforcement. Consideration should be given to creating a stand-alone WAPPRIITA database.
    - A review of the process by which data are entered into NEMISIS should be conducted, and a strategy should be implemented that ensures complete and consistent data entry and easy, accurate retrieval of these data.
  22. Environment Canada should prepare and distribute annual reports that clearly explain and summarize the enforcement activities carried out in each region.
  23. Environment Canada should implement the personal and household effects exemption [WAPTR section 15] as it is written. Specifically the exemption should be applied only to goods that come from countries that do not require the prior grant of an export permit for those goods. Officers should be supplied with a routinely updated list of the countries to which the exemption applies.
  24. Environment Canada should institute the use of wildlife declaration forms for Canada as per section 19 of WAPPRIITA:
    - A programme for instituting the use of wildlife declaration forms should be designed and implemented in collaboration with the Canada Customs.
    - The WAPTR should be amended to require the completion of wildlife declaration forms for wildlife imports and exports.
  - A procedure should be implemented to ensure that the data collected through wildlife declaration forms are accurately entered into NEMISIS.
  - Wildlife trade data collected via wildlife declaration forms should be made publicly available.
  25. Environment Canada and Canada Customs should complete a feasibility study for establishing designated ports for commercial wildlife shipments. The study should include discussion and recommendations on the needs for and effectiveness of designated ports to improve the effectiveness of CITES enforcement in Canada, and it should include consideration of the human resources and equipment necessary for adequately screening shipments for compliance with CITES.
  26. Environment Canada should conduct a study, in conjunction with Canada Customs, into the use of HS Codes to assist CITES enforcement efforts. The study should include a discussion of the relative value of HS Codes and make recommendations for resolving the problems of inaccurate coding and amending the codes to target commodities of highest priority.
  27. The government Canada must ensure that either Canada Customs continues to verify CITES permits, or that Environment Canada is provided with the resources required to effectively assume all responsibility for this activity.
  28. Environment Canada should ensure that Canada Customs officers receive adequate training on permit verification and handling.
  29. Environment Canada should actively pursue agreements with Alberta, British Columbia, Newfoundland and Labrador, Saskatchewan, Nunavut, Yukon and Northwest Territories to enable the option to issue tickets for WAPPRIITA violations.
  30. Environment Canada should conduct a review of Canada's record of responding to WAPPRIITA violations and ensure that these responses are consistent across the country.



31. Environment Canada should actively enforce WAPTR section 20 (on labelling) and in so doing establish the viability of the regulation through case precedents.
32. Environment Canada should establish full-time public outreach positions in each region (except Ontario, which already has such a position) with responsibility for raising public awareness of federal wildlife protection legislation.
33. Environment Canada should establish the following interagency agreements:
  - an MOU with the CFIA that clearly defines the basis on which the two bodies co-operate, with the goal of improving the effectiveness of CITES enforcement in Canada and ensuring that live specimens are disposed-of in accordance with CITES Resolution Conference 10.7.
  - an MOU with DFO that establishes a closer working relationship and defines the basis on which the two departments could assist each other's enforcement efforts and
- completion of the outstanding MOUs on the implementation of CITES and the enforcement of WAPPRIITA with Ontario, Québec, Nova Scotia, New Brunswick and Newfoundland and Labrador. At the very least these MOUs should outline the roles and responsibilities of each party, as has been established with Alberta, British Columbia, Manitoba, Saskatchewan, Prince Edward Island, Nunavut, Yukon and the Northwest Territories.
34. Environment Canada should ensure that the regional CITES training it provides to other government agencies and departments is consistent in content and presentation across the country.

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# APPENDIX A — CITES BASICS

## Overview

CITES monitors, regulates and/or prohibits the international trade in specimens of species of animals and plants through an international permitting system. Countries grant permits only if particular conditions are met, and these permits must be presented before specimens of species subject to the Convention may cross international borders. The level of trade control exerted by CITES depends on the level of threat from trade faced by the species. (For detailed information on CITES see Wijnstekers [2001].)

## CITES Appendices

Species of concern are listed in three Appendices, each of which sets different restrictions on the international trade in those species:

### **Appendix I**

Species listed in Appendix I are those that are threatened with extinction. Trade in Appendix I species is permitted only in very limited circumstances. Commercial trade in Appendix I species is generally prohibited, although artificially propagated Appendix I plants or captive-bred Appendix I animals may be traded according to Appendix II rules. Both an import permit from the importing country and an export permit or re-export permit from the country of export are required for trade in Appendix I specimens (Anon., 1973). There are more than 800 species listed on Appendix I (Anon., 2000a).

### **Appendix II**

Species that are not currently threatened with extinction but could become so if trade is not regulated are listed in Appendix II. Species may also be listed on Appendix II because they cannot easily be distinguished from other species listed on Appendix I or II. Trade in Appendix II specimens requires a CITES export permit issued by the exporting country, which is only to be granted after the exporting country has made a number of determinations, including a finding that the export will not be detrimental to the survival of the species. In the event of re-export a CITES re-export permit is required (Anon., 1973). The majority of species listed by CITES are in Appendix II (Anon., 2000a).

### **Appendix III**

Individual countries may list species in

Appendix III when those countries wish to exert control over the export of certain native species. If an Appendix III specimen originates from the listing nation a CITES export permit from that nation is required for export. If the specimen originates from another country the shipment requires a certificate of origin. A certificate of origin or re-exportation must also accompany shipments of Appendix III specimens from non-listing nations (Anon., 1973). There are more than 200 species listed on Appendix III (Anon., 2000a).

## CITES Organization

### **Secretariat**

CITES is administered by a Secretariat based in Geneva, Switzerland. The Secretariat's essential role is to help member nations to implement the Convention. CITES Article XII outlines the Secretariat's functions (Anon., 1973).

### **Animals Committee and Plants Committee**

The purpose of these committees is to provide advice on scientific issues in the trade in animals or plants, thereby assisting with the decision-making process about these species (Anon., 2003q).

### **Nomenclature Committee**

The Nomenclature Committee recommends standard names for animals and plants and reviews the CITES Appendices and other documents to ensure the correct use of zoological and botanical nomenclature. The committee verifies that changes in the names of species do not change the extent of protection for those species (Anon., 2003q).

### **Standing Committee**

The Standing Committee is composed of Parties representing six geographical regions: Africa, Asia, Central America and the Caribbean, Europe, North America and South America. The committee also includes representatives from the Depository Government (Switzerland), the Party that hosted the last CoP and the Party hosting the next CoP. The purpose of the Standing Committee is to co-ordinate the implementation of the Convention between CoPs and complete tasks assigned to it during the CoP (Anon., 2003q).

## **The Parties**

As of December 30, 2003 164 countries have entered CITES into force. These countries are referred to as the Parties (Anon., 2003q). Collectively they are the Conference of the Parties.

## **Meeting of the Conference of the Parties (CoP)**

The Convention requires the Secretariat to call a CoP every two years. CoPs are attended by delegations from each Party. At these meetings the Parties may amend the Appendices (by two-thirds majority if more than half of the Parties are present) and make recommendations to improve the implementation of the Convention (Anon., 1973). These recommendations take the form of Decisions and Resolutions intended to clarify the interpretations of the Convention text.

### **Decisions**

Decisions of a CoP are generally short-term instructions to committees, working groups or the Secretariat (Anon., 2003g).

### **Resolutions**

Resolutions of a CoP are long-term Decisions, terms of reference, recommendations or interpretations of the Convention that are put into practice to improve the implementation of the Convention (Anon., 2003g).

## **Introduction from the Sea**

The term introduction from the sea refers to a situation where a species is collected in a marine environment that is not within the jurisdiction of a state (country). In that case an introduction from the sea certificate is issued by the CITES Management Authority of the collecting state. This certificate must then be presented to obtain the necessary permit(s) for export (Anon., 1999b).

## **National Authorities**

Each Party is required to designate at least one at least one Management Authority and one Scientific Authority.

### **Management Authority**

The primary function of the Management Authority is to issue import, export and re-export permits and certificates according to the rules of CITES (Anon., 1973). To issue these permits the Management Authority must make a number of findings, as well as

consider recommendations made by the Scientific Authority.

In addition to issuing permits Management Authorities are responsible for managing the custody and return to the country of origin of confiscated living specimens and designating rescue centres, if necessary (Anon., 1973).

Management Authorities issue certificates of captive breeding when they are satisfied that an animal specimen was bred in captivity or a plant specimen was artificially propagated. The Management Authority is also responsible for registering scientific institutions. Registered scientific institutions can move CITES specimens across borders with less paperwork, but only for non-commercial loans and donations or exchanges of herbarium specimens, other preserved, dried or embedded museum specimens and live plant materials labelled by a Management Authority (Anon., 1973).

### **Scientific Authority**

The primary function of the Scientific Authority is to take into account species data and advise the Management Authority regarding the issuance of permits. The Scientific Authority is also responsible for advising the Management Authority whether a proposed recipient of a living Appendix I specimen is suitably equipped to house and care for it (Anon., 1973).

## **Range State**

The term range refers to the geographical distribution of a species or group (Lincoln et al, 1998). Therefore a range state for a species is a country that encompasses all or part of the range of that species.

## **Trade**

CITES Article I defines trade as export, re-export (export of a specimen that has previously been imported), import and introduction from the sea (see below). The term trade refers to any export, import or introduction from the sea of a specimen, whether it is for commercial purposes or not.

### **Commercial Trade**

Trade is considered 'commercial' if its purpose is to obtain economic gain through resale, exchange or other economic benefit (Anon., 1985d). This is contrasted with trade for non-commercial 'personal' use. Appendix B

## APPENDIX B — WAPPRIITA

1992, c. 52

[W.8.5]

An Act respecting the protection of certain species of wild animals and plants and the regulation of international and interprovincial trade in those species.

[Assented to 17th December, 1992]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

### SHORT TITLE

Short title

1. This Act may be cited as the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act.

### INTERPRETATION

Definitions

2. In this Act,

“animal” means any specimen, whether living or dead, of any species of animals that is listed as “fauna” in an appendix to the Convention, and includes any egg, sperm, tissue culture or embryo of any such animal;

“Convention” means the Convention on international trade in endangered species of wild fauna and flora, made on March 3, 1973 in Washington, D.C., United States and ratified by Canada on April 10, 1975, as amended from time to time, to the extent that the amendment is binding on Canada;

“conveyance” means any vehicle, aircraft or water-borne craft or any other contrivance that is used to move persons or goods;

“distribute” includes sell;

“Minister” means the Minister of the Environment;

“officer” means a person, or a person who belongs to a class of persons, designated pursuant to section 12;

“plant” means any specimen, whether living or dead, of any species of plant that is listed as “flora” in an appendix to the Convention, and includes any seed, spore, pollen or tissue culture of any such plant;

“prescribed” means prescribed by regulation;

“transport” includes send.

### BINDING HER MAJESTY

Binding on Her Majesty

3. This Act is binding on Her Majesty in right of Canada or a province.

### PURPOSE

Purpose

4. The purpose of this Act is to protect certain species of animals and plants, particularly by implementing the Convention and regulating international and interprovincial trade in animals and plants.

### AGREEMENTS

Federal-provincial agreements

5. The Minister may enter into an agreement with the government of any province to provide for the cooperative management and administration of this Act and to avoid conflict between, and duplication in, federal and provincial regulatory activity.

### PROHIBITIONS

Importation

6. (1) No person shall import into Canada any animal or plant that was taken, or any animal or plant, or any part or derivative of an animal or plant, that was possessed, distributed or transported in contravention of any law of any foreign state.

Importation and exportation

- (2) Subject to the regulations, no person shall, except under and in accordance with a permit issued pursuant to subsection 10(1), import into Canada or export from Canada any animal or plant, or any part or derivative of an animal or plant.

Interprovincial transport

- (3) Subject to the regulations, no person shall, except under and in accordance with a permit issued pursuant to subsection 10(1), transport from one province to another province any animal or plant, or any part or derivative of an animal or plant.

#### Transport requiring provincial authorization

7. (1) Where the transportation out of a province of an animal or plant, or any part or derivative of an animal or plant, is permitted by the province only if the person who transports it holds a permit issued by a competent authority in that province, no person shall, except under and in accordance with such a permit, transport any animal, plant or part or derivative of an animal or plant from that province to another province.

#### Provincial prohibitions

- (2) No person shall transport from a province to another province any animal or plant, or any part or derivative of an animal or plant, where the animal or plant was taken, or the animal, plant, part or derivative was possessed, distributed or transported, in contravention of any provincial Act or regulation.

#### Possession

8. Subject to the regulations, no person shall knowingly possess an animal or plant, or any part or derivative of an animal or plant,
  - (a) that has been imported or transported in contravention of this Act;
  - (b) for the purpose of transporting it from one province to another province in contravention of this Act or exporting it from Canada in contravention of this Act; or
  - (c) for the purpose of distributing or offering to distribute it if the animal or plant, or the animal or plant from which the part or derivative comes, is listed in Appendix I to the Convention.

#### Documents

9. Every person who imports into Canada, exports from Canada or transports from one province to another province an animal or plant, or any part or derivative of an animal or plant, shall keep in Canada, in the prescribed manner and for the prescribed period, any documents that are required to be kept by the regulations.

## FEDERAL PERMITS

#### Issuance

10. (1) The Minister may, on application and on such terms and conditions as the Minister thinks fit, issue a permit authorizing the importation, exportation or interprovincial transportation of an animal or plant, or any part or derivative of an animal or plant.

#### Application for permit

- (2) An application shall be made in the form and on the terms and conditions that the Minister requires, contain all the information that the Minister requires and be accompanied by the prescribed fees.

#### Revocation or suspension

- (3) The Minister may, after giving a person who holds a permit an opportunity to make representations, revoke or suspend the permit for contravention of any term or condition of the permit.

#### Misrepresentation

11. No person shall knowingly furnish any false or misleading information or make any misrepresentation with respect to any matter in this Act.

## ADMINISTRATION

#### Officers

12. (1) The Minister may designate such persons or classes of persons as the Minister considers necessary to act as officers for the purposes of this Act or any provision thereof, and where the person to be designated is an employee, or the class of persons to be designated consists of employees, of the government of a province, the Minister shall only designate that person or class with the agreement of that government.

#### Powers of peace officers

- (2) Officers designated under subsection (1) have, for the purposes of this Act, all the powers of a peace officer, but the Minister may limit, in any manner the Minister considers appropriate, the powers that certain officers may exercise for the purposes of this Act and, where those

powers are so limited, they shall be specified in the certificate referred to in subsection (3).

#### Certificate to be shown

(3) On entering any place under this Act, an officer shall, on request, show the person in charge or the occupant of the place a certificate, in the form approved by the Minister, certifying that the officer has been designated pursuant to this section.

#### Obstruction

(4) No person shall knowingly make any false or misleading statement either orally or in writing to, or obstruct or hinder, an officer who is carrying out duties or functions under this Act or the regulations.

#### Detention

13. Any thing that has been imported into or is about to be exported from Canada, or has been transported, or is about to be transported, from a province to another province, may be detained by an officer until the officer is satisfied that the thing has been dealt with in accordance with this Act and the regulations.

#### Inspections

14. (1) For the purpose of ensuring compliance with this Act and the regulations, an officer may at any reasonable time enter and inspect any place in which the officer believes, on reasonable grounds, there is any thing to which this Act applies, or there are any documents relating to the administration of this Act or the regulations, and the officer may
- (a) open or cause to be opened any container that the officer believes, on reasonable grounds, contains such a thing;
  - (b) inspect any such thing and take samples free of charge;
  - (c) require any person to produce for inspection or copying, in whole or in part, any document that the officer believes, on reasonable grounds, contains any information relevant to the administration of this Act or the regulations; and

(d) seize any thing by means of or in relation to which the officer believes, on reasonable grounds, this Act or the regulations have been contravened or that the officer believes, on reasonable grounds, will afford evidence of a contravention of this Act or the regulations.

#### Conveyance

(2) For the purpose of carrying out an inspection under subsection (1), an officer may stop a conveyance or direct that it be moved to a place where the inspection may be carried out.

#### Dwelling-place

(3) An officer may not enter a dwelling-place except with the consent of the occupant or under the authority of a warrant issued under subsection (4).

#### Warrant

(4) Where on ex parte application a justice of the peace is satisfied by information on oath that

(a) the conditions for entry described in subsection (1) exist in relation to a dwelling-place,

(b) entry to the dwelling-place is necessary for any purpose in relation to the administration of this Act or the regulations, and

(c) entry to the dwelling-place has been refused or there are reasonable grounds for believing that entry will be refused,

the justice may issue a warrant authorizing an officer to enter the dwelling-place subject to any conditions that may be specified in the warrant.

#### Search without warrant

15. For the purpose of ensuring compliance with this Act and the regulations, an officer may exercise the powers of search and seizure provided for in section 487 of the Criminal Code without a warrant if the conditions for obtaining a warrant exist but, by reason of exigent circumstances, it would not be feasible to obtain a warrant.

#### Custody of things seized

16. (1) An officer who detains or seizes a thing under section 13, 14 or 15 or under a warrant issued under the *Criminal Code* may retain custody of the thing or transfer custody of it to such person as the officer may designate.

#### Perishable things

- (2) Where a thing referred to in subsection (1) is perishable, the officer may dispose of it or destroy it and any proceeds realized from its disposition shall be paid to the lawful owner of the thing unless proceedings under this Act are instituted within ninety days after the detention or seizure.

#### Abandonment

17. The owner, importer or exporter of any thing detained or seized under this Act may abandon the thing to Her Majesty in right of Canada.

#### Notice to remove

18. (1) Where an officer believes, on reasonable grounds, that any thing is being or has been imported into Canada in contravention of this Act or the regulations, the officer may, whether or not the thing is detained or seized, require, by delivering a notice in the prescribed form and manner, that it be removed from Canada in accordance with the regulations.

#### Deadline for removal

- (2) Where a notice to remove a thing is delivered, the removal shall be carried out within the period specified in the notice or, if no such period is specified in the notice, within ninety days after its delivery.

#### Forfeiture

19. (1) Where a person is convicted of an offence under this Act, the convicting court may, in addition to any punishment imposed, order that any thing detained or seized, or any proceeds realized from its disposition, be forfeited to Her Majesty.

#### Forfeiture on consent

- (2) Where the owner of a thing detained or seized under this Act consents to its forfeiture, it is thereupon forfeited to Her Majesty.

#### Automatic forfeiture

- (3) Where a thing is detained or seized under this Act, it, or the proceeds realized from its disposition, is forfeited to Her Majesty

(a) in the case of a thing that has been detained under section 13, if the thing has not been removed within the period prescribed by the regulations;

(b) in the case of a thing that has been seized, if ownership of the thing cannot be ascertained within thirty days after the seizure; and

(c) in the case of a thing that is the subject of a notice under section 18, if the thing has not been removed from Canada in compliance with that section.

#### Return of thing where no forfeiture ordered

- (4) Where the convicting court does not order the forfeiture of a detained or seized thing under subsection (1), the thing, or the proceeds realized from its disposition, shall be returned to the lawful owner of the thing or the person in whose possession the thing was at the time of the detention or seizure.

#### Exception

- (5) Where a person is convicted of an offence under this Act, any thing seized or any proceeds realized from its disposition, may be retained until the fine is paid or the thing may be sold under execution in satisfaction of the fine and the proceeds applied, in whole or in part, in payment of the fine.

#### Disposition by Minister

20. (1) Where a sample has been taken pursuant to paragraph 14(1)(b) or a thing has been forfeited or abandoned under this Act, it shall be dealt with and disposed of as the Minister may direct.

#### Costs

- (2) The importer or exporter, as the case may be, and the owner of any thing detained, seized, abandoned or forfeited under this Act are jointly and severally liable for all the costs of inspection, removal,

detention, seizure, abandonment, forfeiture or disposition incurred by Her Majesty that exceed the proceeds realized from the disposition of the thing under this Act.

#### Regulations

21. (1) The Governor in Council may make regulations for carrying out the purposes of this Act, including regulations

(a) respecting the issuance, renewal, revocation and suspension of permits and the circumstances in which persons may be exempted from holding such permits;

(b) respecting the exemption of animals and plants, and parts and derivatives of animals and plants, from the operation of any provision of this Act;

(c) amending the definitions “animal” and “plant”

(i) for the purposes of subsection 6(1),

(ii) for the purposes of subsection 6(2),

(iii) for the purposes of subsection 6(3),

(A) in order to protect species that are subject to the legislative authority of Parliament, or

(B) at the request of the minister who is responsible for the protection of wild animal or plant species of the government of the province into which the animal or plant is to be transported, where that minister is of the opinion that the transport would be harmful to the environment of that province, and

(iv) for the purposes of section 7, in order to protect species of animals and plants in a province, other than those species that are subject to the legislative authority of Parliament, at the request of the minister who is responsible for the protection of wild animal or plant species of the government of the province;

(d) specifying the places and times at which, and the manner in which, animals and plants, classes of animals and plants and parts and derivatives of animals and plants may be imported into Canada and exported from Canada;

(e) respecting the marking of animals and plants, and parts and derivatives of animals and plants, and the packaging for animals, plants and parts and derivatives of animals and plants for importation into or exportation from Canada or for transportation from one province to another province;

(f) prescribing the documents to be kept by persons mentioned in section 9 and the manner of keeping the documents and the period for which they are to be kept;

(g) specifying the terms and conditions under which animals and plants, and parts and derivatives of animals and plants, are to be removed from Canada under section 18;

(h) prescribing the manner in which the proceeds resulting from the payment of fines or the execution of orders under this Act shall be distributed;

(i) prescribing the fees or charges to be paid in connection with the administration of this Act and the terms and conditions of paying such fees and charges; and

(j) generally to implement the Convention.

#### Idem

(2) The Governor in Council shall make regulations specifying the animals and plants that are listed as “fauna” and “flora”, respectively, in an appendix to the Convention and shall, not later than ninety days after any change to a list in an appendix to the Convention, amend the regulations to reflect that change.

#### OFFENCE AND PUNISHMENT

##### Offence and punishment

22. (1) Every person who contravenes a provision of this Act or the regulations

(a) is guilty of an offence punishable on summary conviction and is liable

(i) in the case of a person that is a corporation, to a fine not exceeding fifty thousand dollars, and



(ii) in the case of a person other than a person referred to in subparagraph (i), to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding six months, or to both; or

(b) is guilty of an indictable offence and is liable

(i) in the case of a person that is a corporation, to a fine not exceeding three hundred thousand dollars, and

(ii) in the case of a person other than a person referred to in subparagraph (i), to a fine not exceeding one hundred and fifty thousand dollars or to imprisonment for a term not exceeding five years, or to both.

#### Subsequent offences

(2) Where a person is convicted of an offence under this Act a second or subsequent time, the amount of the fine for the subsequent offence may, notwithstanding subsection (1), be double the amount set out in that subsection.

#### Fines cumulation

(3) Notwithstanding subsection (1), any fine imposed on a conviction for an offence involving more than one animal or plant, or part or derivative of an animal or plant, may be computed in respect of each animal, plant, part or derivative as though it had been the subject of a separate complaint or information and the fine imposed shall then be the sum payable in the aggregate as a result of that computation.

#### Continuing offence

(4) Where an offence under this Act is committed or continued on more than one day, it shall be deemed to be a separate offence for each day on which the offence is committed or continued.

#### Additional fine

(5) Where a person has been convicted of an offence under this Act and the court is satisfied that as a result of the commission of the offence monetary benefits accrued to the person, the court may order the person to pay, notwithstanding the maximum

amount of any fine that may otherwise be imposed under this Act, an additional fine in an amount equal to the court's estimation of the amount of those monetary benefits.

#### Orders of court

(6) Where a person is convicted of an offence under this Act, in addition to any punishment imposed, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order containing any one or more of the following prohibitions, directions or requirements:

(a) prohibiting the person from doing any act or engaging in any activity that could, in the opinion of the court, result in the continuation or repetition of the offence;

(b) directing the person to take any action the court considers appropriate to remedy or avoid any harm to any animal or plant to which any provision of this Act applies that resulted or may result from the commission of the offence;

(c) directing the person to publish, in any manner the court considers appropriate, the facts relating to the commission of the offence;

(d) directing the person to pay the Minister or the government of a province an amount of money as compensation, in whole or in part, for the cost of any remedial or preventive action taken by or caused to be taken on behalf of the Minister or that government as a result of the commission of the offence;

(e) directing the person to perform community service in accordance with any reasonable conditions that may be specified in the order;

(f) directing the person to post a bond or pay into court an amount of money the court considers appropriate for the purpose of ensuring compliance with any prohibition, direction or requirement mentioned in this subsection;

(g) directing the person to submit to the Minister, on application by the Minister within three years after the date of the conviction, any information respecting

the activities of the person that the court considers appropriate in the circumstances; and

(h) requiring the person to comply with any other conditions that the court considers appropriate for securing the person's good conduct and for preventing the person from repeating the offence or committing other offences under this Act.

#### Suspended sentence

(7) Where a person is convicted of an offence under this Act and the court suspends the passing of sentence pursuant to paragraph 737(1)(a) of the *Criminal Code*, the court may, in addition to any probation order made under that paragraph, make an order directing the person to comply with any prohibition, direction or requirement mentioned in subsection (6).

#### Imposition of sentence

(8) Where a person whose sentence has been suspended fails to comply with an order made under subsection (7) or is convicted, within three years after the day on which the order was made, of another offence under this Act, the court may, on the application of the prosecution, impose any sentence that could have been imposed if the passing of sentence had not been suspended.

#### Limitation period

(9) Proceedings by way of summary conviction in respect of an offence under this Act may be instituted at any time within, but not later than, two years after the day on which the Minister became aware of the subject-matter of the proceedings.

#### Minister's certificate

(10) A document purporting to have been issued by the Minister, certifying the day on which the Minister became aware of the subject-matter of any proceedings, shall be received in evidence and, in the absence of any evidence to the contrary, shall be considered as proof of that fact without proof of the signature or the official character of the person appearing to have signed it.

#### Private prosecutions

(11) Any person who has attained the age of majority may, where the Attorney General of Canada does not intervene, institute proceedings to which this Act applies.

### TICKETABLE OFFENCES

#### Procedure

23. (1) In addition to the procedures set out in the *Criminal Code* for commencing a proceeding, proceedings in respect of any prescribed offence may be commenced by an officer

(a) completing a ticket that consists of a summons portion and an information portion;

(b) delivering the summons portion of the ticket to the accused or mailing it to the accused at the accused's latest known address; and

(c) filing the information portion of the ticket with a court of competent jurisdiction before or as soon as practicable after the summons portion has been delivered or mailed.

#### Content of ticket

(2) The summons and information portions of a ticket shall

(a) set out a description of the offence and the time and place of its alleged commission;

(b) include a statement, signed by the officer who completes the ticket, that the officer has reasonable grounds to believe that the accused committed the offence;

(c) set out the amount of the prescribed fine for the offence and the manner in which and period within which it may be paid;

(d) include a statement that if the accused pays the fine within the period set out in the ticket, a conviction will be entered and recorded against the accused; and

(e) include a statement that if the accused wishes to plead not guilty or for any other reason fails to pay the fine within the period set out in the ticket, the accused must appear in the court and at the time set out in the ticket.

#### Notice of forfeiture

(3) Where any thing is seized under this Act and proceedings relating to the thing are commenced by way of the ticketing procedure described in subsection (1), the officer who completes the ticket shall give written notice to the accused that if the accused pays the prescribed fine within the period set out in the ticket, the thing, or any proceeds realized from its disposition, shall thereupon be forfeited to Her Majesty.

#### Consequences of payment

(4) Where an accused to whom the summons portion of a ticket is delivered or mailed pays the prescribed fine within the period set out in the ticket,

(a) the payment constitutes a plea of guilty to the offence described in the ticket and a conviction shall be entered against the accused and no further action shall be taken against the accused in respect of that offence; and

(b) any thing seized from the accused under this Act relating to the offence described in the ticket, or any proceeds realized from its disposition, are forfeited to Her Majesty and may be disposed of as the Minister directs.

#### Regulations

(5) The Governor in Council may make regulations prescribing

(a) offences under this Act to which this section applies and the manner in which those offences may be described in tickets; and

(b) the amount of the fine for a prescribed offence, which amount shall not exceed one thousand dollars.

#### GENERAL

#### Officers, etc., of corporations

24. Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to or acquiesced or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence,

whether or not the corporation has been prosecuted or convicted.

#### Offences by employees or agents

25. In any prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused, whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without the knowledge or consent of the accused and that the accused exercised all due diligence to prevent its commission.

#### Venue

26. A prosecution for an offence under this Act may be instituted, heard and determined in the place where the offence was committed or the subject-matter of the prosecution arose, where the accused was apprehended or where the accused happens to be, or is carrying on business.

#### Unpaid fees or charges

27. Where any fee or charge imposed under this Act is unpaid, the fee or charge, as the case may be, may be recovered from the person on whom it was imposed as a debt due to Her Majesty.

#### Report to Parliament

28. The Minister shall annually prepare a report with respect to the administration of this Act during the preceding calendar year and shall cause a copy of the report to be laid before each House of Parliament on any of the first fifteen days that the House is sitting after its completion.

#### REPEAL

29. [Repeal]

#### COMING INTO FORCE

#### Coming into force

\*30. This Act or any provision thereof shall come into force on a day or days to be fixed by order of the Governor in Council.

*\*Note: the Act entered into force on May 14, 1996"*

## APPENDIX C — WAPTR

### REGULATIONS RESPECTING THE PROTECTION OF CERTAIN SPECIES OF WILD ANIMALS AND WILD PLANTS AND THE REGULATION OF INTERNATIONAL AND INTERPROVINCIAL TRADE IN THOSE SPECIES

#### SHORT TITLE

1. These Regulations may be cited as the Wild Animal and Plant Trade Regulations.

#### INTERPRETATION

2. In these Regulations, “Act” means the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act;

“artificially propagated” means grown from seeds, spores, pollens, tissue culture or other propagules under controlled conditions;

“bred in captivity” means

(a) in the case of sexual reproduction, born or otherwise produced in a controlled environment of parents that mated or whose gametes were otherwise transmitted under controlled conditions, and

(b) in the case of asexual reproduction, produced or developed under controlled conditions;

“competent authority” means the authority, body or person in a country or province who is legally competent to authorize the export from that country, or the transportation out of or into that province, of an animal or plant or any part or derivative of an animal or plant.

#### FAUNA AND FLORA LISTED IN AN APPENDIX TO THE CONVENTION

3. (1) The animals listed in column I of an item of Part I of Schedule I are listed as “fauna” in the appendix to the Convention specified in column II of that item.  
(2) The plants listed in column I of an item of Part II of Schedule I are listed as “flora” in the appendix to the Convention specified in column II of that item.

#### IMPORTATION INTO CANADA

4. For the purposes of subsection 6(1) of the Act,
  - (a) “animal” means any specimen, whether living or dead, of any wild species of the animal kingdom (kingdom Animalia), and includes any egg, sperm, tissue culture or embryo of any such animal; and
  - (b) “plant” means any specimen, whether living or dead, of any wild species of the plant kingdom (kingdom Plantae), and includes any seed, spore, pollen or tissue culture of any such plant.
5. For the purposes of subsection 6(2) of the Act and in respect of importation,
  - (a) “animal” means any specimen, whether living or dead, of any species of animal listed as “fauna” in an appendix to the Convention or listed in Schedule II, and includes any egg, sperm, tissue culture or embryo of any such animal; and
  - (b) “plant” means any specimen, whether living or dead, of any species of plant listed as “flora” in an appendix to the Convention, and includes any seed, spore, pollen or tissue culture of any such plant.
6. (1) A person who imports into Canada an animal or plant that is listed as “fauna” or “flora” in Appendix II to the Convention but is not listed in Schedule II, or any part or derivative of any such animal or plant, is exempted from holding a permit issued under subsection 10(1) of the Act where the person has obtained, before import, a permit, certificate or written authorization that satisfies the requirements of the Convention and is granted by a competent authority in the country of export.  
(2) Subject to subsection (3), a person who imports into Canada an animal or plant that is listed as “fauna” or “flora” in Appendix III to the Convention but is not listed in Schedule II, or any part or derivative of any such animal or plant, is exempted from holding a permit issued under subsection 10(1) of the Act where the person has obtained, before import, a certificate that

satisfies the requirements of the Convention and is granted by a competent authority in the country of export.

(3) Where a person imports into Canada an animal or plant referred to in subsection (2) and listed in a subitem of column I of Schedule I, or any part or derivative of any such animal or plant, from a country of export listed in column III of that subitem, the person is exempted from holding a permit issued under subsection 10(1) of the Act where the person has obtained, before import, a permit or certificate that satisfies the requirements of the Convention and is granted by a competent authority in that country.

#### EXPORTATION FROM CANADA

7. For the purposes of subsection 6(2) of the Act and in respect of exportation,
  - (a) “animal” means any specimen, whether living or dead,
    - (i) of any species of animal listed as “fauna” in an appendix to the Convention, and includes any egg, sperm, tissue culture or embryo of any such animal, and
    - (ii) of any wild species of the animal kingdom (kingdom Animalia), or any egg, sperm, tissue culture or embryo of any such animal, the transportation of which out of a province is regulated or prohibited by the province; and
  - (b) “plant” means any specimen, whether living or dead,
    - (i) of any species of plant listed as “flora” in an appendix to the Convention, and includes any seed, spore, pollen or tissue culture of any such plant, and
    - (ii) of any wild species of the plant kingdom (kingdom Plantae), or any seed, spore, pollen or tissue culture of any such plant, the transportation of which out of a province is regulated or prohibited by the province.
8. (1) This section applies only in respect of animals and plants that are not listed as “fauna” or “flora” in any appendix to the Convention.

(2) A person who exports from Canada an animal or plant to which this section applies, or any part or derivative of any such animal or plant, is exempted from holding a permit issued under subsection 10(1) of the Act where the thing being exported is transported out of a province that does not prohibit such transportation and that

(a) allows such transportation only if the person has obtained a permit or certificate issued by a competent authority in the province that authorizes such transportation; or

(b) does not require provincial authorization for such transportation.

9. (1) Every person who exports from Canada a live animal shall, where it is shipped by air, prepare it for shipment and ship it in accordance with the IATA Live Animals Regulations, 22nd edition, published in 1995 by the International Air Transport Association, as amended from time to time.

(2) Every person who exports from Canada a live animal or plant shall, where it is shipped by land, sea or, in the case of a live plant, air, prepare it for shipment and ship it in accordance with the Guidelines for Transport and Preparation for Shipment of Live Wild Animals and Plants, as amended from time to time, adopted in 1979 by the Conference of Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora and published in 1980 under the sponsorship of the United Nations Environment Programme.

#### INTERPROVINCIAL TRANSPORT

10. For the purposes of subsection 6(3) of the Act and in respect of a province into which an animal or plant is to be transported,
  - (a) “animal” means any specimen, whether living or dead, of any wild species of the animal kingdom (kingdom Animalia) the transportation of which into that province is regulated or prohibited by the province, and includes any egg, sperm, tissue culture or embryo of any such animal; and
  - (b) “plant” means any specimen, whether living or dead, of any wild species of the

plant kingdom (kingdom Plantae) the transportation of which into that province is regulated or prohibited by the province, and includes any seed, spore, pollen or tissue culture of any such plant.

11. An animal or plant, or any part or derivative of an animal or plant, is exempted from the operation of subsection 6(3) of the Act where all required provincial permits have been obtained.
12. For the purposes of section 7 of the Act and in respect of a province out of which an animal or plant is to be transported,
  - (a) “animal” means any specimen, whether living or dead, of any wild species of the animal kingdom (kingdom Animalia) the transportation of which out of that province is regulated or prohibited by the province, and includes any egg, sperm, tissue culture or embryo of any such animal; and
  - (b) “plant” means any specimen, whether living or dead, of any wild species of the plant kingdom (kingdom Plantae) the transportation of which out of that province is regulated or prohibited by the province, and includes any seed, spore, pollen or tissue culture of any such plant.

#### POSSESSION EXEMPTIONS

13. (1) Every animal or plant listed as “fauna” or “flora” in Appendix I to the Convention, and any part or derivative of the animal or plant, is exempted from the operation of paragraph 8(c) of the Act where
  - (a) the person who possesses it establishes a reasonable probability that it or, in the case of a part or derivative, the animal or plant from which it comes, was taken from its habitat before July 3, 1975;
  - (b) the person who possesses it establishes a reasonable probability that it was legally imported into Canada; or
  - (c) the person who possesses it establishes a reasonable probability that the distributing of it or the offering to distribute it would be in accordance with any applicable federal and provincial laws that relate to the conservation and protection of the animal or plant.

(2) Every animal listed as “fauna” in Appendix I to the Convention, and any part or derivative of the animal, is exempted from the operation of paragraph 8(c) of the Act where the animal was bred in captivity or is part of a captive breeding program.

(3) Every plant listed as “flora” in Appendix I to the Convention, and any part or derivative of the plant, is exempted from the operation of paragraph 8(c) of the Act where the plant was artificially propagated or is part of an artificial propagation program.

#### EXEMPTIONS

##### Interpretation

14. The definitions in this section apply in this section and sections 15 to 19.

“commercial purpose” means any activity related to the sale, offering for sale, purchase, trade or barter of any animal or plant, or any part or derivative of one, without regard to its quantity or weight, including

- (a) any display, performance or exhibit of such a thing for gain or profit; and
- (b) the use of any such thing for the purpose of soliciting sales.

“customs officer” has the meaning assigned to the word “officer” in subsection 2(1) of the Customs Act.

“household effect” means a plant or dead animal, or a part or derivative of one, that is imported to or exported from Canada for other than commercial purposes and that

- (a) is owned and possessed by an individual in the individual’s ordinary country of residence and that forms part of the individual’s household belongings that are being shipped to or from Canada, to the individual’s new residence; or
- (b) forms part of an inheritance from an estate that is imported to or exported from Canada.

“hunting trophy” means a dead animal or a part or derivative of one that an individual acquired and possessed through legal hunting.

“personal baggage” means, where an individual uses a commercial passenger conveyance to enter or depart from Canada, all hand-carried items and all checked baggage of the individual

and, where an individual uses any other type of conveyance to enter or depart from Canada, baggage that is being carried in or on the same vehicle, vessel or aircraft as the individual.

“personal effect” means any of the following things that is imported into or exported from Canada for other than commercial purposes:

- (a) a plant or dead animal, or a part or derivative of one, that is owned and possessed by an individual in the individual’s ordinary country of residence and that, at the time of its import or export, is part of the individual’s clothing or accessories or is contained in the individual’s personal baggage; and
- (b) a tourist souvenir or a hunting trophy.

“pet” means a living animal that an individual owns as a personal pet and that is listed in Part I of Schedule I but not in Schedule II.

“tourist souvenir” means a dead animal, other than a hunting trophy, or a dead plant, or a part or derivative of one, that is listed in column I of an item of Schedule I and in respect of which there is a reference to Appendix II or III of the Convention in column II of that item and that is being imported into their ordinary country of residence by an individual who acquired, owned and possessed it outside their ordinary country of residence during a sojourn from which they are returning.

#### Personal Effects and Household Effects

15. (1) Subject to sections 16 and 18, an individual is exempt from holding an import or export permit issued under subsection 10(1) of the Act for any animal or plant, or any part or derivative of one, that is listed in Schedule I but not in Schedule II or Schedule III and that is a personal effect or a household effect, except
- (a) in the case of a tourist souvenir, where it was acquired in a country where removal from the wild occurred and where that country requires the prior grant of an export permit before any export of it;
  - (b) in the case of the export of a dead plant or dead animal, or a part or derivative of one, other than feathers, that is raw, unprocessed, semi-processed or simply dried; and
  - (c) in the case of a hunting trophy other

than one referred to in subsection (2).

(2) Subject to sections 16 and 18, an individual who is ordinarily resident in Canada or the United States is exempt from holding an import or export permit issued under subsection 10(1) of the Act for the export from Canada to the United States or the import into Canada from the United States of a hunting trophy that is in a fresh, frozen or salted condition and that was acquired and possessed by the individual through legal hunting, where the hunting trophy consists of

- (a) the hide, the hide with paws and claws attached, the skull or meat, excluding organs, of a black bear (*Ursus americanus*); and
- (b) the carcass or meat of a sandhill crane (*Grus canadensis*).

16. The exemption referred to in subsection 15(1) does not apply in respect of the importation or exportation of sturgeon caviar by an individual, if the quantity of caviar being imported or exported is greater than 250 g per individual.

#### Pets

17. Subject to section 18, an individual who is ordinarily resident in a country other than Canada and who imports a pet into Canada for other than commercial purposes and subsequently exports the pet from Canada is exempt from holding a permit issued under subsection 10(1) of the Act if
- (a) the individual has obtained from the competent authority of the individual’s ordinary country of residence a permit, certificate or other written document authorizing the export from, and subsequent import into, that country of the pet; and
  - (b) the permit, certificate or other written document meets the requirements of the Convention and is in conformity with the resolutions passed by the Parties to the Convention regarding the movement of pets.

#### Exemption Conditions

18. (1) An individual is exempted under subsection 15(1) or (2) from holding a permit under subsection 10(1) of the Act on

the condition that the individual not sell or dispose of the plant or animal or the part or derivative of one that is the subject of the exemption within 90 days after the date of import or export, as the case may be.

(2) An individual is exempted under section 17 from holding a permit under subsection 10(1) of the Act on the condition that the individual not sell or dispose of the pet that is the subject of the exemption outside of the individual's ordinary country of residence within 90 days after the date of import or export, as the case may be.

#### DECLARATION

19. (1) Any individual who imports into Canada or exports from Canada an animal or plant, or a part or derivative of one, and who is exempt from holding a permit under these Regulations shall, on the request of an officer or a customs officer under subsection (2), make a declaration at the time of import or export on a form provided for that purpose by the Minister.

(2) The officer or customs officer shall request a declaration where the Minister requires it in order to obtain information relating to the implementation of the Convention.

(3) The declaration shall be signed by the importer or exporter and include the following information in respect of the imported or exported animal, plant, part or derivative:

- (a) the name, street address and telephone number of the importer or exporter, as the case may be;
- (b) a description of the animal, plant, part or derivative, in sufficient detail so as to permit it to be identified, including its common name and, if known, its scientific name, and, where applicable, a description of any thing that contains or is made up of the animal, plant, part or derivative;
- (c) its number or quantity;
- (d) its country of import or export, as the case may be;
- (e) whether the animal, plant, part or derivative was acquired by the individual

outside the individual's ordinary country of residence during a sojourn from which they are returning and, if so, the name of the country in which it was acquired; and

(f) the date of import or export.

#### LABELLING

20. Where a person imports into Canada or exports from Canada any thing that is identified by a mark, label or accompanying document that indicates that the thing is an animal or plant, or a part or derivative of one, that is listed in Schedule I or II, that thing is, unless there is evidence that raises a reasonable doubt to the contrary, deemed to be the thing so identified.

#### REMOVAL NOTICE

21. For the purposes of subsection 18(1) of the Act, a removal notice shall contain the following information:

- (a) the name, street address and telephone number of the importer;
- (b) the name, street address and telephone number of the exporter;
- (c) the provision of the Act or these Regulations that the officer believes has been contravened;
- (d) a description of the thing to be removed; and
- (e) the period of time within which the thing must be removed.

#### REMOVAL REQUIREMENTS

22. An officer who requires the removal of all or part of a thing in accordance with subsection 18(1) of the Act shall require that the thing or part be inspected and, to the extent possible, marked and labelled, and that a place of export be indicated on the label or accompanying document.

#### FORFEITURE

23. For the purposes of paragraph 19(3)(a) of the Act, the period within which a thing must be removed is 90 days after the date of its detention under section 13 of the Act.



## APPENDIX D — WAPPRIITA CONVICTIONS

The following is a summary of convictions resulting from prosecutions for CITES-related WAPPRIITA violations up to April 2003. These cases are valuable as precedents—providing examples for judges deciding similar issues in the future.

This document was compiled from information provided by John Dyck (Environment Canada Pacific and Yukon Region), John Wong (Environment Canada Pacific and Yukon Region), George Balmer (Environment Canada Pacific and Yukon Region), Brian Petrar (Environment Canada Prairie and Northern Region), Martin Thabault (Environment Canada Québec Region), Les Sampson (Environment Canada Atlantic Region), Gerry Brunet (Environment Canada Ontario Region), Richard Charette (Environment Canada National Capital Region) and Pat O'Brien (RCMP).

### 1. R. v. Lucero

Location: Ontario Provincial Court (Milton)  
Date: August 15, 1996  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Elephant (*Loxodonta africana* or *Elephas maximus*): CITES Appendix I  
Details: Unlawful importation of four elephant tusks, which were in transit to the Philippines. The accused was a seaman on board a freighter and was en route to his home in the Philippines at the time of his arrest.  
Penalty: A custodial sentence of 21 days' incarceration and forfeiture of the tusks.

### 2. R. v. Chow

Location: Ontario Provincial Court (Brampton)  
Date: November 20, 1996  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Indian star tortoises (*Geochelone elegans*): CITES Appendix II  
Details: Unlawful importation of 232 live tortoises into Canada at Pearson International Airport. This was a commercial importation of wildlife, which included concealment of the animals.  
Penalty: A fine of CAD10 000 (USD7437).

### 3. R. v. Park

Location: Ontario Provincial Court (Brampton)  
Date: November 26, 1996  
Prosecuting agency: RCMP  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Bear (*Ursidae* sp.): CITES Appendix II  
Details: Attempting to unlawfully export one bear gallbladder from Canada.  
Penalty: A fine of CAD5000 (USD3718).

### 4. R. v. Stewart

Location: British Columbia Provincial Court (Richmond)  
Date: November 27, 1996  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Moluccan cockatoo (*Cacatua moluccensis*): CITES Appendix I  
Details: Unlawful importation of two live cockatoos that were not being imported for commercial purposes (the accused's household pets).  
Penalty: An absolute discharge, however the judge ordered that the birds, valued at more than CAD5000 (USD3718) be forfeited to the Crown.

### **5. R. v. Mora**

Location: Ontario Provincial Court (Brampton)  
Date: December 4, 1996  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Green sea turtle (*Chelonia mydas*): CITES Appendix I  
Details: Unlawful importation of 10 pounds of turtle meat. Canada Customs apprehended the accused upon his arrival in Canada.  
Penalty: A fine of CAD300 (USD223) and forfeiture of the meat.

### **6. R. v. Yue**

Location: Ontario Provincial Court (Brampton)  
Date: March 20, 1997  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Jaguar (*Panthera onca*): CITES Appendix I; cougar (*Puma concolor*): Appendix II; margay (*Leopardus wiedii*): Appendix I; caiman (*Caiman crocodilus*): Appendix II  
Details: Unlawful importation of the skins of one jaguar, one cougar and one margay, plus three mounted caiman, into Canada from Guyana.  
Penalty: Time served (three days in custody), a fine of CAD9000 (USD6693) and forfeiture of the seized items.

### **7. R. v. Pavlik**

Location: British Columbia Provincial Court (Richmond)  
Date: June 16, 1997  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Bear (*Ursidae* sp.): CITES Appendix I or II  
Details: Unlawful importation of six bear gallbladders into Canada from the Republic of Korea. Canada Customs discovered the items concealed in the socks of the accused.  
Penalty: A fine of CAD1600 (USD1190) or 26 days imprisonment in default of payment.

### **8. R. v. Gagnon**

Location: Québec Provincial Court (Chicoutimi)  
Date: November 4, 1997  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Sonnerat's junglefowl (*Gallus sonneratii*): CITES Appendix II  
Details: Unlawful importation of eight junglefowl capes from Thailand without CITES permits. The items were detected at the Canada Customs International Mail Centre in Vancouver, British Columbia.  
Penalty: A fine of CAD200 (USD149) (one day in default), and the goods were ordered forfeited to the Crown.

### **9. R. v. Princess Cruises (B.C.) Limited**

Location: British Columbia Provincial Court (Richmond)  
Date: January 12, 1998  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Walrus (*Odobenus rosmarus*): CITES Appendix III (Canada); whale (*Cetacea* sp.): Appendix I  
Details: Importing wildlife without a CITES permit. The charges stemmed from a Canada Customs seizure of 41 walrus ivory carvings and 1 whale bone

carving imported into Canada from Alaska (United States) on board a Princess Cruises ship on October 23, 1996.  
Penalty: A fine of CAD1000 (USD744) and an order to pay CAD10 000 (USD7437) into a fund administered by Environment Canada to be used for public awareness.

**10. R. v. Verret**

Location: Québec Provincial Court  
Date: January 16, 1998  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Sonnerat's junglefowl (*Gallus sonneratii*): CITES Appendix II  
Details: Unlawful importation of one junglefowl cape from the United States without a CITES permit. The item entered Canada through the Ville St-Laurent postal outlet in Montréal.  
Penalty: A fine of CAD250 (USD186) and forfeiture of the item to the Crown.

**11. R. v. Benefeldt**

Location: Alberta Provincial Court (Barrhead)  
Date: February 11, 1998  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(1) WAPPRIITA  
Species involved: Wild cat (*Felidae* sp.): CITES Appendix I or II; hawk (*Falconiformes* sp.): Appendix I or II; Hartman's mountain zebra (*Equus zebra hartmannae*): Appendix II; crocodile (*Crocodylia* sp.): Appendix I or II; baboon (*Papio* sp.): Appendix II; leopard (*Panthera pardus*): Appendix I; black-backed jackal (*Canis mesomelas*): not listed; blesbok (*Damaliscus dorcas phillipsi*): not listed; Burchell's plains zebra (*Equus burchelli*): not listed; greater kudu (*Tragelaphus strepsiceros*): not listed; oryx (*Oryx gazella gazella*): not listed; red hartebeest (*Alcelaphus buselaphus*): not listed; springbok (*Antidorcas marsupialis*): not listed; warthog (*Phacochoerus aethiopicus*): not listed; hyena (*Hyaenidae* sp.): not listed; oribi (*Ourebia ourebi*): not listed.  
Details: Unlawful importation of several African trophy animals without CITES permits and under a fraudulent Namibian export permit in October 1996.  
Penalty: A fine of CAD1000 (USD744) on count 1 for CITES items from Germany imported without CITES permits and CAD5000 (USD3718) on count 2 for trophies imported from Namibia under an altered permit.

**12. R. v. Cloutier**

Location: Ontario Provincial Court (Fort Erie)  
Date: March 6, 1998  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(1) WAPPRIITA  
Species involved: Not provided by Environment Canada.  
Details: Unlawful importation of 29 reptiles and 6 tropical fish on November 30, 1997.  
Penalty: The seized animals, valued at approximately CAD1000 (USD744), were forfeited to the Crown. The court ordered that the accused display Environment Canada pamphlets and posters related to CITES and WAPPRIITA along with a written notice outlining the importance of and reasons for protecting endangered species through compliance with CITES and WAPPRIITA at his business, for a minimum of three years. The court also ordered that he liaise with the inspections personnel of Environment Canada and the USFWS in the future before initiating imports, exports or both of fish and wildlife to ensure compliance with Canadian and U.S. laws.

**13. R. v. Kayson Hong Enterprises Ltd**

Location: British Columbia Provincial Court (Surrey)  
Date: July 7, 1998  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Costus plant (*Saussurea lappa*): CITES Appendix I  
Details: Unlawful importation of 432 bottles of pills containing costus into Canada without CITES permits.  
Penalty: A fine of CAD500 (USD372) and the goods were ordered forfeited to the Crown.

**14. R. v. Kriaski**

Location: Alberta Provincial Court (Edmonton)  
Date: December 18, 1998  
Prosecuting agency: Environment Canada  
Violation(s): Section 11 WAPPRIITA  
Species involved: American black bear (*Ursus americanus*): CITES Appendix II  
Details: Exportation of bear hides and rug mounts on three separate occasions to customers in the United States using expired CITES export permits. The accused altered the expiry date on all permits.  
Penalty: A fine of CAD2500 (USD1859) and the goods were ordered forfeited to the Crown.

**15. R. v. Sweet**

Location: Nova Scotia Provincial Court (Windsor)  
Date: February 12, 1999  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: American black bear (*Ursus americanus*): CITES Appendix II; bobcat (*Lynx rufus*): Appendix II.  
Details: Exportation of bear and bobcat claws without CITES permits. The accused operated a business in the sale of animal parts and advertised on the Internet. Although he regularly obtained permits for his shipments, this one was sent through the mail because of its small size and thus the chance it would not be detected.  
Penalty: A fine of CAD4000 (USD2975) and the goods were ordered forfeited to the Crown

**16. R. v. Flikkema Aviaries**

Location: Ontario Provincial Court (Welland)  
Date: June 9, 1999  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Illiger's macaw (*Propyrrhura maracana*): CITES Appendix I; other species name not provided by Environment Canada.  
Details: Unlawful importation and sale of 2 macaws in December 1997 and the illegal importation of 350 to 400 Appendix II and III birds of 16 different species in July 1998.  
Penalty: A fine of CAD8500 (USD6321); CAD6000 (USD4462) for the first incident and CAD2500 (USD1859) for the subsequent offence.

**17. R. v. Sibbitt**

Location: Manitoba Provincial Court (Winnipeg)  
Date: June 30, 1999  
Prosecuting agency: Environment Canada, Manitoba Department of Natural Resources, Ontario Ministry of Natural Resources

Violation(s): Sections 7(2) and 6(2) WAPPRIITA  
Species involved: American black bear (*Ursus americanus*): CITES Appendix II  
Details: After illegally killing a bear the accused transported parts of the bear into the province of Manitoba and then into the United States. The prosecution was the result of a joint-forces investigation involving officers of Environment Canada, Manitoba Department of Natural Resources, Ontario Ministry of Natural Resources, USFWS and the Indiana (United States) Department of Natural Resources.  
Penalty: A fine of CAD3000 (USD2231); CAD2000 (USD1487) and CAD1000 (USD744) respectively for each section, and forfeit of a full-mount black bear to the Crown and court costs.

**18. R. v. Lively**

Location: Nova Scotia Provincial Court (Bedford)  
Date: July 16, 1999  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Crocodile (*Crocodylidae* sp.): CITES Appendix I or II; African rock python (*Python sebae*): Appendix II; monitor lizard (*Varanus* sp.): Appendix II  
Details: Unlawful importation of 60 products made from crocodile, python and monitor lizard without CITES permits.  
Penalty: A fine of CAD2000 (USD1487) and the seized items were ordered forfeited to the Crown.

**19. R. v. Kohlhofer**

Location: Manitoba Provincial Court (Winnipeg)  
Date: August 18, 1999  
Prosecuting agency: Environment Canada  
Violation(s): Section 11 WAPPRIITA  
Species involved: American black bear (*Ursus americanus*): CITES Appendix II  
Details: Falsification of a black bear CITES permit.  
Penalty: A fine of CAD400 (USD297) plus CAD188 (USD140) court costs.

**20. R. v. Yuen**

Location: British Columbia Provincial Court (Richmond)  
Date: September 30, 1999  
Prosecuting agency: Environment Canada, British Columbia Conservation Officer Service  
Violation(s): Section 8(b) WAPPRIITA  
Species involved: American black bear (*Ursus americanus*): CITES Appendix II  
Details: Three counts of possessing bear gallbladders with the intent to export them from Canada in contravention of the act. The charges were the result of an undercover operation lead by the British Columbia Conservation Officer Service (Special Investigation Unit) with assistance and co-operation from Environment Canada and DFO.  
Penalty: A fine of CAD2000 (USD1487) per count for a total fine of CAD6000 (USD4462). The accused received additional fines of CAD19 000 (USD14 874) for an additional 33 counts related to the trafficking and unlawful possession of wildlife under the British Columbia Wildlife Act and the Migratory Birds Convention Act.

**21. R. v. Tsarov**

Location: Ontario Provincial Court (Windsor)  
Date: August 18, 1999  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Wood turtle (*Clemmys insculpta*): CITES Appendix II

Details: Unlawful importation of one live turtle from the United States into Canada without a valid CITES permit. The turtle was found concealed in the cab of freight truck by Canada Customs inspectors.  
Penalty: A fine of CAD1000 (USD744) plus court costs. The turtle had been forfeited to the Crown (ownership was passed to the government of Canada) earlier.

**22. R. v. Mujawamariya-Hachey**

Location: Québec Provincial Court (Montréal)  
Date: September 30, 1999  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Hippopotamus (*Hippopotamus amphibius*): CITES Appendix II  
Details: Unlawful importation of 27 hippopotamus teeth from Rwanda without a CITES permit.  
Penalty: The accused received an unconditional discharge because of the impact of a conviction on her refugee status. The defendant was a Rwandan human rights activist. The court ordered a 3-month probation and a donation of CAD250 (USD186) to the Society for the Prevention of Cruelty to Animals. The goods were forfeited to the Crown.

**23. R. v. Badalov**

Location: Ontario Provincial Court (Mississauga)  
Date: November 19, 1999  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Sturgeon (*Acipenseridae* sp.): CITES Appendix II  
Details: Unlawful importation of 3 066.6 grams (108 ounces) of sturgeon caviar from Uzbekistan into Canada without a valid CITES permit. The accused had attempted to import the caviar via an air courier company, but the package was discovered by Canada Customs at Pearson International Airport.  
Penalty: A fine of CAD800 (USD595) and forfeit of the caviar which was valued at more than CAD5000 (USD3718).

**24. R. v. Unger**

Location: Alberta Provincial Court (Calgary)  
Date: March 27, 2000  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Cougar (*Puma concolor*): CITES Appendix II  
Details: The accused exported a cougar that was lawfully taken in Canada into the United States for taxidermy. Despite advice from U.S. authorities the accused returned the cat to Canada with no CITES permits.  
Penalty: A fine of CAD2500 (USD1859).

**25. R. v. Hibben**

Location: Ontario Provincial Court (Windsor)  
Date: February 11, 2000  
Prosecuting agency: Environment Canada  
Violation(s): Sections 6(1) and 6(2) WAPPRIITA  
Species involved: Sperm whale (*Physeter catodon*): CITES Appendix I; hippopotamus (*Hippopotamus amphibius*): Appendix II; water buffalo (*Bubalus arnee*): Appendix III (Nepal)  
Details: Unlawful importation of handcrafted knives and letter openers, with handles made from sperm whale and hippopotamus ivory, and water buffalo horn.

Canada Customs officers discovered the knives when the accused failed to declare his knife collection upon entry into Canada.  
Penalty: A fine of CAD800 (USD595) plus forfeiture of three handcrafted knives valued at CAD1240 (USD922).

**26. R. v. Kay**

Location: Ontario Provincial Court (Burlington)  
Date: February 28, 2000  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Poison dart frog (*Dendrobatidae*. Species not provided by Environment Canada): CITES Appendix II.  
Details: Unlawful importation of 15 frogs into Canada from the United States.  
Penalty: A fine of CAD1500 (USD1116) plus forfeiture of 7 unsold frogs.

**27. R. v. Maksimowicz**

Location: Ontario Provincial Court (Mississauga)  
Date: May 4, 2000  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Sturgeon (*Acipenseridae* sp.): CITES Appendix II.  
Details: Unlawful importation of 200 jars of Russian sturgeon caviar without CITES permits. Canada Customs officers found the caviar in the luggage of the accused.  
Penalty: A fine of CAD1875 (USD1394) plus forfeiture of the caviar.

**28. R. v. Maksimowicz**

Location: Ontario Provincial Court (Mississauga)  
Date: May 4, 2000  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Sturgeon (*Acipenseridae* sp.): CITES Appendix II.  
Details: Unlawful importation of nine jars of Russian sturgeon caviar without CITES permits. Canada Customs officers found the caviar inside a hand-carried bag.  
Penalty: A fine of CAD610 (USD454) plus forfeiture of the caviar.

**29. R. v. Kaartinen**

Location: Manitoba Provincial Court (Winnipeg)  
Date: June 26, 2000  
Prosecuting agency: Environment Canada, Manitoba Conservation  
Violation(s): Sections 7(2) and 12(4) WAPPRIITA and section 8 of Manitoba Wildlife Regulation 110/93.  
Species involved: American black bear (*Ursus americanus*): CITES Appendix II  
Details: The accused outfitted an illegal bear hunt in northwest Ontario, made arrangements to have the meat exported to Indiana (United States) and then transported the hide and skull from Ontario to Manitoba. The accused obstructed investigating officers by conspiring with the Indiana hunter to provide false information to officers. The accused only falsified the CITES export permit from Ontario, and it was also discovered that two permits were issued by Manitoba and Ontario for the same bear. The accused agreed to plead guilty to the three counts above, so three other charges under WAPPRIITA and two other charges under the Manitoba Wildlife Act were stayed.  
Penalty: Fines of CAD3000 (USD2231) for transporting the bear from Ontario to Manitoba, CAD2000 (USD1487) for having obstructed investigators and CAD1000 (USD744) for failing to accompany a client being guided on a hunt (Manitoba Wildlife Regulation), for a total of CAD6000 (USD4462).

### **30. R. v. North Fish Company Limited**

Location: Ontario Provincial Court (Niagara Falls)  
Date: June 29, 2000  
Prosecuting agency: Environment Canada  
Violation(s): Sections 6(1) and 6(2) WAPPRIITA  
Species involved: Sturgeon (*Acipenseridae* sp.): CITES Appendix II  
Details: Unlawful importation of 27 jars of sturgeon caviar without CITES permits and in contravention of U.S. laws.  
Penalty: Fines of CAD2000 (USD1487) on section 6(2) and CAD1500 (USD1116) on section 6(1) plus victim surcharges<sup>38</sup> of CAD875 (USD651), for total fine of CAD4375 (USD3254), plus forfeiture of the caviar.

### **31. R. v. Flikkema**

Location: Ontario Provincial Court (Welland)  
Date: July 7, 2000  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Not provided by Environment Canada  
Details: A total of 483 charges brought for illegally importing and exporting more than 5 000 tropical birds, mostly finches captured in the wild.  
Penalty: A fine of CAD50 000 (USD37 195), 90 days in jail, 3 years' probation, 50 hours community service and a 3-year prohibition on the importation of birds.

### **32. R. v. Flikkema**

Location: Ontario Provincial Court (Welland)  
Date: July 7, 2000  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Not provided by Environment Canada  
Details: A total of 483 charges laid for illegally importing and exporting more than 5 000 tropical birds, mostly finches captured in the wild. The accused was the son of the accused in the related case above (31. R. v. Flikkema).  
Penalty: A fine of CAD25 000 (USD18 599), 2 years' probation, 50 hours community service and a 3-year prohibition on the importation of birds.

### **33. R. v. El-Sayed**

Location: Alberta Provincial Court (Calgary)  
Date: July 10, 2000  
Prosecuting agency: Environment Canada, Alberta Fish and Wildlife  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Nile crocodile (*Crocodylus niloticus*): CITES Appendix I or II  
Details: Unlawful importation of three live crocodiles from Egypt. The animals were concealed in the hand luggage of the 10-year-old son of the accused and were discovered by Canada Customs officers upon arrival in Canada.  
Penalty: A fine of CAD1000 (USD744) and forfeiture of the three crocodiles. The accused was also fined CAD1000 (USD744) for a violation of section 54(1) of the Alberta Wildlife Act.

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<sup>38</sup>. 'The Act Respecting Victims of Crime—Victims' Bill of Rights was proclaimed as law on June 11, 1996 by the Ontario provincial government. Under the act a surcharge is applied to provincial and federal fines for inclusion in a special fund to assist victims of crime.



**34. R. v. McArady**

Location: British Columbia Provincial Court (Surrey)  
Date: July 12, 2000  
Prosecuting agency: Environment Canada, Canada Customs  
Violation(s): Section 6(2) WAPPRIITA and section 153(a) of the Customs Act  
Species involved: Stony coral (*Scleractinia* sp.): CITES Appendix II  
Details: Unlawful importation into Canada of more than 1 000 pounds of 'live rock' containing coral. The accused made false declarations, both orally and in writing, to Canada Customs officers who subsequently found the coral.  
Penalty: A fine of CAD1 250 (USD930) on each count (CAD2500 [USD1859] total), one-year probation, forfeiture of the coral and a court order requiring the accused to notify Environment Canada in writing five days in advance of any future importation of coral.

**35. R. v. LaFlamme**

Location: Québec Provincial Court (Montréal)  
Date: October 16, 2000  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Birdwing butterfly (species not provided by Environment Canada): CITES Appendix II  
Details: Unlawful importation of three butterflies from Thailand without a CITES permit (three counts).  
Penalty: A fine of CAD100 (USD74) per count, for a total of CAD300 (USD223). The goods were forfeited to the Crown.

**36. R. v. Piscopo**

Location: Ontario Provincial Court (Mississauga)  
Date: October 29 2000  
Prosecuting agency: Environment Canada, Canada Customs  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Yellow-lored amazon parrot (*Amazona xanholora*): CITES Appendix II  
Details: Unlawful importation of a parrot from Mexico. The accused acquired the six- to eight-week-old chick while on her honeymoon and placed it in her carry-on bag for the return trip to Canada. The bird was discovered when her luggage was x-rayed by Canada Customs.  
Penalty: A fine of CAD1000 (USD744) and a mandatory CAD250 (USD186) surcharge. The bird had been forfeited to the Crown previously.

**37. R. v. Uniglobe Import & Export Company Ltd.**

Location: British Columbia Provincial Court (Delta)  
Date: November 20, 2000  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Tree fern (*Cibotium barometz*): CITES Appendix II  
Details: Unlawful importation of a commercial shipment of 1 000 packages of pills containing tree fern as an ingredient. The Crown relied upon section 20 of the WAPTR (labelling) to establish the contents of the product.  
Penalty: A fine of CAD1000 (USD744) and forfeiture of the goods.

**38. R. v. Deslisle**

Location: British Columbia Provincial Court (Vancouver)  
Date: December 8, 2000  
Prosecuting agency: Environment Canada  
Violation(s): Sections 6(1) and 6(2) WAPPRIITA  
Species involved: Birdwing butterfly (*Ornithoptera alexandrae*): CITES Appendix I

Details: Unlawful importation of six butterflies. The butterflies were hidden in a hollowed-out hardcover book that was intercepted at the Canada Customs Mail Centre in Vancouver, British Columbia. The originator of the package was a villager from Papua New Guinea who eventually agreed to travel to Canada and testify. The evidence showed that the accused conspired to smuggle the butterflies contrary to the laws of Papua New Guinea and Canada. This investigation was completed with the assistance of the government of Papua New Guinea. The Crown proceeded by way of indictment.

Penalty: A fine of CAD25 000 (USD18 594) on each count for a total of CAD50 000 (USD37 195), forfeiture of the seized butterflies and a five-year prohibition on the trade, import and export of *Ornithoptera alexandrae* butterflies.

### **39. R. v. Duong**

Location: Ontario Provincial Court (Ottawa)  
Date: Feb. 12, 2001  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Scarlet macaw parrot (*Ara macao*): CITES Appendix I  
Details: The accused attempted to smuggle a parrot into Canada by concealing the bird in a briefcase.  
Penalty: The accused was fined CAD1500 (USD1116) plus a victim surcharge of CAD375 (USD279), for a total of CAD1875 (USD1395). The bird was forfeited to the Crown.

### **40. R. v. Wachtel**

Location: Ontario Provincial Court  
Date: April 19, 2001  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Stony coral (*Scleractinia* spp.): CITES Appendix II; giant clam (*Tridacnidae* sp.): Appendix II  
Details: Unlawful importation of seven corals and one clam without a permit. Canada Customs discovered the items during a vehicle search.  
Penalty: A fine of CAD1 000 (USD744) plus a CAD250 (USD186) victim surcharge, forfeiture of the goods and payment of CAD941.60 (USD700.43) as part of the storage fees incurred by Environment Canada to preserve the evidence.

### **41. R. v. Nathnely**

Location: Ontario Provincial Court (Mississauga)  
Date: April 27, 2001  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Elephant (*Loxodonta africana* or *Elephas maximus*): CITES Appendix I  
Details: Unlawful importation of two elephant tusks. The accused declared to Canada Customs that he did not have any wildlife products in his possession, but officers found the tusks mounted on wooden plaques inside his suitcase.  
Penalty: A fine of CAD2500 (USD1859) including a CAD500 (USD372) victim surcharge) and forfeiture of the tusks.

### **42. R. v. Amin**

Location: Ontario Provincial Court (Mississauga)  
Date: May 1, 2001  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA

Species involved: Indian tent turtle (*Kachuga tecta*): CITES Appendix I  
Details: Unlawful importation of two live turtles through Pearson International Airport. The accused did not declare the turtles to Canada Customs, but a CFIA officer discovered the animals in his luggage.  
Penalty: A fine of CAD375 (USD279) including a CAD75 (USD56) victim surcharge and forfeiture of the two turtles.

**43. R. v. David Green & Sons Furriers Inc.**

Location: Yukon Territorial Court  
Date: May 18, 2001  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(1) WAPPRIITA  
Species involved: Lynx cat (*Lynx canadensis*): CITES Appendix II; wolf (*Canis lupus*): Appendix II; sea otter (*Enhydra lutris*): Appendix II  
Details: Unlawful importation of more than CAD136 000 (USD101 165) worth of animal furs.  
Penalty: A fine of CAD20 000 (USD14 878) and a court order that the furs not be re-exported.

**44. R. v. Alicandro**

Location: Ontario Provincial Court (Mississauga)  
Date: June 1, 2001  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Yellow-fronted canary (*Serinus mozambicus*): Appendix III (Ghana); Bali mynah bird (*Leucopsar rothschildi*): Appendix I  
Details: Unlawful importation of two canaries and three mynah birds. The birds were by discovered concealed in the baggage of the accused and on his person by Canada Customs officers.  
Penalty: A fine of CAD1 250 (USD930) (including a CAD250 (USD186) victim surcharge). The birds had been abandoned by the accused and were subsequently euthanized by the CFIA.

**45. R. v. Versace**

Location: Ontario Provincial Court (Niagara Falls)  
Date: June 7, 2001  
Prosecuting agency: Environment Canada  
Violation(s): Sections 6(1) and 6(2) WAPPRIITA  
Species involved: Caiman (*Caiman crocodilus*): CITES Appendix II  
Details: Unlawful importation of 16 caiman skins. The items were not declared and were discovered by Canada Customs officers.  
Penalty: A fine of CAD1000 (USD744) for each count, for a total of CAD2500 (USD186) (including the provincial surcharge).

**46. R. v. Dang**

Location: Ontario Provincial Court (Mississauga)  
Date: September 25, 2001  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Changeable hawk-eagle (*Spizaetus cirrhatus*): CITES Appendix II  
Details: Unlawful importation of a live hawk-eagle from Vietnam. The three- to six-week-old bird was not declared and was discovered by Canada Customs officers. The bird's beak was taped, and it was enclosed within a gift-wrapped box in a carry-on bag.  
Penalty: A fine of CAD5000 (USD3719) (including a victim surcharge) plus a court order for the accused to pay CAD9 086.26 (USD6759.56) in veterinary costs incurred by the Crown.

**47. R. v. Doherty**

Location: Ontario Provincial Court (Windsor)  
Date: October 12, 2001  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: *Orchidaceae* sp. (species not provided by Environment Canada), all orchids are listed in CITES Appendix I or II  
Details: The accused attempted to enter Canada at the Detroit-Windsor tunnel. A Canada Customs inspection of his vehicle revealed the presence of 60 undeclared orchid plants. Documentation in the vehicle indicated the plants had been ordered from a Hawaiian supplier and delivered to the subject's Detroit-area business address. No CITES permit had been obtained to import the orchids.  
Penalty: The accused was fined CAD1000 (USD744) plus a victim surcharge of CAD250 (USD186), for a total of CAD1250 (USD930). The plants were forfeited to the Crown.

**48. R. v. Flikkema**

Location: Ontario Provincial Court (Welland)  
Date: October 30, 2001  
Prosecuting agency: Environment Canada  
Violation(s): Sections 6(2) and 10(1) WAPPRIITA  
Species involved: Not provided by Environment Canada  
Details: Unlawful importation of finches to Canada and unlawful export of the birds to the United States. The accused was the wife of the accused in the related case above (31. R. v. Flikkema). The Crown proceeded by way of indictment.  
Penalty: A fine of CAD50 000 (USD37 195), one year in jail (house arrest) and 40 hours of community service. The court also ordered that Environment Canada was entitled to review records at any time and, on 15 days' notice, copy them and could retain seized documents for 18 months from October 30, 2001.

**49. R. v. Kretz**

Location: Ontario Provincial Court (Niagara Falls)  
Date: December 6, 2001  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: *Orchidaceae* sp. (species not provided by Environment Canada), all orchids are listed in CITES Appendix I or II  
Details: The accused attempted to enter Canada at Fort Erie, Ontario. A Canada Customs inspection of his vehicle revealed the presence of 72 undeclared orchid plants. Documentation in the vehicle indicated the plants had been ordered from a Hawaiian supplier and delivered to a courier depot in the Buffalo, New York area. No CITES permit had been obtained to import the orchids.  
Penalty: The accused was fined CAD1500 (USD1116) plus a victim surcharge of CAD375 (USD279), for a total of CAD1875 (USD1395). The plants were forfeited to the Crown

**50. R. v. Gilbert**

Location: Québec Provincial Court, St- Jérôme District  
Date: January 17, 2002  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA

Species involved: American black bear (*Ursus americanus*): CITES Appendix II  
Details: Unlawful export of a bear skin to the United States without a valid permit.  
Penalty: A fine of CAD100 (USD74) and court costs of CAD36 (USD27).

**51. R. v. Doost**

Location: Halifax Provincial Court (Nova Scotia)  
Date: Feb. 12, 2002  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Elephant (*Loxodonta africana*): CITES Appendix I  
Details: Unlawful importation of 4 363 pieces of elephant ivory jewellery without CITES permits by an individual arriving in Canada as an immigrant.  
Penalty: The accused was given an absolute discharge conditional on the forfeiture of the CAD75 000 (USD55 793) worth of elephant ivory and paying CAD10 000 (USD7437) into the Environmental Damages Fund.

**52. R. v. Desai**

Location: Ontario Provincial Court (Brockville)  
Date: March 6, 2002  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: African grey parrot (*Psittacus erithacus*): CITES Appendix II  
Details: The accused attempted to smuggling of a parrot into Canada by using his vehicle at the Thousand Islands Bridge, Lansdowne, Ontario.  
Penalty: The accused was fined CAD1500 (USD1116) plus a victim surcharge of CAD375 (USD279), for a total of CAD1875 (USD1395). The bird was forfeited to the Crown.

**53. R. v. Davies**

Location: Alberta Provincial Court (Calgary)  
Date: July 11, 2002  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Bald eagle (*Haliaeetus leucocephalus*): CITES Appendix I  
Details: The accused attempted to export a ceremonial dance-costume bustle containing 32 eagle feathers to a resident of the United States without the necessary permits.  
Penalty: The accused was fined CAD2000 (USD1487). The bustle was forfeited to the Crown.

**54. R. v. Mohamud**

Location: Ontario Provincial Court (Ottawa)  
Date: November 12, 2002  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Elephant (*Loxodonta africana*): CITES Appendix I  
Details: In April 2002 the accused illegally imported 10 pieces of ivory jewellery into Canada from Somalia at the Ottawa International Airport. The jewellery was concealed in packages stuffed into a suitcase. The accused did not declare the jewellery. Canada Customs discovered and detained the items and referred the case to CWS for investigation.  
Penalty: The accused was fined CAD500 (USD372) plus a victim surcharge of CAD110 (USD82), for a total fine of CAD610 (USD454). The jewellery was ordered forfeited to the Crown.

**55. R. v. Ali**

Location: Ontario Provincial Court (Mississauga)  
Date: November 26, 2002  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Elephant (*Loxodonta africana*): CITES Appendix I  
Details: In July 2002 the accused traveled to Somalia and returned to Canada with two bracelets and four pairs of earrings, made of gold and ivory, concealed in his luggage. He failed to declare the goods and when confronted with the evidence attempted to pass them as made of cow's bone.  
Penalty: The accused was fined CAD150 (USD112) (considering his limited means) plus a CAD25 (USD19) victim surcharge, for a total fine of CAD175 (USD130). The Court also ordered that the jewellery be forfeited to the Crown.

**56. R. v. Cheong Hing Dry Seafood Ltd.**

Location: Ontario Provincial Court (Mississauga)  
Date: November 26, 2002  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: Orchid (*Gastrodia* sp.): CITES Appendix II  
Details: The charges were brought following the discovery of 216 boxes of "Orthodox Gastrodia Tuber Slices" undeclared and concealed in the centre of a large container by Ontario Conservation Officers on February 21, 2002. CITES permits had not been obtained for the import.  
Penalty: The accused was fined CAD2500 (USD1859), and the goods were ordered forfeited to the Crown.

**57. R. v. Shahidi**

Location: Ontario Provincial Court (Mississauga)  
Date: April 3, 2003  
Prosecuting agency: Environment Canada  
Violation(s): Section 6(2) WAPPRIITA  
Species involved: African grey parrot (*Psittacus erithacus*): CITES Appendix II  
Details: The accused attempted to illegally import a parrot into Canada from Iran on February 7, 2002. The bird was discovered by Canada Customs and CFIA officers who contacted Environment Canada's Wildlife Enforcement Division.  
Penalty: The accused was fined CAD1500 (USD1116) plus a CAD375 (USD279) victim surcharge, for a total fine of CAD1875 (USD1395). The goods were ordered forfeited to the Crown.

# APPENDIX E — WAPPRIITA PERSONAL AND HOUSEHOLD EFFECTS EXEMPTION TABLE

WILD ANIMAL AND PLANT TRADE REGULATIONS CITES PERSONAL & HOUSEHOLD EFFECTS EXEMPTION* SUMMARY TABLE				
	TOURIST SOUVENIR	PERSONAL EFFECT	HOUSEHOLD EFFECT	HUNTING TROPHY
APPLIES TO	All individuals entering or leaving Canada	All individuals entering or leaving Canada	All individuals entering or leaving Canada	Individuals who are residents of Canada or the U.S.A. and are entering or leaving Canada
CONDITIONS	Appendix II or III of CITES  Item was acquired by the individual outside their ordinary country of residence during a sojourn from which he is returning.  Item is part of the individual's clothing or accessories or personal accompanied baggage	Appendix I, II, or III of CITES  Item was owned by the individual in their ordinary country of residence  Item is part of the individual's clothing or accessories or personal accompanied baggage	Appendix I, II, or III of CITES  Owned and possessed by the individual in their ordinary country of residence.  Forms part of individual's <b>household belongings</b> being shipped to their new residence, or, forms part of an <b>inheritance</b> from an estate.	Black bear and Sandhill crane trophies in a fresh, frozen or salted condition  Acquired and possessed through legal hunting in Canada or the U.S.  Taken between Canada and the U.S. as personal accompanied baggage
INCLUDES (These no longer require CITES permits** as long as all conditions for the exemption are met)	Dead plants or dead animals, including their parts and derivatives.  In the case of sturgeon <b>caviar</b> , only 250 grams or less	Live and dead plants, and dead animals only, including their parts and derivatives  In the case of sturgeon <b>caviar</b> , only 250 grams or less	Live and dead plants, and dead animals only, including their parts and derivatives	For <b>black bear</b> : the hide, hide with paws and claws attached, skull or meat  For <b>Sandhill crane</b> : carcass or meat
EXCLUDES (These still require all necessary CITES permits)	Appendix I species  Live animals and plants  Hunting trophies  In the case of sturgeon <b>caviar</b> , more than 250 grams.  <u>ON EXPORT ONLY:</u> Raw, unprocessed, semi-processed or simply dried specimens, except feathers	Live animals  Hunting trophies  In the case of sturgeon <b>caviar</b> , more than 250 grams.	Live animals	For <b>black bear</b> : all organs are excluded.  All hunting trophies from CITES-regulated species, other than black bear and sandhill crane

Source: R. Charette, in litt. to E. Cooper, July 8, 2002. Table originally prepared by J.Straby and J. Robillard, June 6, 2000.

\* All Canadian species listed under Schedule III of the Wild Animal and Plant Trade Regulations require CITES permits. Examples include white or beluga whale, sea otter, peregrine falcon, whooping crane, leatherback turtle and American ginseng.

\*\* All provincial/territorial permits must still be obtained.