TRADE REVIEW

SOUTH AFRICA'S WILDLIFE TRADE AT THE CROSSROADS

Ashish Bodasing

and

Teresa A Mulliken

A TRAFFIC EAST/SOUTHERN AFRICA REPORT

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SOUTH AFRICA'S WILDLIFE TRADE AT THE CROSSROADS: CITES IMPLEMENTATION AND THE NEED FOR A NATIONAL REASSESSMENT

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FOREWORD

In South Africa, where the utilisation of natural resources represents a source of income to many and contributes significantly to the country's fiscus, it is alarming to discover that legislation enacted to protect wildlife and wildlife products is so fragmented and incomplete that wildlife authorities are often unable to act against suspected infringements.

With the support of WWF South Africa and the Endangered Wildlife Trust, the South African office of TRAFFIC East/Southern Africa was tasked with monitoring and documenting all aspects of the wildlife trade in South Africa. TRAFFIC has achieved this by working closely with wildlife authorities, the TRAFFIC Network and many other domestic and international interest groups. The two authors of this document, Ashish Bodasing and Teresa Mulliken, have spent the past three and a half years investigating the many instances and circumstances of illegal wildlife trade in South Africa, ranging from the smuggling of elephant ivory and rhino horn to the illegal import of rare exotic orchids.

South Africa's management of wildlife resources, in particular highly endangered megafauna, is amongst the best in the world. However, the results of this detailed study raise many doubts about the effectiveness of existing laws and management structures to control the country's wildlife trade. South Africa appears to be falling behind in its responsibilities to the international community by failing to implement conservation treaties such as CITES (Convention on International Trade in Endangered Species) adequately. While the strengths and weaknesses of CITES implementation form the main bulk of discussion in this document, many of the points raised are directly applicable to domestic wildlife trade controls and conservation of natural resources in general.

This report recognises that South Africa is going through challenging political times and is actively engaged in the development of new environmental policies and conservation institutions. Because of this, the minds of policy makers may not be completely focused on issues of resource conservation. This well-researched report should refocus attention, and we are convinced that now is the time to grasp the opportunity to develop all-encompassing and integrated policies, effective legislation, management structures and law enforcement programmes. This will ensure that South Africa can gain effective control of the trade in its indigenous wildlife, while strengthening its ability to cooperate internationally in the control of global wildlife trade as required by CITES.

This report by TRAFFIC amply outlines the scope of manpower and legislative shortcomings in South Africa, and provides constructive suggestions for finding solutions to many outstanding problems. We wholeheartedly support the contents of this document and urge all parties to use it as a basis for developing integrated legislation which will safeguard South Africa's rich wildlife resources.

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EXECUTIVE SUMMARY

South Africa has long been recognised as a key player in the international trade in wild animals, plants and products. Concern that this trade is not adequately controlled led TRAFFIC East/Southern Africa to undertake a detailed examination of relevant legislation and mechanisms in place to ensure that wildlife trade was legal and sustainable. The primary focus of this study was on South Africa's implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which South Africa joined in 1973. This report summarises the results of TRAFFIC's study, analyses deficiencies in South Africa's CITES implementation under the previous provincial structure, and provides recommendations for more effective control of wildlife imports and exports.

Many of the contemporary measures in place to protect South Africa's fauna and flora and regulate of the wildlife trade reflect this country's former history; responsibility for wildlife conservation, including trade, was largely accorded to the provinces. Although regional boundaries have recently been revised by the Government of National Unity, the legal framework and administrative structure for controlling the wildlife trade is unchanged. The governments of the former Cape, Natal, Orange Free State and Transvaal provinces remain responsible for controlling trade in wildlife, with powers to issue import and export permits and assist with enforcement in the newly formed provinces. All references to provinces and provincial governments in this report refer to the provincial structure constituted before 1995.

The provincial nature of trade controls stems from South Africa's legal foundation for CITES implementation: no national legislation has been adopted to implement either the text of the Convention or Resolutions adopted by CITES Parties. Unfortunately, provincial legislation in the form of wildlife ordinances have not filled this gap, as they do little more than reference CITES Appendix I and II species, and establish basic permitting requirements. Species included in CITES Appendix III are largely exempted from trade controls in all four provincial ordinances. As a result, CITES implementation in South Africa could best be described as *ad hoc*, with provincial staff variously interpreting the Convention and Resolutions, implementing some provisions and ignoring others.

The superficial and patchwork nature of CITES-implementing legislation has resulted in:

* Varying and discretionary interpretation, and therefore implementation, of the Convention's requirements, including a failure to institute and enforce permit requirements for all species included in the three CITES Appendices and adoption of confusing terminology for referencing CITES-listed species;

* Inconsistent provincial controls on the sale and possession of native wildlife, these controls are generally specific only to the wild species indigenous to a given province. As a result, traders seeking to export native wildlife are able to do so by moving wildlife from a province in which it is protected to one in which it is not;

* Interprovincial permitting requirements for the movement of certain types of wildlife, including many CITES-listed species. that exist only on paper, as there are no internal border controls; and

* Wide variations in penalties for violating import and export controls, with penalties for some offences so low in Natal and Transvaal as to provide little disincentive to illegal trade.

On the surface, the administrative structure for CITES implementation appears somewhat more consistent. CITES requires each Party to designate a Management Authority and a Scientific Authority responsible for implementing the Convention. In the case of South Africa, a national Management Authority has been established in the Department of Environment Affairs and Tourism, and the directors of provincial wildlife departments have been designated as both the Management and Scientific Authority in each of the four former provinces.

The national Management Authority performs administrative functions such as transmitting information provided by the CITES Secretariat to the provinces, compiling CITES annual reports and convening meetings of the CITES Working Group. This office provides little else in the way of coordination. In the provinces, Management Authority responsibilities such as permit issuance and record keeping and enforcement are largely delegated to other staff, with licensing offices generally considered to constitute the Management Authority. Scientific Authority responsibilities are generally delegated to whichever staff within the wildlife department have the most expertise on given taxa at the time such information is needed. Enforcement of the Convention, such as inspection of wildlife to be imported or exported, is generally delegated to provincial wildlife enforcement staff. The Endangered Species Protection Unit of the South African Police (ESPU) also assists with enforcement of the Convention.

Other similarities in the structure, function and relationship of Scientific and Management Authorities include:

* CITES implementation being only one of a variety of functions performed simultaneously by permitting, scientific and enforcement staff;

* Universal absence of specific training in CITES-related issues for staff responsible for CITES implementation;

* Limited access to information and identification materials to assist with permit issuance and inspection: species are therefore allowed to be imported from range states where they do not occur or where export bans are in effect;

* Poor quality control with respect to issuance of permits and compilation of annual reports: comparison of permits issued in 1993 with South Africa's CITES annual report for that year showed numerous cases where permit information was inaccurately or incompletely reflected in the annual report;

* Import approval based on copies of export permits or information provided by importers, and export permit issuance based on information provided by exporters, with little or no confirmation through physical inspection of goods in trade;

* Limited interprovincial co-ordination with regard to permit issuance, with the result that traders failing to acquire a permit in one province can always try another, sometimes meeting with success;

* Unlimited ports of entry and exit for wildlife trade such that wildlife can be imported or exported with little chance of inspection, especially through borders with other members of the Customs Union (Botswana, Lesotho, Namibia, Swaziland), thereby increasing the potential for illegal trade;

* Poor coordination and information sharing between wildlife enforcement staff, Customs, ESPU and Department of Agriculture staff. Investigations are characterised by informal communications rather than formalised cooperation, and often owe more to good will and individual personalities than necessity;

* Lack of government facilities to hold confiscated live animals and plants, and funds to compensate zoos or other facilities that might agree to take them, with the result that authorities may be hesitant to act in the case of suspected illegal trade; and

* Lack of a formal mechanism to ensure that exports of Appendix II species will not be detrimental to the survival of species in trade, with South African wildlife potentially threatened as a result.

South Africa has earned a positive reputation for conserving native wildlife. However, this is being undermined by the government's inability to adequately control trade in wild animal and plant species, including enforcement of CITES. The Government of National Unity has the opportunity to address this situation by developing and implementing a sound wildlife trade policy, and to ensure that utilisation of wildlife in trade is both sustainable and legal.

Although many issues of domestic concern undoubtedly benefit from management at the provincial level, it is clear that the compartmentalised nature of provincial wildlife trade controls is neither efficient nor effective. The current transitional period in South Africa's governance provides an ideal opportunity to address the failure of previous legislative and institutional structures to adequately control this country's trade in native and exotic wildlife. The current government should therefore develop and adopt a nationally uniform and managed system of trade controls, with implementation delegated to national and provincial government departments as appropriate.

In view of the above findings, TRAFFIC recommends that the following actions be taken:

* **The development of national legislation** to effect uniform legal coverage for the regulation of trade in all CITES-listed species in South Africa should be recognised as a national goal of major and immediate importance. Such legislation should consolidate and standardise the provisions of the provincial ordinances.

* **The development of a nationally compatible and integrated administrative structure** that links all national and provincial authorities should be effected at the earliest possible moment.

* **Further development of a coordinated law enforcement structure** and strategy establishing cooperative linkage between all relevant national and provincial law enforcement bodies needs to be addressed.

INTRODUCTION

South Africa's accession to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) came into force on 13 October 1975. The Department of Environmental Affairs and Tourism (DEAT) was nominated by the South African government to serve as the country's principal CITES Management Authority. In addition, South Africa's four provincial administrations, namely, Cape Nature and Environmental Conservation (CNC), Natal Parks Board (NPB), Orange Free State Nature and Environmental Conservation (OFSC) and Transvaal Nature and Environmental Conservation (TNC) were also designated to serve as both Management and Scientific Authorities within their respective jurisdictions. Finally, the Directorate of Sea Fisheries was charged with carrying out Management and Scientific Authority functions with respect to the pelagic marine environment. Collectively, these authorities have been directly charged with implementing the provisions of the Convention in South Africa over the last two decades. Although South Africa granted complete political autonomy to the independent homelands such as Transkei, Ciskei, Bophuthatswana and Venda, these homelands were never recognised by the international community as sovereign states and South Africa continued to implement CITES in these regions.

As presently designed and administered, there are numerous flaws in the basic implementation of CITES in South Africa. While a decentralised approach may have been politically expedient at the time of accession 20 years ago, the nature of today's wildlife trade, as well as the evolving complexities of the Convention itself, require a thorough reappraisal of the current system. Although it is impossible to fully judge the scale of trade occurring outside of established trade controls, there are numerous indications that many problems exist and that the current provincial administrative framework inadequately meets the challenges of today.

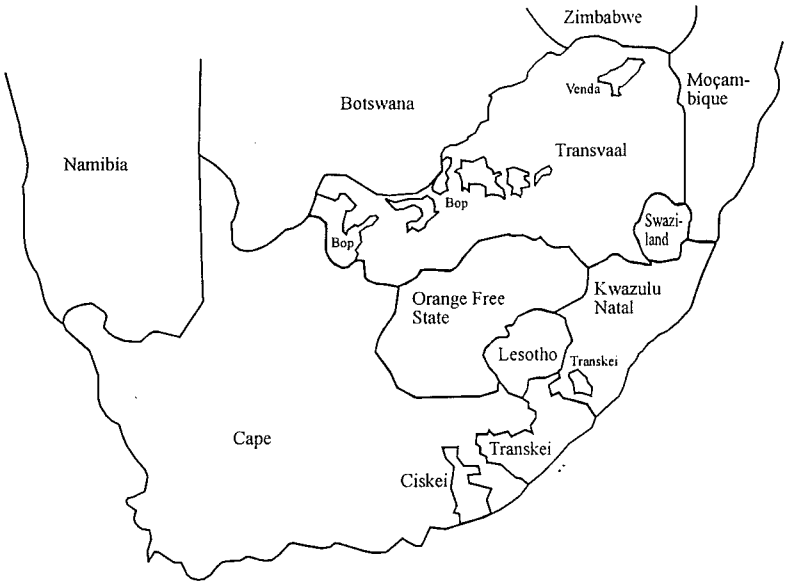
With the advent of South Africa's Government of National Unity and the ongoing restructuring of government institutions, a unique opportunity is at hand to restructure CITES administration and make implementation more effective. The government's Reconstruction and Development Plan specifically supports sustainable utilisation of renewable wildlife resources as one means to redress the inequities of an apartheid past. Recognising this, there is a pressing need to ensure that South Africa's wildlife trade is legal and sustainable through the institution of national legislation, trade controls and administrative procedures that are standardised and implemented in a consistent manner nation wide.

The future of CITES administration within the newly-created nine regional authorities remains unclear. There are worrying indications that further decentralisation may be in the offing and that a process of devolution within key environmental institutions is occurring. For example, in the Orange Free State, the province's long-standing conservation authority, OFSC, has recently been subsumed within the provincial Department of Agriculture and Environment Affairs. This development could make CITES implementation an even lower priority locally than was previously the case.

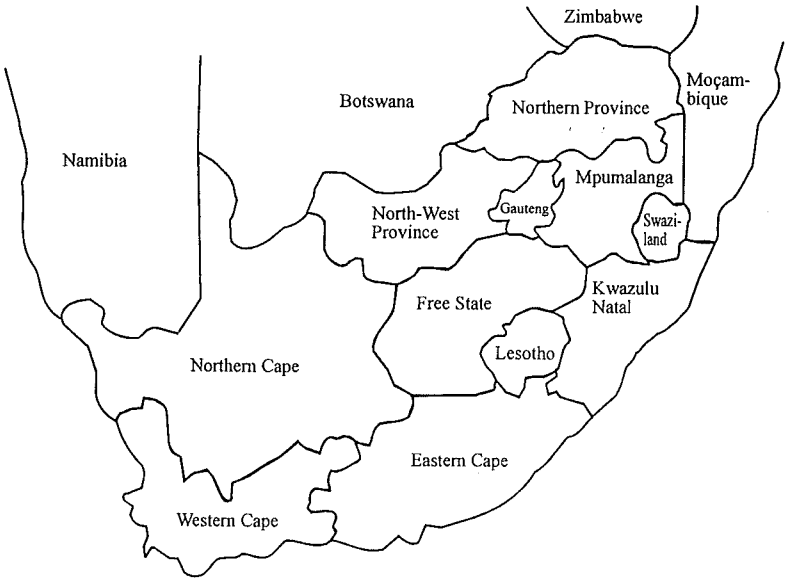
In the five newly-created provinces, the structure and mandate of emergent conservation bodies remains ambiguous with respect to CITES. It is not known, for example, whether these new institutions will be empowered to issue permits and assume all of the responsibilities of full-fledged CITES Management and Scientific Authorities, whether new provincial conservation legislation will be promulgated or whether existing ordinances of the former provinces will remain in effect. These fundamental questions remain to be answered for an area encompassing roughly half of the nation. Further decentralisation could conceivably result in South Africa having some nine separate

Figure 1

OLD SOUTH AFRICA



NEW SOUTH AFRICA



institutions functioning as CITES permit-issuing authorities, operating independently and without the benefit of national legislation or a coordinated administrative strategy. Decentralisation of this magnitude would create a host of intractable problems to the detriment of not only South Africa's wildlife but also the wildlife of other countries for which South Africa serves as a market or entrepot. TRAFFIC's primary objective in undertaking this study is to ensure that the evolving administrative and legal framework for CITES and other wildlife trade controls in the new South Africa is structured to be as effective, rational and dynamic as possible. There are many lessons which can be learned from a detailed examination of the past 20 years of CITES implementation in South Africa. This report is the first systematic attempt at such an evaluation, and it is hoped that it will serve as a foundation for future decision-making on CITES implementation in South Africa.

From the outset, it must be acknowledged that the data and other information contained in this report largely comes from government institutions that are currently undergoing restructuring and, in most cases, no longer exist as previously constituted. Figure 1 and Table 1 present the most recent geographical and institutional developments in this regard, but more changes are likely to occur in the near future. Readers are advised to bear in mind that throughout this report, all references to Cape Province and CNC, Natal Province and NPB, Orange Free State and OFSC, and Transvaal Province and TNC refer to geographical and provincial government institutions as they were constituted before 1995. It should be appreciated that the CITES administrative structure of the former regime largely remains in place. For example, the former CNC (now called the Department of Environment and Cultural Affairs of Western Cape Province) is still the permit-issuing authority for Western, Eastern and Northern Cape Provinces, and the Department of Conservation and Agriculture of Gauteng Province (part of the former Transvaal) continues to issue permits on behalf of Mpumalanga, Northern and North-West Provinces. Therefore, while this analysis draws upon data from the past, the problems highlighted in this report are still, with rare exception, ongoing in the new South Africa.
Although this study is largely critical of South Africa's implementation of CITES, it must be borne in mind that South Africa is not alone in failing to implement the Convention effectively. Many of the problems and issues which are addressed are not unique to South Africa: a wide range of CITES Parties – perhaps even the majority – have records of poor implementation (Nash, 1994). The intention of this report is not to demonstrate that South Africa is, comparatively speaking, "worse" than most other Parties. Rather, by highlighting existing problems at this critical junction in South Africa's history, it is hoped that constructive solutions can be found to improve legislation, trade controls, administrative procedures and law enforcement for CITES throughout the country. If South Africa is to maintain a leadership role for wildlife conservation in Africa, CITES implementation must be elevated to a much higher position on the government's agenda. Doing so will ensure that many sustainable use options that depend on international markets are not jeopardised by poor trade controls, which could lead to restrictive interventions under CITES or bilateral measures on the part of South Africa's trading partners.

Table 1: South Africa's Former and Current Provincial Administration Structure for Nature Conservation

Former Provincial Structure	FormerDepartmental Structure	Current Provincial Structure	Current Departmental Structure	Comments
Cape Province	Cape Nature Conservation	Western Cape Province	Department of Environmental and Cultural Affairs	
		Eastern Cape Province	Eastern Cape Conservation Services	New province includes Transkei and Ciskei homelands
		Northern Cape Province	Northern Cape Nature Conservation Services	
Natal Province	Natal Parks Board KwaZulu Nature Conservation	KwaZulu/Natal Province	Natal Parks Board KwaZulu Nature Conservation	Both departments are expected to be amalgamated in the near future
Orange Free State Province	Directorate Nature and Environmental Conservation – Orange Free State	Free State Province	Department of Agriculture and Environment Affairs	Includes Thaba Nchu, formerly part of Bophuthatswana
Transvaal Province	Chief Directorate of Nature and Environment Conservation – Transvaal	Gauteng Province	Department of Environment Affairs	
		Mpumalanga Province	Department of Conservation and Agriculture	
		Northern Province	Department of Environmental Affairs and Tourism	New province includes Venda and parts of Bophuthatswana homelands
		North-West Province	Department of Agriculture andmost of Environmental Affairs	New province includes Bophuthatswana and parts of Transvaal and Cape Province

METHODOLOGY

Since its formation in 1992, the TRAFFIC East/Southern Africa – South Africa office has been working on various wildlife trade and CITES implementation issues. During this time, TRAFFIC analyses of trade data, legislation, investigations and ongoing interaction with a broad range of government officials, scientists, conservationists and wildlife traders have produced a wealth of information regarding many aspects of wildlife trade in South Africa. This report is largely based upon this collective body of work.

Trade Data

Several sources of data were used to analyse various issues in this study, including the following:

* CITES annual report data were obtained concerning all CITES-reported trade involving wildlife exported from, imported by, or originating in South Africa for the period 1976 to 1991. These data are based on information contained in the CITES annual reports submitted to the CITES

Secretariat by CITES Parties; thus, these data include South Africa's CITES annual reports. These data are maintained by the World Conservation Monitoring Centre under contract to the CITES Secretariat and are collectively referenced as "CITES Annual Report Data" in this report. Unless specifically stated, all data referring to trade prior to 1991 were obtained from CITES Annual Report Data.

* Since 1992, TRAFFIC has received CITES permit data from CNC, NPB, OFSC and TNC. Consisting of over 27 000 records, including all transactions which occurred in 1991, these data are collectively referenced as "TRAFFIC South African CITES Permit Data" in this report. Unless otherwise stated, TRAFFIC South African CITES Permit Data were used for assessing trade during the period January 1991 to April 1995.

There are a number of problems associated with the data in these two data sets which warrant some degree of explanation. South Africa's permit system inadvertently facilitates both over- and under-reporting of actual trade volumes. For example, CNC, NPB and OFSC issue import permits in advance of shipments arriving in the country, so reported trade volumes reflect permits issued rather than actual numbers of specimens arriving in South Africa. On the other hand, TNC issues import permits after the arrival of individual shipments but, in the case of live animals, the permit data may exclude mortalities found in the shipment. For these reasons, South Africa's import data often does not reflect true trade volumes. Data for the country's export trade are also based on permits issued rather than actual trade volumes. As there are no mechanisms in place to verify whether an export permit was ever used or not, whether the numbers of specimens in individual shipments equalled those on permits or whether shipments were exported without permits, trade may be either under- or over-reported depending on the circumstances.

Notwithstanding these shortcomings, the above mentioned data provide a meaningful indication of species and relative volumes of specimens in trade and trends useful for reviewing CITES implementation in South Africa.

Legislation

TRAFFIC reviewed relevant national legislation to analyse the legal framework for CITES implementation in South Africa. Focusing on those provisions which relate to issues of importance to CITES, the following national acts were reviewed: the *Animals Protection Act No. 71 of 1962*; *Environment Conservation Act No. 73 of 1989*; *Sea Fishery Act No. 12 of 1988*; *Agricultural Pests Act No. 36 of 1983;* and *Customs and Excise Act No. 91 of 1964.*

The legislation review also considered the four provincial ordinances which relate to CITES implementation, namely: *Nature and Environmental Conservation Ordinance No. 19 of 1974* of Cape Province; Natal's *Nature Conservation Ordinance No. 15 of 1974*; Orange Free State's *Nature Conservation Ordinance No. 8 of 1969*; and Transvaal's *Nature Conservation Ordinance No. 12 of 1983.* The most recently-amended versions of these ordinances were reviewed for this study.

Investigations

As an ongoing activity over the last three years, TRAFFIC has been involved in more than 120 wildlife trade investigations. In most cases, TRAFFIC has played a collaborative role with government law enforcement agencies. Information from a number of these cases is presented in this report to highlight various wildlife trade issues.

Interviews

TRAFFIC staff and consultants discussed CITES and other wildlife trade issues with staff from the four provincial administrations, Customs and Excise (Customs), DEAT, the Department of Agriculture (DOA), the Endangered Species Protection Unit (ESPU) of the South African Police (SAP), the Society for the Prevention of Cruelty to Animals (SPCA), the Department of Home Affairs and a considerable number of wildlife traders. This report draws heavily upon information obtained during these discussions. Other information was also obtained from contacts within the TRAFFIC Network, the CITES Secretariat and other non-government organisations.

HISTORY OF THE REGULATION OF WILDLIFE TRADE IN SOUTH AFRICA

Although South Africa has garnered international acclaim for endangered species programmes and the management of protected areas, the regulation of wildlife trade in South Africa has generally held a nominal position at the national level. In the past, consumptive uses of many animal and plant species were generally regarded as "a way of life" as opposed to fully-fledged commercial activities. Consequently, trade regulations were rarely comprehensive in nature and were usually effected at the local rather than national level, and then only for a limited number of high-profile species.

In 1652, Dutch settlers arrived at the Cape of Good Hope, marking the first chapter of South Africa's "modern" history. The seemingly endless abundance of natural resources, coupled with the non-recognition of indigenous land rights and cultures, quickly led to the uncontrolled hunting of many wildlife species with little concern for their long-term conservation. Early attempts to address the growing loss of wildlife in the Cape during the first 40 years of European settlement, resulted in the promulgation of some eight legislative measures dealing with wildlife issues (Rabie and Fuggle, 1992). Generally speaking, these moves had little effect, and some were actually counter-productive from a conservation point of view, such as the declaration classifying Lions *Panthera leo* and Leopards *Panthera pardus* as problem animals and offering a bounty for their killing.

Throughout the 18th century and the first half of the 19th century, the indiscriminate hunting of wildlife continued to concern government officials, but, apart from issuing a series of largely repetitious placaats (laws) on the issue, successive governments made little progress in controlling indiscriminate hunting. While stringent penalties for illegal hunting were promulgated, a general lack of law enforcement resulted in a marked decline in the region's wildlife resources. In the meantime, a well-developed ivory trade to European markets took root out of the Cape, with unsuccessful attempts to keep the lucrative traffic a monopoly of the Dutch East India Company. In fact, the quest for ivory led the first Europeans to cross the Great Fish River into the eastern Cape in 1736 and the Orange River in 1760, opening up these regions for future European settlement (Parker and Amin, 1983). During this period, the regulation of marine resources also commenced with the prohibition of seal hunting on Dassen Island in 1709 and the control of whaling in Table and False Bays in 1792 (Rabie and Fuggle, 1992).

Early colonial attempts to control illegal hunting were marked by a litany of failures: by 1865, Quagga *Equus quagga*, Burchell's Zebra *Equus burchelli*, Cape Hartebeeste *Alcelaphus caama caama*, Blue Antelope *Hippotragus leucophaeus* and Cape Lion *Panthera leo melanochaitus* were all extinct (Balouet, 1990). Largely in response to this tragic loss of wildlife species, the latter part of the 19th century and the first decade of the 20th saw a proliferation of legislation to protect wildlife, including fish, being promulgated by the newly-established provincial legislatures in the Cape, Natal, Orange Free State and Transvaal (Rabie and Fuggle, 1992). Commencing with the

establishment of game reserves and, later, national parks, South Africa's system of protected areas began to take shape during this period.

While South Africa's wildlife trade has steadily evolved from "a way of life" into a multi-million rand industry, the country's wildlife trade legislation has generally lagged far behind. It is significant to note that the enactment of comprehensive provincial nature conservation ordinances took place as recently as 1965 in the Cape, 1967 in the Transvaal, 1969 for the Orange Free State and not until 1974 in Natal. On the other hand, national wildlife trade legislation has still not been developed. In fact, it can be argued that South Africa's environmental legislation largely stands as an historical recount of the country's troubled history and continues to be composed of a plethora of parliamentary acts, provincial ordinances, local by-laws and ministerial regulations to the detriment of a sound national environmental policy (Rabie and Fuggle, 1992).

There is broad recognition that wildlife utilisation, particularly where international trade is concerned, must be properly managed in order to prevent over-exploitation which can lead to a reduction in wild populations, species extinctions and impact the stability and productivity of entire ecosystems. Increasingly, biodiversity is being viewed as a global asset with an existence value extending well beyond political boundaries (Swansen and Barbier, 1992); conserving biodiversity at the global level will probably require a restructuring of trade and the international policies of industrialised nations (McNeely, 1989). In this regard, South Africa needs to be fully cognisant of its role in the international wildlife trade and the impact any failure to implement proper trade controls could have on wildlife species both at home and throughout the rest of the world.

SOUTH AFRICA'S ACCESSION TO CITES

World attention on endangered or threatened species issues, particularly the negative impacts of commercial trade, directly led to the development of CITES. Recognising the need for international cooperation to safeguard commercially-valuable species from the threat of extinction through uncontrolled harvest and trade, 21 countries signed the Convention in Washington DC on 3 March 1973. CITES officially entered into force as an international conservation treaty on 1 July 1975 after ten countries had formally ratified it. As of August 1995, 130 countries around the world have become Parties to the Convention.

The 15th Party to join, South Africa ratified CITES on 15 July 1975 and the Convention entered into force on 13 October 1975. In joining, South Africa unconditionally agreed to abide by the Articles of the Convention, which outline specific obligations. As noted in Nash (1994), these include obligations to:

* allow import, export, and re-export of species listed in the CITES Appendices only when carried out in accordance with the Convention (Articles II, III, IV, V, VI and VII);

* take appropriate measures to enforce the provisions of the Convention and to prohibit trade in violation of the Convention's provisions, and to provide annual reports on international trade and biennial reports on national enforcement measures (Article VIII);

* designate one or more Management Authorities as being responsible for granting permits or certificates and maintaining trade records and to designate one or more Scientific Authorities to provide technical advice to the Management Authority (Article IX); and

* contribute annually to the budget of the Secretariat (Article XI).

CITES is an extremely complex treaty whose implementation requires regular reconsideration to keep pace with changing political and conservation realities, including the availability of better information on wildlife trade. In addition to the basic tenets of the Convention itself, the Parties have adopted a series of Resolutions during the biennial meetings of the CITES Conference of the Parties (COP) to "fine-tune" various issues of interpretation, implementation and law enforcement. All Parties are expected to implement these Resolutions, to follow the decisions of the CITES Standing Committee and to cooperate with other member States as directed by CITES Notifications to the Parties (CITES Notifications), which are periodically circulated by the CITES Secretariat.

Unfortunately, the Convention, COP Resolutions and CITES Notifications are merely words on paper and can only be made into an effective conservation mechanism through appropriate supporting actions taken by the Parties themselves. In this regard, CITES is principally a non-self-executing treaty and each Party must institute a series of national measures before it can be implemented (See Box 1). While there is latitude in the means by which Parties can fulfil their obligations under the Convention, essential ingredients include the adoption of a sound legal framework and the creation of a precise administrative structure.

Box 1 CITES as a Non-Self-Executing Treaty

International lawyers distinguish between self-executing and non-self-executing provisions in a treaty. Self-executing provisions are those which are directly applicable by a Party without a need for any additional national legal instrument. Non-self-executing provisions, on the contrary, cannot be implemented until specific legislation has been adopted for that purpose. These include, in particular, provisions which create specific obligations for private persons, as such obligations cannot be enforced in the courts and penalties cannot be applied for non-compliance unless expressly provided for by domestic legislation.

The main non-self-executing provisions of CITES appear in Articles II. 4 and VIII. 1. Article II. 4 requires that Parties do not allow trade in specimens of species included in the Convention's Appendices except in accordance with the provisions of the Convention. As a result, Parties are under the obligation to take measures prohibiting trade in CITES specimens whenever the conditions laid down by the Convention have not been complied with.

This general rule is supplemented by Article VIII. 1, which requires that Parties take appropriate measures to enforce the provisions of the Convention and to prohibit trade in specimens in violation thereof. Therefore, Parties have to take the specific measures required to implement the Convention and make its provisions binding not only upon public agencies but upon private persons as well.

The scope of Article VIII. 1 is quite broad and allows, therefore, for a certain degree of discretion by Parties on the type of measures they must take to enforce the Convention. There are, however, two categories of measures which must be taken under that Article: firstly, measures to penalise trade in specimens in violation of the Convention, or the possession of specimens so traded, or both (Article VIII. 1 (a)); and secondly, measures to confiscate such specimens or return them to the State of export (Article VIII. 1 (b)).

These obligations must be considered as the very keystone of the Convention since without effective penalties it is obvious that enforcement will be impossible. As, however, in most if not all legal systems, criminal penalties may only be imposed by an Act of Parliament or an equivalent instrument, the Convention provides a clear obligation for Parties to enact appropriate legislation. The failure to do so constitutes a violation of the Convention.

Thus, the mere ratification of CITES without the adoption of appropriate implementation legislation can never be sufficient to ensure an effective enforcement of the Convention, if only because penalties for violations of the provisions of CITES can only be imposed by national legislation.

Source: de Klemm, 1993

SOUTH AFRICA'S WILDLIFE TRADE LEGISLATION

The national government and the four provincial authorities share responsibility for controlling international trade in wildlife and wildlife products in South Africa. In general, a number of legislative acts provide a loose framework for national regulation, while four provincial ordinances detail more specific controls and procedures within each province.

National Legislation

Various legislation which falls under DEAT, DOA and the Department of Finance (Customs) provide national mechanisms for regulating some aspects of South Africa's trade in wildlife.

With respect to CITES implementation, the *Customs and Excise Act No. 91,* as amended, is perhaps the most important piece of national legislation as it prohibits the import or export of any goods which, under any other law, specifically require authorisation through the issuance of a '*permit, certificate or other authority*'. The Act requires that this documentation be produced and reviewed by Customs Controllers for each consignment. The Act also provides for the seizure of goods suspected of being in contravention of the '*Act or any other law*', thereby allowing for the compulsory forfeiture of CITES-listed specimens imported or exported in cases which contravene the provisions of provincial ordinances.

The *Environmental Conservation Act No. 73 of 1989* was enacted to provide for '*the effective protection and controlled utilisation of the environment and for other matters incidental thereto*'. Responsibility for implementation was given to DEAT. In 1993, an amendment to the Act provided a mechanism to append schedules containing the provisions of international conventions, treaties or agreements relating to the protection of the environment that have been ratified by the South African government. However, schedules referencing CITES have yet to be appended.

DOA legislation aimed at protecting agriculture and human health is also relevant for implementing certain aspects of CITES in South Africa. The *Animal Diseases Act No. 35 of 1984*, the *Animal Diseases Amendment Act No. 18 of 1991* and the *Agricultural Pest Act 36 of 1983* all provide for the quarantine of live animals and plants coming into South Africa. As a result, DOA's Directorates of Animal Health and of Plant Quality and Control are responsible for important monitoring functions with respect to trade in live specimens of CITES-listed species.

The *Sea Fishery Act 12 of 1988*, which is implemented by the Directorate of Sea Fisheries, does not directly refer to CITES, but certain taxa referred to in the Act are CITES-listed species, such as Jackass Penguin *Spheniscus demersus*. This Act is principally concerned with the '*conservation of the marine ecosystem and the orderly exploitation, utilisation and protection of certain marine resources*'.

While each of the above Acts serve some useful purpose for implementing certain aspects of the Convention, overall, South Africa lacks comprehensive national legislation for CITES. This deficiency entrenches the relatively nominal position accorded wildlife trade matters nationally in South Africa, and largely decentralises CITES regulation to provincial ordinances as the principle means for control.

Provincial Legislation

For most practical purposes, provincial legislation forms the backbone of CITES implementation and enforcement in South Africa. Each of the four provinces has promulgated nature conservation ordinances which include provisions for the protection of species and the regulation of trade. It needs to be borne in mind, however, that these ordinances generally pre-date CITES and were initially developed with the protection of indigenous species and domestic conservation issues as their primary concern. Compliance with CITES requirements only became an additional consideration in more recent years.

Cape Province

The *Nature and Environmental Conservation Ordinance No. 19 of 1974* implements CITES in Cape Province. This Ordinance was most recently amended in 1992. The trade provisions of the Ordinance generally comply with CITES requirements. In fact, import controls supersede the provisions of the Convention in that import permits are required for all live wild animal species (even those from other provinces) and trophies from outside of South Africa regardless of a species' standing on the CITES Appendices.

Natal Province

The *Nature Conservation Ordinance No. 15 of 1974* provides the basis for CITES implementation and enforcement. In December 1993, an amendment was adopted introducing a new schedule which was intended to contain CITES Appendix I and II species, however due to an error, a summary of the IUCN Threatened Species List was included instead. This move did serve to strengthen the ability of the Ordinance to support implementation of the Convention, but also created an anomaly for indigenous species listed in more than one schedule. The import of species listed in the schedule is sanctioned only under permit, a requirement that supersedes CITES provisions for Appendix II or III species.

Orange Free State Province

Wildlife trade controls in the Orange Free State are included in the *Nature Conservation Ordinance No. 8 of 1969*. This Ordinance was consolidated in 1992, primarily strengthening possession and domestic trade provisions for elephants and rhinos. Generally speaking, the Ordinance applies CITES import and export controls to taxa listed under the Convention with the exception of exotic Appendix III plants and animals (including parts and derivatives), and like elsewhere, import permits must be obtained for most species in advance of their importation.

Transvaal Province

The *Nature Conservation Ordinance No. 12 of 1983* promulgates wildlife trade controls in the Transvaal. Amendments incorporated in 1991 strengthened certain provisions of the Ordinance with respect to CITES and penalties were increased. Legal trade in all species listed in Appendices I and II of the Convention requires import or export permits, which in the case of imports of Appendix II specimens is stricter than the requirement of the Convention.

Problems with South Africa's CITES Legislation

Although permit requirements and some enforcement measures are generally in place for Appendix I and II species, neither South Africa's national legislation nor the provincial ordinances wholly reflect compliance with the Convention. While there has been no attempt to develop comprehensive implementing legislation for CITES at the national level, there have been a number of coordinated efforts to strengthen provisions in the provincial ordinances for certain species. Such efforts have largely transpired on a "flavour-of-the-day" basis for high-profile trade issues such as trade in rhino horn, elephant ivory and cycads.

The more salient issue, however, is the patchwork effect of provincial regulations that give rise to many inconsistencies between various parts of the country. South Africa lacks an integrated, cohesive wildlife trade policy. At its worst, this system allows for trade which would not be authorised in one province to transpire legally in another.

The Relationship between National and Provincial Legislation

The fundamental relationship between national and provincial legislation is frequently ambiguous. For example, it is unclear whether the *Customs and Excise Act* is directly applicable for the purpose of enforcing the provisions of the Convention throughout South Africa or whether the Act can only be used to assist in the enforcement of the four provincial ordinances. If the latter is the case, as the ordinances are widely inconsistent with respect to terminology, specific trade controls, species coverage, offences and penalties, the nature of the Customs offence will necessarily differ from one province to the next. In such cases, the *Customs and Excise Act* is only as effective as the individual ordinances themselves, making it an ineffective enforcement tool for a range of CITES infractions. The *Environment Conservation Act*, on the other hand, whilst clearly mandated to include international treaties, makes no reference to CITES, leaving the ordinances as the principal form of wildlife trade control.

Inadequate Coverage for CITES-listed Species

Many CITES-listed species fall completely outside of the provisions of the provincial ordinances. In particular, provincial legislation provides only partial coverage for Appendix III species. For invertebrate species such as Giant Clams *Tridacnidae spp.* and many coral species, generally only taxa which are indigenous to South Africa are covered. Cape legislation contains no explicit provisions for Appendix III species, although higher taxa listings in some of the schedules extend coverage to all exotic frogs, toads, lizards, tortoises and turtles. Further, creative interpretation of otherwise vague terminology has led to all Appendix III bird species gaining coverage as well (See Box 2). In Natal, Schedule 12A of the Ordinance lists a range of both indigenous and exotic CITES and non-CITES species. The list, which includes species and sometimes higher taxa listings, is not completely adequate for the purposes of CITES and may exclude a number of CITES species, especially recent additions to the Appendices. By designating the Rosy-faced Lovebird *Agapornis roseicollis* as an *'unprotected wild bird'* on Schedule 8 of the Ordinance, Natal also apparently excludes coverage for this Appendix II species. The Ordinances of the Orange Free State and Transvaal also do not extend coverage to species listed on Appendix III.

The general exclusion of exotic Appendix III species in South Africa's provincial ordinances directly contravenes Article V of the Convention. Consequently, it is generally not possible to penalise individuals who do not acquire or produce CITES permits for certain, generally non-indigenous, Appendix III species under these ordinances. Forfeiture or seizure of illegal shipments is probably not a legal option, thereby violating Article VIII of the Convention.

Box 2 Non-Compliance with CITES Provisions for Appendix III Species

Provincial legislation generally fails to extend South Africa's trade controls to most species listed on Appendix III of the Convention. In most cases, if species are not specifically noted in the text or listed in the schedules of the provincial ordinances, there is no legal basis for their control. Vague legal terminology in the CNC Ordinance, however, has lent itself to some measure of "accidental" compliance with the provisions of the Convention. Specifically, Schedule 2 of CNC Ordinance covers 'all birds' other than those listed in other schedules. While the original intent of this language was to provide protection for indigenous species, the term '*all birds*' has since been interpreted to mean "all birds of the world". Hence, the subsequent regulations regarding protected birds are deemed to include all bird species listed on Appendix I, II and III of the Convention. In this case, rather than by design, expedient interpretation of otherwise vague terminology has been used to buttress CITES trade controls for Appendix III birds. For a host of other Appendix III mammal, reptile or plant species, however, no such language in the ordinance exists to provide a basis for similar treatment.

The problem of exclusion is not limited only to exotic species. There are examples where indigenous species, typically invertebrates or plants, are not accorded a consistent level of protection from one province to the next. This state of affairs is particularly worrying with respect to taxa that are endemic to a single province (See Box 3).

Box 3 Indigenous Insects Poorly Protected by Provincial Ordinances

In 1994, TRAFFIC received information indicating that Stag Beetles *Colophon* spp., an insect genus endemic to a small area in the Cape, were being traded internationally. A subsequent enquiry revealed that all Stag Beetles were fully protected under the Cape Ordinance, with permits required for anyone to collect, possess or export these species. Available trade data showed that there were no records of any such permits being issued by CNC authorities. However, Stag Beetles are not covered by any of the other provincial ordinances, hence, it is not an offence outside of the Cape to possess or export Stag Beetles without a permit. None of the other provinces were able to prevent trade in this genus in spite of its protected status in the only province in which *Colophon* occurs in the wild. This demonstrates the failure of the provincial ordinances to provide uniform protection even to indigenous species.

As Stag Beetles are regarded as rare and possibly endangered, the entire genus was proposed by the Netherlands for inclusion in Appendix I at the ninth meeting of the COP. Recognising that these species solely occur within South Africa, the Parties accepted South Africa's offer to place the genus on Appendix III. However, as noted above, even within South Africa, this leaves Stag Beetles without adequate protection. This case highlights the need for uniform provincial controls for Appendix III species throughout South Africa. Further, as of this date, South Africa has not formally proposed listing the genus on Appendix III.

Timely Amendments to the Provincial Ordinances

Where the provincial ordinances are structured so that CITES-listed species need to be specifically listed in the schedules, as is the case in Natal, it remains to be seen if changes to the CITES Appendices can be incorporated within the provincial ordinances in a timely fashion. When amendments need legislative approval, the provision of coverage in an expedient manner will probably not be possible. Delays leave species that were newly-added to the CITES Appendices vulnerable to continued trade pressure after they officially became regulated or protected under the

Convention. For example, many species which were placed on the CITES Appendices at the ninth meeting of the COP in mid-November 1994 (listing effective on 16 February 1995), have not been incorporated into the schedules of Natal's Ordinance at the time of this writing and, technically speaking, remain eligible for commercial import without CITES permits as of this listing.

Inadequate Provisions for Comprehensive Trade Controls

Although the ordinances outline various legal conditions for import, export, domestic trade, possession and hunting with respect to species listed in the schedules, there are many gaps where control of CITES-listed species is concerned. For example, export controls for parts and derivatives are largely restricted to indigenous species under the Cape Ordinance, while Natal's Ordinance is ambiguous concerning the extent of coverage given to parts and derivatives of various groups of species. Further, with respect to "borderline" CITES issues, there are no provisions relating to the domestic sale, possession or transfer of indigenous reptiles, amphibians and invertebrates in Natal, whilst the movement of Appendix I birds requires a permit. Similarly, apart from elephants or rhinoceroses, the Orange Free State's Ordinance fails to promulgate controls for possession of, or domestic trade in, specimens of CITES-listed animal species. Likewise, in the Transvaal, the Ordinance does not provide adequate coverage for possession, internal trade and transport of specimens of CITES-listed species. Many dealers are aware of these discrepancies and "province hop" to take advantage of them (See Box 4). While these issues are not explicitly dealt with in the text of the Convention, it is widely recognised that it is very difficult to control imports effectively without legal provisions for dealing with internal trade issues, including possession.

Box 4 Circumventing CITES Permit Controls: "Province Hopping" in South Africa

In 1994, TRAFFIC investigated the circumstances surrounding an application to import an Appendix II-listed Saker Falcon *Falco cherrug* from Bahrain. CNC CITES Scientific Authority rejected the application on the grounds that the bird in question was wild-caught; that sufficient stock of the species was already held in captivity in South Africa; and that, should the bird escape, it might contaminate the gene pool of indigenous falcon species through interbreeding.

When a CITES import permit from CNC was not granted, an application to import the same falcon was then submitted to OFSC by another individual. An import permit was granted and the falcon arrived in the Orange Free State, whereupon the importer subsequently gave it to the applicant from the Cape, who had originally applied for its importation. Regardless, and in spite of having previously rejected the import, Cape authorities issued a transport permit for the falcon to be brought into the Cape. This bird was later reported to have escaped from the possession of its new owner.

This case clearly demonstrates how decisions to prevent trade in one province can be circumvented by routing trade through another province.

Discretionary Issuance and Acceptance of Permits

A common problem with all of the provincial ordinances is that the power to grant and accept permits for trade in CITES-listed species is discretionary and, technically speaking, can be done without any regard for the provisions of the Convention. Nothing in the text of the provincial ordinances binds permit-issuing staff or law enforcement personnel to comply with the specific conditions and requirements for trade under the Convention. Statutory obligations to verify the validity of export or re-export permits issued by foreign governments are also absent in the ordinances. Allowing the conditions for the issuance and acceptance of permits to be discretionary

is one of the most important deficiencies in South Africa's provincial legislation and results in a less than adequate legal framework for CITES implementation throughout the country.

Inconsistent Terminology

There is extreme variability in the terminology used for species in the provincial ordinances which, in the absence of national legislation, can complicate the enforcement of CITES in South Africa. These differences give rise to considerable variance between the provinces regarding which species or specimens are covered in the ordinances. For law enforcement purposes, what constitutes an offence in one province may be completely legal in another. Table 2 presents the different terminology used to reference CITES Appendix I and II species in the text and the schedules of the four provincial ordinances.

Table 2: Terminology Describing CITES Appendix I and II Species in Provincial Ordinances

Provincial Ordinance	CITES Appendix I Species	CITES Appendix II Species
Cape Province	In the text and the schedules: *endangered wild animals*' and '*endangered flora*'.	In the text and the schedules: '*protected wild animals*' and '*protected flora*'.
Natal Province	In the text: no specific name. In the schedules: *'protected game'; 'specially protected game'; 'endangered mammals'; 'protected amphibians, invertebrates and reptiles'; 'specially protected birds'; 'protected indigenous plants'; 'specially protected indigenous plants'; 'fauna and flora'.*	In the text: no specific name. In the schedules: '*ordinary game'; 'protected game'; 'specially protected game'; 'endangered mammals'; 'protected amphibians, invertebrates and reptiles'; 'unprotected birds'; 'specially protected birds'; 'protected indigenous plants'; 'specially protected indigenous plants'; 'fauna and flora'.*
Orange Free State	In the text: '*endangered species*'. In the schedules: *'protected game'; 'ordinary game'; 'specified wild animals'; 'exotic animals'; 'protected plants'*.	In the text: '*scarce species*'. In the schedules: '*protected game'; 'ordinary game'; 'exotic animals'; 'protected plants'*.
Transvaal Province	In the text: '*endangered species*'. In the schedules: *'protected game'; 'specially protected game'; 'protected wild animals'; 'wild animals'; 'exotic animals'; 'specially protected plant'.*	In the text: '*rare species*'. In the schedules: '*protected game'; 'protected wild animals'; 'wild animals'; 'exotic animals'; 'protected plant'.*

The ordinances carry provisions that define the terms listed in Table 2, which are then related to specific trade controls and penalties for infractions. Apart from the Cape's Ordinance, the terminology used to define CITES-listed species in the text is contrary to that used in the schedules. For example, in Transvaal, CITES Appendix I species are referred to as '*endangered species*' in the text of the Ordinance, but within the schedules Appendix I species are variously listed as '*protected game', 'specially protected game', 'protected wild animals', 'wild animals*' and '*exotic animals*'. This gives rise to some degree of confusion and may weaken CITES implementation under particular circumstances. As trade infractions prescribed in the Ordinances vary depending on which schedule a species is listed, the situation arises where trade infractions involving the same Appendix I species would be penalised differently. The discrepancies can also become acute between neighbouring provinces. For instance, certain cycad species endemic to Natal are classed as '*specially protected indigenous plants*' in NPB Ordinance, for which an unlimited fine for infractions is applicable. However, the same species are classed as *'protected plants'* in the Transvaal with a maximum fine of R750.

Wide Discrepancy between Penalties

There is also wide variance in the prescribed penalties for wildlife trade infractions in South Africa. Table 3 compares sanctions for the unlawful import or export of CITES-listed species as outlined in the provincial ordinances. The table demonstrates that such offences carry comparatively lenient penalties under the Natal or Transvaal Ordinances as compared to those in the Cape or the Orange Free State.

Table 3: Comparison of Prescribed Penalties for Import or Export Offences Involving CITES-listed Species under South Africa's Provincial Ordinances

Province	Prescribed Penalties for Illegal Import or Export of CITES-listed Species
Cape Province	For offences involving Appendix I species, a fine not exceeding R100 000 and/or imprisonment for up to ten years, plus a fine not exceeding three times the commercial value of the specimen in question. For Appendix II species, a fine not exceeding R10 000 and/or a prison sentence of up to two years, as well as a fine not exceeding three times the commercial value of the specimen.
Natal Province	For offences involving species listed in Schedule 12A, which includes selected indigenous and exotic CITES and non-CITES species, an unlimited fine and/or ten years in prison. For certain offences involving indigenous animal species not listed on Schedule 12A, a minimum fine of R20 and a maximum fine of R100 000 and/or a minimum prison term not exceeding one month and a maximum prison term not exceeding two years, depending on the taxa; for cases involving indigenous plants, an unlimited fine and/or ten years in prison. All sentences may be doubled upon a subsequent conviction.
Orange Free State	For offences involving either Appendix I or II species, a fine of up to R100 000 and/or prison sentences of up to ten years.
Transvaal Province	For first offences involving Appendix I or II species, a fine of up to R1 500 and/or imprisonment of up to 18 months; for subsequent offences, a fine not exceeding R2 000 and/or a prison sentence of up to two years. For any offence involving an indigenous elephant or rhino species or protected plant species, imprisonment of up to ten years, plus a fine not exceeding three times the commercial value of the specimens in question.

There are a number of other problems with the penalties designated in the provincial ordinances. For example, in the Transvaal, penalties for offences involving CITES-listed specimens are differentiated from penalties involving native species. In cases where the species falls into both categories (i.e. an indigenous, CITES-listed species) it is unclear which penalty should prevail. Natal's Ordinance is also ambiguous with regard to penalties for species that are listed by definition in more than one schedule and where no legal precedents have been set to determine which penalties apply. In the Orange Free State, apart from offences involving elephants or rhinos, there are no penalties for illegal possession or domestic trade in CITES-listed species.

CITES Review of Legislation

A recent CITES trade law review conducted by the IUCN Environmental Law Centre and TRAFFIC USA on behalf of the CITES Secretariat examined the wildlife trade legislation in 81 countries, including South Africa. The results of this study were summarised in Doc. 9.24 *National Laws for Implementation of the Convention*, which was presented at the ninth meeting of the COP in November 1994. South Africa's legislation was rated in category 2: Legislation meets many requirements for CITES implementation, while needing additional legislation in some areas. (In the revised annex to Doc. 9.24, category 2 was changed to *'needs work'* in response to the question *'meets requirements?'*). While this rating is perhaps comparatively good, it nonetheless indicates that there are deficiencies in South Africa's legislation which need to be addressed. In fact, the analysis of South Africa's legislation should be viewed as overly optimistic considering the general lack of national legislation and the range of problems noted above.

SOUTH AFRICA'S ADMINISTRATIVE STRUCTURE FOR CITES

Like its conservation legislation, South Africa's administrative structure for CITES is fundamentally decentralised to provincial authorities. While such an approach is in keeping with governance as a whole in South Africa, it should be kept in mind that only a handful of the Parties to CITES have decentralised implementation of the Convention to the extent that South Africa has. Finances are another consideration. Whereas a more centralised system might have been more cost-effective, regional autonomy requires separate budget arrangements for each of the provincial authorities. As evidenced by the actual workings of the Management and Scientific Management Authorities within each province, it can be argued that no province has been able to meet these costs effectively.

National CITES Management Authorities

Article IX of the Convention requires all Parties to designate one or more CITES Management Authorities to deal with the administrative functions of the Convention. South Africa has designated a national Management Authority within DEAT. Based in Pretoria, this office serves as the principal point of communication with the CITES Secretariat; coordinates preparation of CITES annual reports; distributes CITES Notifications; and facilitates inter-provincial communication with respect to CITES-related issues of national concern. Although charged with coordinating communications between provincial CITES authorities and the CITES Secretariat, in practice, staff within the provinces often communicate directly with the Secretariat, but do not routinely copy correspondence to DEAT. DEAT is not empowered to issue CITES permits, a point noted in the *Directory of CITES Parties* maintained and distributed by the CITES Secretariat.

DEAT also coordinates meetings of the CITES Working Group (CWG), a body that brings together representatives of the provincial authorities and other government agencies. DEAT staff charged with CITES matters also have a range of other government responsibilities. Therefore, they are not always well-versed in the complexities of CITES procedures, and sometimes fail to carry out their responsibilities with efficient dispatch. Furthermore, DEAT staff are not empowered to oversee CITES implementation within the provinces.

The Chief Director of Sea Fisheries has also been designated as a Management Authority with respect to specimens introduced from the sea and thus is empowered to issue CITES permits. In practice, however, applications for CITES permits are referred to the respective provincial Management Authority.

Provincial CITES Management Authorities

Reflecting the decentralised, regional nature of government, in addition to DEAT, there are four provincial CITES Management Authorities in South Africa. Each of the provincial Management Authorities is responsible for issuing CITES permits; ensuring that the provisions dealing with the issuance of permits, transport and housing issues, quota systems and reporting are complied with; and otherwise overseeing the day-to-day administration of the Convention within their respective jurisdictions.

Legally speaking, the chief executive officer of each of the provincial conservation departments is designated as the Management Authority. In reality, however, a number of departmental staff perform the daily functions of the Management Authority. Within CNC, staff within Permits Section Fauna and Flora perform the duties of the Management Authority. In the Orange Free State, the Permits Department is responsible. NPB's Department of Conservation has direct responsibility for the

issuance of CITES permits, while clerical and administrative staff within TNC's Support Service's Legislation Section are largely responsible for CITES administration within the Transvaal.

CITES Scientific Authorities

Article IX of the Convention also requires the creation of a Scientific Authority to implement certain technical aspects of CITES implementation. Scientific Authorities are required to provide scientific or technical assessments necessary for conservation of species listed in the Appendices with respect to exports of Appendix I and II species or imports of Appendix I species. In the case of exports, the Scientific Authority needs to make a finding that the trade will not be detrimental to the survival of the species before the Management Authority issues an export permit.

Apart from the Directorate of Sea Fisheries, which has responsibility for pelagic species, there is no national Scientific Authority in South Africa. As is the case for Management Authorities, the chief executive officers of the four provincial conservation bodies have been designated as the Scientific Authority for each of South Africa's provinces. In practice, however, there seems to be little formal administrative structure for the provincial Scientific Authorities. In fact, Scientific Authority functions are generally fulfilled on an *ad hoc* basis by available staff in the department likely to have knowledge regarding the taxa in question at any given time. It must be noted, however, that some individual officers sometimes seek advice from external sources. The lack of a formalised structure for South Africa's CITES Scientific Authorities is an important problem which needs to be addressed.

Staff and Resources for CITES Implementation

Adequate resources are necessary for CITES to be effectively implemented in South Africa. Whereas centralised systems are generally more cost-effective in terms of total resources, regional autonomy requires separate staffing and funding for each of the national and provincial CITES authorities. Adequate staffing levels are very important, particularly where trade levels are high. Table 4 demonstrates that none of the provinces assign CITES responsibilities to staff on a full-time basis. Instead, CITES permit staff concurrently perform other permitting and licensing duties, including the issuance of permits for professional hunting, nursery permits, and permits to collect animals or plants, to transport wildlife, to import, export or re-export non-CITES species, to sell flora or to keep animals in captivity. In Transvaal, the province with the largest wildlife trade, the sheer magnitude of the workload of permit issuing staff would seem to justify the employment of full-time CITES officers. As noted above, DEAT staff with CITES responsibilities also perform a host of other duties to the overall detriment of effective CITES implementation in South Africa.

Table 4: Comparison of Staffing Levels and Resources for CITES Permit Issuance between South Africa's Provincial Authorities

	CNC	NPB	OFSC	TNC
Number of CITES permit - issuing staff and offices	5 staff 1 office	3 staff 1 office	2 staff 1 office	7 staff 1 office
Number of full-time CITES staff	None	None	None	None
Number of CITES permits issued annually	500	300	<300	1 100
Number of other permits issued annually	10,050	5,700	2,350	5,800
Annual administration budget	R277,000 – R300,000 including salaries	R20,000 excluding salaries	N/A	R470 000

N/A = Not available

Equally important to the number of staff routinely performing CITES functions is their level of expertise and training with respect to the complexities of CITES implementation. None of the provinces currently provide formalised training courses for CITES permit issuing or law enforcement staff. It is not surprising, then, that the general level of understanding for CITES is relatively low and that mistakes are repeatedly made by provincial staff. At the national level DEAT has not organised routine training opportunities for provincial or other national law enforcement bodies, such as Customs or DOA, to enhance their knowledge of CITES issues and to address species identification problems.

Finally, while provincial budget information for CITES implementation is sketchy at best and unavailable in most cases, there are indications that insufficient resources are going into CITES-related activities. Currently, CITES export and import permits are issued free of charge. Many countries, however, have adopted a "user pays" approach and charge a fee for processing applications for CITES permits. This helps to underwrite some of the costs of implementing CITES. As evidenced by the actual workings of the various Management and Scientific Authorities, it can be argued that neither the national government nor the provincial authorities have been able to meet the manpower and financial costs of CITES implementation effectively. This has affected the performance of second-tier management structure, including permit officers, law enforcement personnel and field officers. There is a perception among such employees that they are understaffed, without adequate training and have little interaction with top-level management to deal with the complexities of the CITES system.

National Policy Development and Coordination

National policy development and coordination for CITES is achieved through the CWG, which was formed on 13 April 1988. Convened by DEAT, CWG members include representatives of the four provincial nature conservation departments, ESPU, DOA, Customs and Excise, DEAT and the Department of Foreign Affairs. In 1993, the CWG was incorporated into the Sub-Committee on Fauna and Flora, a part of the Committee for Environmental Management, when that Committee's mandate was expanded to include international treaties. The effectiveness of the CWG is impaired by the fact that it only meets two or three times per year to discuss CITES and related issues. Trade in non-CITES species, both indigenous and exotic, is not subject to such coordination.

IMPLEMENTATION OF CITES IN SOUTH AFRICA

Implementation of the Articles of the Convention, COP Resolutions and CITES Notifications is largely left to the discretion of the provincial administrations. Except in cases where CITES relates to indigenous species, the Convention has not traditionally been viewed as an issue of major concern. Problems with legislation, internal administrative procedures or actual trade infractions have not generally been recognised by senior management in the Provinces, and when problems are identified, they are not always addressed in an expedient manner.

Permits and Certificates

Each of South Africa's four provincial authorities has their own CITES permit, the design of which generally complies with the information requirements laid out by the Convention. Still, there are a number of relatively minor problems which need to be addressed in order to fully comply with the specifications adopted by the COP. For example, the permits used by CNC and NPB do not feature the CITES logo, TNC permits do not specify the full name of the Convention and NPB permits lack a specific place to record the original export permit number for transactions involving a re-export.

Of greater consequence, there is no specific column on CNC and NPB permits to record the "purpose" of the transaction, although this is usually indicated in the box entitled "Special Conditions". TNC and OFSC have specific blocks for noting the purpose of the transaction, but in the case of OFSC, the purpose is indicated by marking an "X" over one of the single-character abbreviations used to ascribe a particular purpose. In doing so, however, the letter code is made completely illegible. Notwithstanding the problem of identifying the purpose on the permit, provincial staff frequently indicate an incorrect purpose, for example, describing "commercial trade" as "personal effects" or for "zoological purposes" (See Boxes 8 and 9). An examination of permits issued during the period January 1991 through April 1995 found 179 cases where the source of species was given as "O" for "Other" rather than being more specific. Omission of this information is extremely problematic particularly in the case of Appendix I specimens, as knowledge of the source is critical to a Management Authority's decision to grant a CITES permit.

Apart from design problems, a more fundamental shortcoming is the issuance of permits on the basis of incomplete or inadequate information. For example, one permit was issued with the consignee's name and address given as simply '*Pete, Zinov District, Mozambique*', and another without a designated consignee at all.

Irregularities have also occurred with respect to reporting country of origin. For several years prior to 1993, staff in Transvaal were under the impression that "Country of Origin" referred to the country from where the species were imported rather than the country from where the species originated. This situation was brought to the attention of the provincial authorities, however, numerous permits had already been issued in this manner, and South Africa's CITES annual reports were never edited to correct these errors.

CITES Notifications to the Parties

As the primary point of communication between South Africa and the CITES Secretariat, DEAT receives copies of all official CITES documents, including the Appendices, the final drafts of COP Resolutions and CITES Notifications. It is the responsibility of DEAT staff to circulate copies to the directors of provincial nature conservation authorities. This information often provides the basis for determining the acceptability of trade in CITES-listed species by permit staff. Unfortunately, getting the information to the provincial authorities may result in substantial delays if DEAT is slow in forwarding CITES Notifications, or if there are subsequent delays in forwarding this information to the relevant permit staff within the provincial authorities.

Once received, there is no guarantee that the information will be used. For example, NPB permit staff have commented to TRAFFIC that they are simply too busy to read through all of the CITES Notifications issued by the Secretariat. NPB staff distribute appropriate CITES Notifications to those individuals responsible for implementing specific provisions of the Convention, keep those deemed relevant to the issuance of permits, and forward any remaining CITES Notifications to the registry office for general filing. Consequently, no one maintains a complete set of CITES Notifications in any one office, and there is no subject index for easy reference. Similar problems also appear to be operative in the Transvaal, however. Cape authorities maintain full sets of CITES Notifications in two separate offices.

Box 5 **CITES Notifications: Vital Information for CITES Permit Staff**

Provincial permit staff are sometimes unaware of important CITES developments that have direct relevance to the acceptability of many wildlife trade transactions. For example, in April 1993, NPB permit staff were unaware that the CITES trade ban with Italy had been rescinded two months earlier. In August 1993, a permit for the import of African Grey Parrots from Guinea was issued despite CITES Notification No. 737 of May 1993, recommending the suspension of all imports of this species from Guinea. In November 1993, both NPB and TNC staff were unaware that the CITES Secretariat had issued CITES Notification No. 677 in June 1992, requesting that all Tanzanian export permits be forwarded to the Secretariat for confirmation. Even more worrying, in some provinces, there are instances where provincial staff failed to comply with these directives even after provincial permit staff were made aware of these specific CITES Notifications by TRAFFIC.

CITES Appendices and Taxonomic Issues

Understanding the CITES Appendices and taxonomic issues also appear to pose problems for staff in the provincial Management Authorities. Although all Management Authorities have copies of the CITES Appendices, permits are sometimes issued misidentifying or excluding CITES-listed species. For example, an NPB permit was issued for an Appendix I turtle species (*Cheloniidae spp.*) listed as a non-CITES species and a TNC permit was issued for a species '*Aldabrachelys elephantia*', an unknown species. Another NPB permit failed to identify 20 Laysan Ducks *Anas laysaensis* as covered by the Convention despite the fact this species is listed on Appendix I. These cases demonstrate that some permit staff are unfamiliar with the species listed on the CITES Appendices, and further, are not consistently using standard nomenclature adopted by the Parties.

Regulation of Trade in CITES Appendix I Species

Species listed on Appendix I of the Convention are regarded by the Parties to be '*threatened with extinction*'. Trade in Appendix I species is strictly regulated and should only be authorised under exceptional circumstances. Trade for commercial purposes is prohibited, but Article VII of the Convention provides for non-commercial trade in specimens for scientific or educational purposes. Exemptions are also made to allow for trade in "personal effects", "captive-bred", "artificially propagated" and "pre-Convention" specimens. These exemptions have been further defined through a number of Resolutions adopted by COPs in order to reduce the potential for abuse and to provide guidelines under which trade in Appendix I species should be permitted.

Importers intending to import an Appendix I specimen must first obtain an import permit from the Management Authority of the country of import. Appendix I import permits may only be issued for purposes that are deemed '*not detrimental to the survival of the species*' involved and when the import is '*not to be used primarily for commercial purposes*'. For transactions involving live animals, the importing Party must also confirm that the importer has adequate facilities and knowledge to care for the species in question. Both the Management and Scientific Authorities have specific responsibilities in making these determinations.

The Convention's strict requirements reflect the need to ensure that trade in Appendix I species does not pose a threat the survival of populations in the wild. Consequently, one would expect trade in wild-collected Appendix I specimens to be minimal. With respect to live Appendix I specimens, South African trade data for the period January 1991 to April 1995 indicate that 533 mammals,

174 birds, 67 reptiles and 16 amphibians that were reportedly collected in the wild or for which the origin is "unknown" were authorised for import or export. An additional 245 mammals, 485 birds, 336 reptiles and 60 amphibians listed on Appendix I were traded as "captive-bred" specimens. While it is difficult to judge to what extent this represents unwarranted trade, a review of the circumstances surrounding certain taxa indicates that at least some of the transactions contravene the intent of the Convention (See Box 6).

Box 6 **Trade in Appendix I Species: The Case of the Cheetah**

An analysis of trade data for all Cheetah *Acinonyx jubatus* transactions between January 1991 and April 1995 showed that South African authorities allowed the import of 85 live Cheetah and the export of 110 during this period. Import data indicate that 30 Cheetah were imported for commercial purposes, 22 for breeding purposes, 11 for zoological purposes and two for reintroduction purposes, while the purpose for another 20 specimens was not stated at all on the import documents.

Notwithstanding commercial imports – which in the absence of mitigating circumstances, clearly violate the terms of the Convention – and those transactions where the purpose is not clearly stated, even some of the transactions that would appear to qualify for an exemption under CITES become questionable under examination. For example, in 1992, a permit for the import of six wild-caught live Cheetah from Namibia for breeding purposes was granted by OFSC. Article III. 3 of the Convention requires that the Management or Scientific Authority of the country of import determine that the importer is '*suitably equipped to house and care for*' the species and that the Management Authority determine that the specimens are '*not to be used for primarily commercial purposes*'. Considering that during the same period, OFSC granted export permits for 17 hunting trophies, including seven Cheetah to the same individual, there are reasons to suspect that this particular importer was simply restocking a hunting concession. It is also of note that OFSC officials issued permits to the same person for the export of two Cheetah trophies declared as South African origin within eight days of granting the permit to import the six live Cheetah from Namibia.

Trade with zoos is also problematic and may have been used to disguise otherwise commercial transactions. For example, three export permits for a total of six Cheetah were granted to a zoological park located in Myanmar, but one of the permits indicated a destination address in Singapore. Also doubtful was the export of 28 live Cheetah to a single zoo in Mexico. Given that very few zoos maintain such large collections of carnivores, there are grounds to question the purpose of this transaction as well.

Trade for Commercial Purposes

The Convention requires that imports of Appendix I specimens are limited to purposes that are not primarily commercial and various Resolutions adopted by the COP have addressed this issue. In theory, except for specimens bred in captivity at facilities registered with the CITES Secretariat or for pre-Convention specimens (see below), there should be very little reported trade in Appendix I species for commercial purposes. According to CITES annual report data, South African trade records from 1976 to 1992 show that over 1,165 Appendix I birds were imported for commercial purposes, with exporting Parties reporting the export of 1,901 Appendix I birds to this country for the same reason. Most of this trade was identified as involving captive-bred specimens. Few, if any, of these Appendix I birds were imported from captive breeding facilities registered with the CITES Secretariat. However, it must be noted that this requirement only recently took effect and many Parties are not clear about its implementation.

Trade in "Pre-Convention" Specimens

According to the Convention, import permits are not required for the import of Appendix I specimens if they were acquired prior to a species' inclusion in the CITES Appendices or prior to the date on which the Convention came into effect in the exporting Party. In such cases, an export certificate certifying the "pre-Convention" nature of the specimen may serve in place of an export permit. However, the Parties recognised the need to further define what was meant by this exemption. Resolution Conf. 5.11 instructs exporting Parties not to issue pre-Convention certificates unless the specimens were acquired prior to the species' listing in any Appendix of the Convention, and importing Parties not to accept pre-Convention certificates unless the date of acquisition of the specimens listed therein was prior to the date in which CITES entered into force in the importing country for the species concerned.

According to this Resolution, pre-Convention certificates may not be used in cases where the date of acquisition of the specimens cannot clearly be determined to have been before the date in which they would have been subject to controls under CITES in the countries concerned. Furthermore, the Parties stated specifically that it was their intent that such "pre-Convention" exclusions not apply in the case of Appendix I controls for species moved from Appendix II or Appendix III to Appendix I. There are many instances where South African authorities have not taken these guidelines into consideration when accepting imports of pre-Convention specimens (See Box 7).

Box 7 **Trade in "Pre-Convention" Specimens**

A review of a sample of Singapore re-export documents indicates that several shipments of Appendix I birds exported from Singapore were accepted by South Africa for import in 1992 and 1993. TNC allowed 12 Moluccan Cockatoos *Cacatua moluccensis* to be imported in May 1992, although this Indonesian parrot species was included in Appendix I on 11 June 1989. This import was presumably allowed on the basis of a written explanation on the Singapore re-export permit stating that the birds were acquired before CITES became applicable to them in Singapore. Because this cockatoo was listed on Appendix II in June 1981; Indonesia (the country of origin) has been a CITES Party since 1979; and South Africa has been a Party since 1975, any "pre-Convention" claim should have been insufficient to have allowed the import of the birds into South Africa under the terms of Resolution Conf. 5.11.

NPB also accepted the import of two shipments of Moluccan Cockatoos in 1992, one containing three birds and the other ten, as well as the import of a Great Hornbill *Buceros bicornis* (listed in CITES Appendix I as of 11 June 1992) in 1993. All of these birds were described on the Singapore re-export documents as having been acquired prior to the effective date of the Appendix I listing in Singapore. These transactions did not comply with the requirements for the "pre-Convention" exemption.

Trade for "Personal Purposes"

"Personal effects" is another term used in the Convention which is commonly misinterpreted by permit authorities in South Africa. The Convention and subsequent Resolutions are quite clear on the definition and the intention of this exemption, which refers to the import or export of personal possessions or household effects by people moving to or from their home countries.

The import of pets acquired by South Africans travelling, as opposed to living, abroad does not fall within this definition. There are a number of cases, however, where South African permit authorities seem to have unquestioningly issued import or export permits for Appendix I species to applicants who simply state that the purpose of the transaction is "personal" (See Box 8). As recently as April 1995, for example, a TNC permit was issued for the import of a wild-caught

Appendix I Moluccan Cockatoo originating from Indonesia as a "personal effect". The exporter was a South African resident contracted to work in Southeast Asia where he obtained the bird and the importer was a relative who resided in South Africa. As a live Appendix I specimen, it should have also been determined whether the importer had adequate facilities or knowledge to care for the bird.

Box 8 **The Import and Export of CITES Specimens as "Personal Effects"**

From January 1991 through April 1995, South African authorities authorised trade in 3,637 live mammals, birds, reptiles and amphibians as personal effects. While only 15 specimens were Appendix I species, the general application of this CITES exemption seems to be rather "loose". Of the 740 permits issued during this period for such trade, 452 cases (61%) raise questions in that the consignee and the permittee refer to different individuals, a fact which in some instances may negate the acceptability of the transaction under this exemption. In some cases one or more of the names cited on the permits was a commercial dealer. For example, in 1994, permits were issued to a recognised bird trader who is still resident in South Africa for the export of two Moluccan Cockatoos and four Illiger's Macaws *(Ara Maracana)*, both Appendix I species, for personal purposes. This would appear to contravene the terms of the Convention, but is not an isolated case. An examination of the permit data indicates that many other permitees were known commercial dealers.

The distinction between commercial trade and personal effects is often a subjective judgement, but the number of specimens in an individual transaction has to be carefully considered. In situations where more than one specimen of a single species are involved, the particular circumstances should determine the acceptability of such trade as personal effects. Generally speaking, it is inappropriate to sanction large numbers of specimens as personal effects. In 1991, examples of commercial trade where the purpose was identified as personal, included the import of 115 African Grey Parrots from Zaire, 100 Rose-ringed Parakeets *Psittacula krameri* from Mauritius, 100 Red-bellied Parrots *Poicephalus rufiventris* from Tanzania and 100 Red-winged Pytilia *Pytilia phoenicoptera* from Sierra Leone.

There were also questionable aspects of South Africa's plant trade for personal purposes. For example, 64 permits for plant species included trade in 2,188 seedlings and 449 plants, of which 75% constituted Appendix I cycad species. The relatively high trade volumes covered by these permits seem to more appropriately reflect commercial trade rather than trade in personal effects. Given the high frequency of illegal trade in cycad species within South Africa, the country's rather poor system of control and at least five international seizures of South African cycads during 1994 and 1995 (Giddy, pers. comm.), it is important to ensure that illegal trade is not inadvertently legalised as "personal effects" by the permit authorities.

Trade in "Captive-bred" Specimens

The Convention provides an exemption for trade in "captive-bred" Appendix I animals and stipulates that only a certificate from the country of export stating that the specimens in question are captive-bred is required for such trade. However, recognising potential loopholes provided by this exemption, the Parties agreed in Resolution Conf. 2.12 to restrict the designation of captive-bred to animals held in a facility that had successfully bred the species to the second (F2) generation, or was using techniques shown to be successful in breeding such animals to the second generation by other facilities. This means that eggs or young animals taken from the wild, but reared in captivity, would not qualify as captive-bred. Resolution Conf. 2.12 further stipulates that breeding stock must have been acquired in a manner not detrimental to the survival of the species

in the wild and must be maintained indefinitely without augmentation from the wild, except to prevent deleterious inbreeding.

A separate exemption was included in the treaty for Appendix I animals bred in captivity *'for commercial purposes'*, and provides for such trade to be considered as trade in Appendix II specimens. A series of subsequent resolutions followed, all designed to limit the potential for trade in captive-bred specimens to threaten the survival of species' wild populations. In particular, Resolution Conf. 8.15 recommends that facilities meet certain minimum criteria for each species they seek permission to export; are approved by the CITES Authorities in the country in which they are located; and are included in a register maintained by the CITES Secretariat. This Resolution requires that facilities seeking registration establish the legal origin of their founder stock in their registration documents. Other than the 21 breeding operations for Nile Crocodile *Crocodylus niloticus*, no other breeding facilities have applied to the South African CITES authorities for inclusion in the CITES Secretariat's *Register of Operations which Breed Specimens of Species Included in Appendix I in Captivity for Commercial Purposes.*

South Africa's CITES Management Authorities generally accept the permit applicant's claim of captive-bred at face value and, in doing so, do not apply the criteria of Resolutions Conf. 2.12 and 8.15. Unwittingly, this facilitates the laundering of wild-caught Appendix I specimens into international commercial trade (See Box 9).

Box 9 **Exports of Allegedly Captive-bred Appendix I Species**

In 1987, South Africa reported issuing a permit for the export of a "captive-bred" shipment of 20 Hyacinth Macaws *Anodorhynchus hyacinthinus* and 20 Palm Cockatoos *Probosciger aterrimus* to the United Kingdom (UK), the purpose of trade being given as "personal". It is extremely unlikely that these birds were captive-bred in South Africa as the only recorded import of these species over a 12 year period from 1976 to 1987 was a shipment of five Hyacinth Macaws in 1985 and eight Palm Cockatoos in 1984. Captive-breeding data for Hyacinth Macaws indicate clutches of two eggs, but the second chick was reared in only one-in-four documented nests. Palm Cockatoos lay only one egg at a time (Forshaw, 1984). At the time this permit was issued, very few specimens of either of these species were being bred anywhere in the world. These facts should create suspicion that trade in these specimens might represent wild-caught birds being laundered through South Africa, and claims to the contrary should require supporting documentary evidence to justify acceptance of the captive-bred status of the specimens in question.

Both of these parrot species are extremely valuable in the pet trade, a major reason for continuing illegal trade worldwide. For example, in 1992, South African prices for Hyacinth Macaws were R40,000 for a single bird and R120,000 for a breeding pair, providing a major incentive for illegal trade. It is worth juxtaposing these prices against the then maximum fine of R500 for the illegal export of a non-indigenous Appendix I bird species from Natal, where this permit was issued.

Box 10 **Identifying Appendix I Species as Appendix II on CITES Export Permits**

Provincial permit authorities, particularly those in TNC, CNC and NPB, have generally interpreted Article VII of the Convention to mean that captive-bred or artificially propagated Appendix I specimens are to be declared as Appendix II specimens on CITES permits. While Article VII. 4 states that specimens bred in captivity or artificially propagated for commercial purposes '*shall be deemed to be specimens of species in Appendix II*', at the second meeting of the COP in 1979, the Parties adopted Resolution Conf. 2.12 to clarify the precise meaning of this provision. The Resolution stated that for specimens intended for commercial trade that were captive-bred or artificially propagated, conditions for trade in Appendix II specimens would apply. This means that it is not appropriate to list the specimens in question as Appendix II on the permit, but rather that an import permit is not required in advance of an export permit. Resolution Conf. 2.12 was further refined at the eighth and ninth meetings of the COP. Resolution Conf. 8.18 states that export and re-export permits should give the Appendix in which the species, subspecies or population is listed. Aside from the many cases involving Appendix I plant species mis-declared as Appendix II specimens, CITES trade data from January 1991 to April 1995 record the import of 182 live mammals and 215 birds, and the export of 43 live mammals and nine birds incorrectly identified as Appendix II specimens. These included three Chimpanzees *Pan troglodytes* exported to Mexico in 1993, four Black-footed Cats *Felis nigripes* exported to Canada and four Illiger's Macaws exported to Zimbabwe in 1994.

There also appears to be a lack of understanding of the definition of "captive-bred" and, in many cases, competent authorities merely list Appendix I species as Appendix II specimens on the export permit if the applicant has stated in their permit application that the specimens were captive-bred or artificially propagated. There is a real need to increase oversight on this important issue and ensure compliance with the Convention.

Trade in "Artificially Propagated" Specimens

Like captive-bred animal specimens, the Convention also provides an exemption for commercial trade in Appendix I plant specimens that have been "artificially propagated". Resolution Conf. 8.17 restricts artificially propagated plants to mean '*plants grown from seeds, cuttings, divisions, callus tissues or other plant tissues, spores or other propagules under controlled conditions*'. Like the parental stock for captive-bred animals, the cultivated parental stock must be '*established and maintained in a manner not detrimental to the survival of the species in the wild*' and '*managed in such a way that long term maintenance is guaranteed*'.

To exert better control over trade in artificially propagated plants, the registration of plant nurseries has long been considered by the COP. Resolution Conf. 9.19 establishes guidelines for the registration of nurseries exporting artificially propagated specimens of Appendix I species and directs the CITES Secretariat to compile and update a *Register of Commercial Nurseries*. This register serves to confirm that the Management Authority of a country is satisfied that the listed nurseries are in possession of, or are capable of propagating, bona-fide "artificially propagated" specimens. The responsibility of ensuring that nurseries seeking inclusion in the Register meet the required criteria falls to the Management Authority of each country. As South Africa's plant trade is significant and involves a number of Appendix I taxa, compliance with Resolution Conf. 9.19 should be seen as a national priority. Although Resolution Conf. 9.19 only recently took effect, so far, there is little indication that the provincial authorities are moving forward with an effective implementation policy.

The single most important issue to be addressed is the failure to inspect shipments prior to their export. None of the provinces have instituted a mandatory formal process for conducting inspections. Currently, inspections are conducted on an *ad hoc* basis, if at all, and often take place at the request of the dealer on his/her premises, which could allow illegally obtained plants to be substituted before export. Data on the sizes of exported plants, which for slow-growing species is often not an indicator of whether specimens have been wild-collected or not, is rarely available, and the dealer's declaration of artificial propagation is usually taken at face value.

Trade in Appendix I Species Prior to the Effective Date of CITES Appendix I Amendments

Proposals to amend the CITES Appendices take effect 90 days after their acceptance by the COP. Unfortunately, there is a tendency among some traders to buy and sell as many Appendix I specimens as possible in advance of the effective date of new Appendix I listings. The Parties sought to address this problem in Resolution Conf. 5.11, by calling on all Parties to take any necessary measures to prevent the '*undue acquisition*' of specimens of species listed in CITES Appendix I between the time the Parties approve a listing and the time it takes effect.

CITES annual report data indicate that Natal and Transvaal authorities have not effectively implemented import controls for species soon to be listed on Appendix I prior to the effective date of a listing. Available data show that imports have taken place not only just prior to species being listed in this Appendix, but also after the effective listing date. For example, Goffin's Cockatoo *Cacatua goffini* was transferred from Appendix II to Appendix I in March 1992. South Africa imported approximately 600 birds in both 1991 and 1992, roughly twice the figure for the two previous years. It would appear that the rate of importation increased following the proposed listing of the species listing on Appendix I in 1991. Of the birds for which import permits were issued in 1992, 160 would appear to have been imported following the CITES decision to list the species on Appendix I and a further 70 birds were imported after the CITES Appendix I listing had taken effect.

Regulation of Trade in CITES Appendix II Species

Appendix II of the Convention contains those species that '*although not necessarily now threatened with extinction may become so, unless trade in specimens of such species is subject to strict regulation*'. Species can also be listed on Appendix II for "look-alike" reasons in order to avoid the exploitation of other regulated species that are similar in appearance. The Scientific Authority of the country of export is required to advise that exports of Appendix II specimens '*will not be detrimental to the survival of that species*'. Management Authorities in the country of export are required to confirm that specimens were not acquired in contravention of national laws, and to ensure that live specimens are prepared and shipped in a humane manner. CITES export permits must accompany all shipments.

Although the Convention only requires import permits for Appendix I species, all of South Africa's provinces require that import permits be issued for the import of Appendix II species as well. Except for those issued by NPB, import permits are generally based on the information contained on the CITES export permits (or similar documentation in the case of non-Parties) issued by the country of export. In general, provincial permit authorities rarely question whether adequate non-detriment findings have been made by the Scientific Authorities in exporting countries, or whether trade controls in place in those countries are adequate to prevent the illegal trade in specimens from other range states.

CITES Article IV. 3 requires the Scientific Authorities of exporting Parties to monitor the trade in Appendix II specimens in order to identify areas where trade is incompatible with maintaining the '*species throughout its range at a level consistent with its role in the ecosystem in which it occurs and well above the level at which that species might become eligible for inclusion in Appendix I*'. When properly designed, the permit system in itself can be a tool to assist Parties to monitor such trade, but in fact is seldom used to fulfil this important obligation. CITES authorities in importing countries can also play an important role in monitoring the trade in Appendix II specimens, and helping to ensure that it is in compliance with the Convention. As recommended by Conf. Resolution 2.6, if any party deems that an Appendix II or III species is being traded in a manner detrimental to the survival of that species it should consult with the Management Authority of the country of export or if not possible, call upon the assistance of the Secretariat. Some countries have formalised mechanisms for improving implementation of the Convention with regard to trade in Appendix II species. Under EU regulations, for example, decisions have been taken to suspend imports of some species from range countries not believed to be adequately fulfilling their obligations to make non-detriment findings before allowing trade in Appendix II species. Such is not the case in South Africa, however. A 1995 TRAFFIC report entitled *South Africa's Trade in African Grey Parrots (Mulliken, 1995)* documents the irregular trade in African Grey Parrots to South Africa and highlights the fact that South African authorities rarely review the documentation of incoming shipments with any degree of consistency. Considering that permit information is generally reviewed by more than one person, including senior staff, it is astounding that no irregularities were noticed during the import of some 43,000 African Grey Parrots over a 12-year period. Imports from Togo, for example, should have raised concern especially considering that the African Grey population in that country is relatively small (See Box 11).

Other instances of trade in African Grey Parrots not in accordance with Article IV also failed to be detected by South African authorities. For example, from 1987 to 1990, South Africa allowed the import of 10 700 African Grey Parrots from Ghana in spite of a domestic export ban being in effect since 1986. From 1990 to 1993, over 8,000 specimens were reported as imported from Guinea, although in 1991 the country's total population was estimated at only 5,000 to 10,000 birds (Mulliken, 1995).

In other cases South Africa's Management Authorities responded quickly to external pressure and moved to curtail trade detrimental to a species. A notable example of South Africa's ability to implement trade controls in an expedient manner is reflected in action taken with respect to trade in Red-and-Blue Lories *Eos histrio* (See Box 12).

Box 11 **TRAFFIC Trade Review: South Africa's Trade in African Grey Parrots**

An examination of export permit numbers as indicated in Togo's 1984 CITES Annual Report indicate that all export numbers were three digits in length and appear to have been issued in sequence. In contrast the Togolese export permit numbers recorded by South Africa in it's CITES annual reports varied considerably and unusually in length and sequence.

Year	Togo Permit Number	South African Permit Number	Number of Parrots
1982	23260	?	200
1983[1]	2328115	?	200
	23281-19[2]	?	400
	2328120[3]	?	200
	2328714	?	200
1984	23281	4492	200
	232811	1334	100
	2328166	1339	400
	2328178	1329	120
	2328181	1330	250
	2328192	0130	250
	23281007	0105	400
	23281103	1351	200
	23281104	1350	200
	24281105	1341	400
	23281110	1358	250
	3323192	0473	200
1985	m(76) 4023281119[2]	1378	400
	23281120[3]	1520	400
	23281122	1371	300
	23281160	1384	400
	23281163	1507	250
	23281170	1394	300
	23281174	1399	200
	?	1381	250
	?	1501	300
	?	1510	200
1986	232811	1874	160
	23281186	1875	240
	23281190[2]	1549	400
	23281190[2]	1553	300
1987	23281	1588	250
	23281132	1582	400
	2328119[2]/23281201[3]	1417	500
	2328119[2]	1598	200
	23281194[2]	1589	300
	23281202[3]	2998	400

[1] Species was recorded as *'Psittaciformes'*.

[2] Permits exhibiting a variation in the sequence *'119'*.

[3] Permits exhibiting a variation in the sequence *'120'*.

Source: Mulliken, 1995

Box 12 **South Africa's Trade in Red-and-Blue Lories**

Red-and-Blue Lories are small, brilliantly-coloured parrots found only on one small group of Indonesian islands. The total wild population was believed to be approximately 2 000 birds prior to a rapid increase in trapping which began in 1992 (Nash, 1993). TRAFFIC Southeast Asia estimated that possibly more than 700 birds were trapped for trade during that year, representing over a third of the remaining population, with many birds reportedly trapped in protected areas. Owing to the small size of the remaining Red-and-Blue Lory populations, it would seem that these export permits were issued in violation of CITES requirements for trade in Appendix II species, as exports were allowed at levels likely to be detrimental to the survival of the species. Over 100 Red-and-Blue Lories are known to have been re-exported to South Africa from Singapore in early 1993, where they were offered for sale in local trade journals for as much as R8,500 per pair. This trade to South Africa was not a case of "smuggling", as export permits had been issued by Indonesia and re-export permits by Singapore. However, it provided a clear example of the potential for South African consumer markets to help drive a species toward extinction. Import controls in Australia, the European Union and the United States (US) prohibited the import of Red-and-Blue Lories, thereby making South Africa one of the most important remaining markets for these birds.

TRAFFIC realised that it was critical to close the South African market in order to reduce the demand for Red-and-Blue Lories. In early June 1993, TRAFFIC called upon the South African government to prohibit further imports of this species. TNC officials responded immediately by suspending imports and seeking the agreement of other provincial authorities to do the same. All four provinces and DEAT agreed to a national ban on further imports in late July 1993. TRAFFIC applauded the South African government's decision, which served as a precedent with respect to taking nationally coordinated action to ban imports of a species threatened by international trade in advance of such bans being called for in a CITES Notification or through an Appendix I listing. The Red-and-Blue Lory was subsequently placed on Appendix I at the next COP.

It is clear from this example that South Africa's demand for some species can have negative consequences for their wild populations. At present there is no national mechanism to limit the import of species believed to be endangered by trade. In the case of Red-and-Blue Lories, coordinated action on the part of the provincial governments was effective in stopping further imports. It remains to be seen whether such action will be taken to limit imports of other species determined to be threatened by trade.

Regulation of Trade in CITES Appendix III Species

Species are included in Appendix III at the request of a country in which the species occurs. By placing a species in Appendix III, the proposing Party asks for the cooperation of other Parties to control trade of the species from within its jurisdiction. South Africa has not listed any species on Appendix III, however, other Parties have listed a number of species that are also indigenous to South Africa. Trade in Appendix III species requires those countries listing the species to issue CITES export permits for any sanctioned trade, while other exporting countries are required to provide certificates of origin to demonstrate that the specimens in question are not from the country which originally placed the species on Appendix III. Importing countries are required to ensure that such documents are in order before accepting any imports of Appendix III species.

As noted previously, none of the provincial ordinances make any specific reference to CITES Appendix III species, so there is no legal basis to implement trade controls. In practice, however, provincial authorities occasionally issue CITES permits for Appendix III specimens, but there is a

general misunderstanding concerning such trade. For example, TNC permit staff are under the impression that the provisions for trade in Appendix III species are limited to specimens exported by the Parties which originally listed the species on Appendix III, and that no documentation is required to accompany shipments of Appendix III species originating from other countries. The vast majority of CITES Appendix III species are therefore allowed to be imported into South Africa without the required CITES documentation. This is evidenced by the lack of any records of Appendix III bird imports in South Africa's CITES annual reports for the Transvaal. (The only exception concerns imports of the Rose-ringed Parakeets, which were inaccurately identified as Appendix II specimens in CITES permits during 1991-1994).

A similar situation prevailed in Natal until NPB permit staff began reporting Appendix III imports in 1991. Still, in 1992, it appears that trade data for Appendix III imports were incomplete. For example, an examination of a random sample of Natal import permits issued that year for non-CITES species revealed trade in 300 Cordon-bleu's *Uraeginthus bengalus*, 100 Lavender Finches *Estrilda caerulescens*, 100 Bluebill Weavers *Spermophaga spp.*, 500 Orange-cheeked Waxbills *Estrilda melpoda* and four Great Blue *Turacos Corythaeola cristata*, none of which were identified as Appendix III specimens or included in South Africa's 1992 CITES Annual Report.

Trade in Re-exported Specimens

With respect to re-exports, Parties generally accept the judgement of the Management Authority granting a re-export permit, trusting that the documents from the original country of export were in order. This is acceptable provided that the country of re-export provides accurate information on the re-export permit, including the country of origin, the number of the export permit of the country of origin and its date of issue. The Convention recognises that irregularities may occur and recommends that Parties use their discretion with respect to permits issued by other Parties, as a means of controlling the entry of illegally obtained specimens into international trade. As noted above, provincial staff rarely monitor trade closely which, in some cases, results in the irregular issuance of re-export permits (See Box 13).

Box 13 **Irregular Re-export of Aldabra Giant Tortoises**

In 1994, TNC issued several import permits for captive-bred Aldabra Giant Tortoises *Geochelone gigantea* from the Seychelles. TRAFFIC subsequently reminded TNC permit staff of CITES Notification No. 786, issued 10 March 1994, which drew attention to the lack of credibility concerning captive-breeding operations in the Seychelles for Aldabra Giant Tortoises. The CITES Notification recommended that the validity of all export permits from the Seychelles first be confirmed by the CITES Secretariat before being accepted. In spite of this reminder, further permits were accepted by TNC without consulting the Secretariat, including a March 1995 shipment of five allegedly captive-bred Aldabra Giant Tortoises from the Seychelles.

In May 1995, TNC staff granted an export permit for two wild-caught Aldabra Giant Tortoises with the country of origin given as South Africa. It is rather incredible that TNC staff were not able to determine that the species is not indigenous to South Africa. Moreover, it turns out that the two specimens were part of the shipment of five tortoises accepted in March and were actually being re-exported by the same dealer. The circumstances of this case raise many questions about the seriousness of TNC staff to comply with the terms of the Convention. TNC staff were alerted to this error in June 1995, but no action was taken and the tortoises were allowed to leave accompanied by this permit in late July 1995.

Box 14 **Poor Scrutiny of Permit Applications for Re-exports**

In May 1995, a Nile Crocodile *Crocodylus niloticus* skin rugmount and six Hippopotamus *Hippopotamus amphibius* teeth arrived in the UK without any CITES permits. The shipment was detained by UK Customs pending clarification of its legality. A TRAFFIC investigation revealed that an export permit had been issued by TNC for the export of a set of Hippopotamus teeth and a Nile Crocodile skin rugmount to the UK. The TNC export permit stated that the items were originally "wild-caught" in Zimbabwe and provided two Zimbabwean export permit numbers. Unfortunately, no corresponding import permits could be found for the Zimbabwean export permits. Further investigations revealed that the crocodile skin actually originated in Zambia and that the skin had been legally imported from Zambia on an import permit issued by TNC. Similarly, the Hippopotamus teeth were discovered to have come from Tanzania, also sanctioned by a TNC import permit.

This error should have been identified by TNC and illustrates that a number of steps did not take place which would have led its discovery. For example, neither the original TNC import permits nor the alleged Zimbabwe export permits were consulted to verify the origin of the specimens – the information on the application for re-export was simply taken at face value.

A similar case occurred in July 1995 with respect to a shipment of live reptiles exported from the US to South Africa. TRAFFIC was alerted to a discrepancy in the permits and discovered that the NPB import permit stated that the reptiles were bred in captivity in the US, whereas the US export permit indicated that some of the reptiles had been wild-caught in Togo, Tanzania and Indonesia. NPB was advised of the discrepancy and responded that the permit was issued on the basis of the declarations made by the importer and that in practice NPB does not insist on seeing the export permit to verify the declarations made by the applicant before an import permit is issued.

Without verification procedures in place, the wildlife trade is open to abuse by traders inadvertently or wilfully declaring false information to South Africa's CITES Management Authorities.

Trade in Plants

The only country with an entire floristic zone within its borders, it is not surprising that South Africa is a significant exporter of plant species in the world. Owing to the rarity of many species and other factors, illegal exports have been a fairly constant feature within South Africa's plant trade. Incidences of such trade involving Appendix I species include the seizure of 695 mature cycads *Encephalartos spp.* exported to Madiera in 1988, 2 000 mature wild-collected *Pachypodium* species exported to Germany in 1989, 510 mature cycads exported to Japan in 1990, 80 kg of *Aloe* species exported to Switzerland in 1993 and 25 cycads *Stangeria eriopus* exported to the UK in 1994. Having failed to address this problem adequately, South Africa is now faced with the embarrassment of incidences in 1994 and 1995 where the Management Authorities in both the UK and Germany have refused to grant CITES import permits for South African plant exports. This action was taken in spite of the presence of valid South African CITES export permit "verifying" that the transaction satisfied the requirements of the Convention.

Provincial authorities have attempted to monitor the trade in CITES-listed plants via the CITES permit-issuing system, however many problems persist. One notable example is the export trade in plants from the Cape Province, the largest plant exporting region in South Africa. In 1981, CNC instituted a system of "Exemption Certificates" which allowed dealers to export CITES-listed species using exemption certificates as long they had been granted a "blanket" CITES permit for

specified genera. Notwithstanding the fact that exemption certificates do not qualify as CITES export permits as stipulated under the Convention, CNC has repeatedly urged the importing nations to accept these documents in lieu of CITES export permits whenever the issue of their validity has been raised. An examination of CNC exemption certificate data for the period 1981 through to 1992 revealed trade in 7 380 plant cuttings, 1 455 plants and 11 244 seedlings of CITES Appendix II species which went unreported in the CITES Annual Reports.

In 1995, the CITES Plants Committee acknowledged the shortfalls of South Africa's implementation of the Convention with regard to plants, and recommended that the South African Management Authority conduct a series of training seminars focused exclusively on plant trade issues and problems. Such action was deemed necessary to confirm South Africa's ability to conduct its plant trade in compliance with CITES requirements.

Transit and Trans-shipment

Although Article VII. 1 of the Convention exempts shipments of CITES-listed specimens in transit from CITES trade controls, the COP has subsequently established guidelines for dealing with this issue in Resolutions in order to prevent illegal trade arising from transit or trans-shipments situations. Resolution Conf. 4.10 directs CITES Parties to limit the scope of transit or trans-shipment to '*situations in which a specimen is in fact in the process of shipment to a named consignee and that any interruption in the movement arises only from the arrangements necessitated by this form of traffic*'. Resolution Conf. 7.4 also recommends that parties '*inspect transit shipments, and check the presence of valid export documentation as required under the Convention or satisfactory proof of its existence*'.

As a result of these Resolutions, CITES implementing legislation should also cover shipments of CITES-listed specimens transiting South Africa. This, however, is not the case. In fact, since 1910, South Africa, together with Botswana, Lesotho and Swaziland were joined in a Customs Union, with Namibia joining in 1990 after independence. The Customs Union agreement allows bonded cargo from member states to pass freely through any of these countries. For example, containers prepared and sealed in Lesotho can enter South Africa, proceed to the port of Durban and exit the country without any official inspection. This arrangement greatly inhibits South Africa's ability to control transit shipments of wildlife through its ports if the cargo is destined to or from any member of the Customs Union. It is worth noting in this regard that Lesotho and Swaziland remain non-Parties to the Convention, and that the latter country has been identified as a transhipment point for illegal wildlife products in the past.

The Disposition of Confiscated Specimens

Article VIII of the Convention requires that the CITES Management Authority nominate a "rescue centre" or another appropriate destination to care for live confiscated specimens. In South Africa no such "rescue centres" have been formally nominated, but a number of institutions accept confiscated specimens out of concern for their welfare. The *Criminal Procedures Act* provides for the sale of seized specimens, which under CITES is not permitted in the case of Appendix I specimens, but may be an option for specimens of species listed on Appendix II or III. In practice, confiscated specimens in South Africa are not sold. Provincial authorities, where possible, return live indigenous species to the wild, otherwise the specimens are treated as live exotic specimens and are either sent to a rehabilitation centre or zoological garden, placed in commercial breeding programmes, re-exported to the country of origin, or euthanised. Dead specimens, generally, parts,

derivatives or products, are stored indefinitely by the relevant enforcement agency. However, the lack of formal policy necessitates *ad hoc* decisions for the disposal of confiscated specimens on a case-by-case basis. This has sometimes resulted in commercial trade that might not otherwise be permitted (See Box 15).

Box 15 The Trade in Confiscated Tortoises

TNC policy allows the export of wild-caught indigenous tortoises provided they have been confiscated and cannot be reintroduced into the wild. Such exports are only sanctioned for confiscated specimens which have been provided to Pretoria or Johannesburg Zoos and exceed the zoos' carrying capacity (Erasmus, pers. comm., 1995). When overstocked, these zoos sell the surplus tortoises to commercial dealers under the proviso that they will be exported. Between 1993 and 1994, the Johannesburg Zoo sold a total of 425 tortoises at R50 each to a South African trader (Coetzee, *in litt.*, 1995). Officials at Pretoria Zoo, were unable to provide data as to numbers sold, but indicated that they rarely receive confiscated tortoises. During this same period, TNC reported confiscating a total of 411 tortoises. Whilst the number of tortoises sold exceeds the number confiscated, this may be explained by stocks held by the zoos prior to 1993.

On the other hand, TRAFFIC South African CITES permit data indicate a different story. From 1993 through 1994, the same South African trader exported 2,023 indigenous tortoises on TNC permits, 99% of which were declared as "wild-caught". As Johannesburg Zoo records indicate only 425 specimens sold to this dealer, the origin of 1,598 specimens remains unaccounted for.

The majority of the tortoises exported were Leopard Tortoises *Geocheleone pardalis*, a popular species in the international pet trade because of its attractive shell pattern. International selling prices for this species ranged from R4,164 to R7,982 each in the rand equivalent in 1994. As confiscated tortoises can be purchased from the zoos for R50 each and specimens can probably be collected in the wild for even less, a substantial monetary incentive exists to illegally wild-collect and export tortoises under the guise of "confiscated specimens". This may explain the discrepancy in the export of allegedly confiscated specimens. Equally, this example highlights the inability of TNC authorities to monitor their tortoise export policy effectively.

In accepting confiscated live specimens, rescue centres agree to incur the expense of housing, feeding and caring for specimens, which may be extremely costly in the case of large shipments or for particular species. Article VIII of the Convention provides for Parties to institute measures for recouping such costs and Resolution Conf. 4.18, in particular, recommends that Parties enact legislation that requires the guilty importer and/or carrier to meet the costs of confiscation, custody and returning live specimens to their country of origin or export. South Africa has not implemented this recommendation and this has led to institutions functioning as "rescue centres" sometimes being reluctant to agree to house or care for confiscated specimens. (See Box 16)

Box 16 The Cost of Housing Confiscated Specimens

In 1993, a shipment of exotic parrots including 47 Blue-and-Gold Macaws *Ara arauana*, ten Green-winged Macaws *Ara chloroptera* and six Hawk-headed Parrots *Deroptyus acciptrinus* were confiscated due to the improper CITES documentation. Owing to a shortage of space at the government quarantine station, Johannesburg Zoo was requested to house the birds in April 1993. Some 11 months later, the courts issued a verdict, and the alleged importer was found "not-guilty", although the birds were forfeited to the state. Johannesburg Zoo is still in possession of the birds some 27 months later and is attempting to find a permanent home for them. The financial costs for the upkeep of the birds has been estimated in excess of R30,000, and the Zoo is extremely cautious regarding future acceptance of confiscated specimens.

Like most other CITES issues, the disposition of confiscated specimens is complex and encompasses a range of ethical, financial and legal considerations. In the absence of a well-thought out policy and a sound legal basis, many problems will arise that authorities will not be able to address effectively. In the worst cases, a reluctance to confiscate otherwise illegal shipments result. The question is again raised as to whether South Africa will develop and adopt a national policy with regard to the disposition of confiscated specimens, or whether the provinces will continue to react disparately with *ad hoc* solutions whenever problems arise.

CITES Annual Reports

Article VIII. 6 requires each Party to submit to the CITES Secretariat an annual report of all imports, exports and re-exports of CITES-listed species. Since its accession to CITES in 1975, South Africa has submitted an annual report compiled by DEAT staff from reports prepared by each of the four provinces. In the process of collating the data into a provincial report and then later a national report, there is plenty of scope to inadvertently commit a large variety of clerical errors. Compounded errors can result in a high degree of unreliability in the annual report's presentation of data.

An examination of the information contained on 684 provincial import, export and re-export permits issued in January, April, July and October 1993 with the presentation of the same data in South Africa's CITES annual report highlights the extent of this problem. TRAFFIC found 249 errors, representing 14 different problems, including the misidentification or omission of species, permit numbers, purpose, source or other important information (See Table 5). Such errors reduce the quality of South Africa's CITES annual reports.

Table 5: Comparison of South African Provincial CITES Permit Data with the South African 1993 Annual Report for the Months January, April, July and October

	Type of Error noted in the 1993 Annual Report	CNC	NPB	OFSC	TNC
1	Species stated in report does not match species on permit	1	0	1	17
2	Species listed on permit but omitted from report	5	7	6	30
3	Description on permit differs from description in report	2	2	0	5
4	Quantity on permit differs from quantity in report	4	4	0	16
5	Purpose on permit differs from purpose stated in report	4	0	0	14
6	Source listed on permit not reflected in report	65	0	0	39
7	Country of destination on permit omitted or does not match country stated in report	8	0	0	22
8	Country of origin on permit omitted or does not match country stated in report	0	0	0	8
9	Tag numbers incorrect or omitted	0	2	0	17
10	Permit number of exporting country omitted or does not match permit number stated on import permit (excludes permits issued for re-exports)	0	0	0	8
11	Original export permit number omitted or does not match permit number stated on import permit issued for a re-export	0	0	0	1
12	Re-export number on permit misidentified or omitted in report	0	0	0	15
13	South African CITES Permit number does not match permit number in report	2	2	0	11
14	Import permit number stated on export permit is misidentified or omitted in report	0	0	0	46
	Total number of permits with at least one error	91	17	7	249
	Total number of permits checked	177	80	10	417
	Percentage of permits erroneously reported	51,4%	21,2%	70,0%	59,7%

Beyond the numerous clerical errors in transposing and collating provincial data into a provincial and then a national annual report, permit-issuing procedures also distort the data with respect to actual trade volumes. In Natal and Transvaal, for example, provincial CITES annual reports are based on import and export permits issued, rather than on actual trade. This practice, in combination with provincial procedures for issuing CITES permits, results in both over- and under-reporting of actual trade volumes. For example, in Natal permits are issued in advance of imports whereas in the Transvaal permits are issued after the arrival of a shipment. Import trade reported in Natal reflects permits issued rather than actual trade, while trade volumes for Transvaal imports do not reflect the actual quantity in the shipment as mortalities are sometimes excluded in the case of live species. Export trade data for each of the provincial authorities also reflects permits issued rather than actual trade as there are no mechanisms in place to verify whether an export permit was actually used or not, and no inspection of shipments prior to export.

Failing to accurately report CITES trade in the annual reports negatively impacts on global monitoring efforts for wildlife under the Convention and may thwart law enforcement efforts against illegal trade. For example, Transvaal permit data indicate that at least some of the imports of Appendix I birds into South Africa from 1987 to 1991 went unreported in South Africa's CITES annual reports, including 26 Scarlet Macaws *Ara macao* from "South America" in 1987. Bird breeders confirm that a quantity of Scarlet Macaws were imported from Nicaragua around that time with the approval of South African government authorities. If the trade had been reported it may have helped to alert the international community to the export of this Appendix I species from Nicaragua, a country which had banned all exports of wild-caught birds at the time.

In order to monitor trade in wild-caught and captive-bred specimens, the Secretariat issued CITES Notification No. 205 requesting Parties to provide source information in the "Remarks" column of their annual reports if specimens were other than wild-caught. South African CITES annual reports have included notations to this effect, some of which appear inaccurate (See Box 17).

Box 17 **Wild-caught African Grey Parrots Declared as Captive-bred in South African CITES Annual Reports**

From 1985 to 1990, a total of 1 658 African Grey Parrots were reported by South Africa as re-exported to the US, of which 1 252, or 75%, were reported as "captive-bred", the latter having been exported in 1985 and 1986. US data showed the import of only a third as many African Grey Parrots, of which 170, or 32% of the US total, were reported as captive-bred. The captive-bred designation was not just limited to 1985 and 1986 re-exports of African Grey Parrots. In fact, South Africa's CITES annual reports for the years 1984 through 1986 declared virtually all birds exported as being captive-bred. This could have been a general clerical error on the part of those compiling annual reports. However, the fact that the US reported at least some of Togo African Grey imports as captive-bred indicates that South African export permits also contained such errors.

Source: Mulliken, 1995

LAW ENFORCEMENT

Responsibility for law enforcement is shared between a number of agencies and one non-government organisation. In South Africa, the key players include the law enforcement divisions of the four provincial authorities, the ESPU of the SAP, Customs officers, the quarantine units of DOA and the SPCA. It is worth noting that each of these agencies have their own objectives and responsibilities, with CITES enforcement only a major focus in certain instances (See Box 18).

Box 18 **Primary Objectives of South African Law Enforcement Agencies**

Provincial nature conservation bodies have nature conservation officers empowered to enforce the ordinances alongside their other conservation functions, as well as specially dedicated enforcement officers who conduct investigations and coordinate enforcement inside and outside of protected areas. The implementation of CITES and the wildlife trade provisions of the provincial ordinances are major concerns of these bodies. In terms of law enforcement policy, provincial authorities seek to control trade that might be detrimental to indigenous wildlife populations and not to discourage trade that might be beneficial to wildlife conservation in South Africa.

The **ESPU** is primarily concerned with interdicting illegal wildlife trade throughout South Africa, relying upon the provincial nature conservation ordinances, DOA quarantine controls or Customs regulations as the legal basis for determining infractions. In practice, ESPU efforts are largely directed at the illegal trade in rhino horn and elephant ivory and only recently has attention been focused on other high-profile species such as cycads or certain parrots. This last point is an important consideration. While the ESPU arguably has the most resources at its disposal, the most direct mandate for dealing with wildlife trade offences and a nationwide jurisdiction, its operational focus on a handful of high-profile species means that many, if not most, aspects of the wildlife trade are not addressed by this enforcement body.

Customs officers are primarily concerned with preventing the entry of contraband items into South Africa, ensuring that the value of imported goods is declared correctly and collecting surcharges and taxes accordingly. Wildlife trade infractions play a relatively minor role in the day-to-day functioning of Customs.

DOA Quarantine officers are principally concerned with ensuring that all imported live animals and plants (with some notable exceptions) are quarantined or inspected in order to prevent the introduction of dangerous or exotic diseases. CITES infractions, particularly with respect to the conditions of transport for live animals, would first be noted by DOA quarantine staff, however, CITES implementation is not considered a priority.

The **Society for the Prevention of Cruelty to Animals** is mainly concerned with animal welfare issues and enforcement of the *Animals Protection Act of 1962*. Apart from transport issues, CITES trade infractions are outside the purview of SPCA.

Indirectly, **DEAT** and the **Ministry of Foreign Affairs** also play minor roles in law enforcement, principally as conduits for communication with external authorities. In this regard, they are eager to ensure that South Africa complies (or appears to comply) with the requirements of the Convention.

Law enforcement is complicated by the fact that South Africa has a large number of potential ports of entry. With nearly 100 recognised international entry points and thousands of kilometres of coastline and terrestrial borders, there are plenty of options for wildlife to move in and out of South Africa. Customs personnel usually staff the major ports of entry, but as Table 6 indicates, permanent staff are only present in 16 locations. In addition, DOA manages quarantine stations at the three major international airports servicing Cape Town, Durban and Johannesburg.

Table 6 **Official Points of Entry in South Africa**

Type of Entry Point	Number of Stations	Stations with Customs Staff
International Airports	22	4 with permanent staff; 13 on call; 5 unstaffed but assisted by Immigration personnel
Domestic Airports*	11	11 unstaffed
Customs Union Border crossings	46	3 with permanent staff, leaving the balance either on call or are assisted by Immigation personnel
Other Border Crossings	5	2 with permanent staff; 3 unstaffed but assisted by Immigration personnel.
Seaports	7	7 with permanent staff
Total	91	16 with permanent staff; 13+ on call; 8+ unstaffed, but assisted by Immigration personnel

* Light aircraft from neighbouring countries occasionally use domestic airports.

Although strategically positioned to play a major role in CITES enforcement, Customs and DOA staff generally regard compliance with the Convention as a secondary or minor responsibility. Generally speaking, provincial wildlife authorities are expected to take the lead on such matters even though they are seldom the first to encounter wildlife shipments at South Africa's ports of entry or exit. Because Customs and DOA staff lack any formal training in CITES or wildlife trade issues, when faced with unclear situations, there is a tendency to simply drop potential investigations rather than engage provincial conservation authorities for assistance. In view of this situation, it can be argued that South Africa commits very few, if any, law enforcement personnel to "front-line defence" positions for combating illegal trade in wildlife.

Because Customs and DOA staff are not, for the most part, directly engaged in CITES issues, South Africa generally lacks the ability to inspect wildlife shipments upon import or prior to export at the ports of entry or exit. Consequently, government authorities are unable to confirm claims of captive breeding or artificial propagation or properly identify the species being traded with those listed on the documents for most wildlife shipments. Therefore, it is not surprising that incidences of illegal wildlife exports from South Africa are periodically exposed by foreign authorities without having being detected by South African government agencies at the time of export. While this is not a problem unique to South Africa, it nonetheless should give cause for concern and points out the need for a serious commitment to law enforcement. For example, during 1994, seizures involving indigenous wildlife species included shipments of tortoises to Belgium, cycads and Purple-crested Louries *Musophaga porphyreolopha* to the US and one tonne of ivory to Taiwan. Conversely, illegal wildlife imports sometimes successfully enter South Africa without detection. Recent cases have involved rare orchids from Southeast Asia, parrots from West Africa and Indonesia, crocodile skins from Zaire and python skins from other African countries.

Some measure of formal cooperation between government agencies for the control of wildlife trade is fostered through the periodic meetings of the CWG. As previously described (see section 6.5), however, this group is composed primarily of senior management who, with the exception of the ESPU representative, generally lack a law enforcement focus. CWG meetings rarely involve provincial wildlife permit, investigative or field staff, who deal with law enforcement issues on a daily basis, and more effort needs to be made to promote direct operational linkages with key Customs and DOA staff on the ground. This points to the pressing need to establish an inter-agency law enforcement working group of hands-on staff to tackle more routine issues in order to facilitate effective law enforcement for CITES and other wildlife trade issues nationwide.

Currently, cooperation at the field level largely results from the independent initiative of certain individuals within the various agencies. These *ad hoc* alliances are sometimes very effective, but they are primarily based on personal relationships rather than organisational links. Problems seem to be particularly acute between certain DOA and provincial conservation staff. For example, it has been reported that DOA staff in Johannesburg and Durban restrict access to the quarantine section by TNC and NPB staff. While the restriction for veterinary precautions is understandable, the lack of access to the documents included with the shipment is not. NPB staff, in particular, are often unable to verify the legality of incoming shipments as they are denied access to import documents by DOA staff.

There is a also a tendency of certain law enforcement staff to promote their own achievements and reputation to the exclusion of the common objective of effective CITES implementation. "Turf wars" and arrogance have sometimes stood in the way of effective cooperation between authorities with nationwide jurisdiction and those limited to the purview of an individual province. As the effectiveness of enforcement agencies is often measured by the number of seizures and successful prosecutions, some authorities are particularly sensitive to other agencies taking the credit for work they have largely done themselves. On occasion, this has led to charges of "media grandstanding" by critics within other collaborating law enforcement agencies. In the worst instances, distrust, non-cooperation and a lack of mutual respect stands in the way of effective inter-departmental cooperation (See Box 19).

Box 19 **The Case of an Uncooperative Customs**

In November 1994, ten Purple-crested Louries *Musophaga porphyreolopha* (now CITES Appendix II) were seized by UK Customs declared as Hartlaub's Turaco *Tauraco hartlaubi*, a non-CITES species at the time. UK Customs informed the South African Embassy in London, who in turn informed Customs and Excise authorities in South Africa. It was then unilaterally decided by South African Customs that the birds would stay in England and the matter was closed without consulting any other concerned authority.

TRAFFIC East/Southern Africa learned about the seizure and immediately contacted the relevant South African authorities. According to the subsequent investigation, a shipment of Hartlaub's Turacos had originally been imported from Tanzania by a Natal trader, and these birds were now allegedly being re-exported by a Transvaal dealer to the US. However, Purple-crested Louries were substituted in the shipment and were apparently not recognised as indigenous birds by South African authorities upon their export.

TRAFFIC duly briefed South African Customs on current legislation in South Africa which prohibits the possession and export of indigenous birds, and inquired about the status of their investigation. Without disclosing any details, Customs officially responded that their investigation was complete and the matter closed. However, TRAFFIC was told by another source that a full investigation had never transpired. TRAFFIC then requested a meeting between TNC and Customs officials to discuss the issue.

At the joint meeting, the Director of Customs and Excise was extremely reluctant to cooperate and advised that his department could not divulge any information regarding their actions due to a secrecy clause in the *Customs Act*. In response, TNC requested that Customs inform TNC Special Investigations or another law enforcement agency such as the ESPU about the details of their investigation. This suggestion was also refused by Customs on the grounds of the secrecy clause.

To date, Customs have still not officially informed any other government body about the seizure in the UK, and no punitive action has been taken against the exporter of the shipment. In the meantime, the birds remain in the UK. This case demonstrates a lack of transparency and accountability and it is hoped that Customs will become more cooperative in future.

It is significant to note that cooperation is strongest between the provincial wildlife authorities. This is probably largely explained by the commonality of shared goals, the provincial nature of

investigations and, perhaps, better personal relationships. In general, provincial enforcement staff are mindful of the problems in enforcing wildlife controls and equally acknowledge the serious problems within their own permit divisions as one of the major contributing factors to CITES infractions in South Africa. Many of the provincial enforcement staff are dedicated conservationists and are personally motivated out of a genuine concern for nature and an intrinsic sense of justice.

DISCUSSION: NATIONAL CONTROL VERSUS PROVINCIAL CONTROL

The use of wild animals and plants as sources of food, shelter, clothing or other accessories, medicine, building material, recreation and pets provides far-reaching economic, social and cultural benefits to many South Africans, and there is tremendous potential for further development of these resources. By the same token, South Africa's biodiversity must be protected from unsustainable or illegal exploitation which can place individual species at risk, threaten habitats and entire ecosystems as well as undermine important economic activities including tourism, game ranching and community-based wildlife programmes. At the international level, South Africa also needs to ensure that its policies do not have a deleterious impact on the biodiversity of other parts of the world. With respect to the wildlife trade, CITES stands as the principal mechanism for international cooperation and South Africa's long-standing membership to the Convention should to be strengthened. For these reasons, it is important that the Government of National Unity establish an effective legal and administrative framework to ensure that wildlife trade is conducted on a sustainable and legal basis and in accordance with the provisions of the Convention nationwide.

A legacy of the country's grey history, an ingrained sense of regional autonomy remains a paramount feature of South Africa's political landscape today. Over the last two decades, the country's experience with CITES implementation has been based upon a decentralised, provincial structure exercising a large measure of autonomous authority. The four provincial ordinances that provide the legal underpinning for wildlife trade controls in South Africa are only relevant to the province in which they are promulagated. While interprovincial trade controls may be a feature in these laws, they are unenforceable and essentially only exist on paper. In reality, there are no inspections of wildlife shipments crossing interprovincial boundaries, and few controls in place to monitor legal possession of wildlife specimens. There is little doubt that many dealers are acutely aware of the facts and, when refused permits in one province, simply make arrangements for transactions to transpire through another province.

This report provides many examples how this regional approach has stood in the way of realising broader national and international goals and commitments. As has been shown, for any country to meet its obligations under CITES adequately, comprehensive legislation, implementing policies and a competent administrative and law enforcement structure all need to be put into place. Without a coordinated and well-integrated approach, decentralisation leaves CITES implementation only as good as the weakest player. In South Africa, this may be one province or another depending on the particular issue at hand, but taken as a whole, many systematic problems currently plague the country's performance with respect to CITES.

The current restructuring of South Africa's geopolitical structure provides a golden opportunity to address outstanding deficiencies in the country's approach to CITES. At this point, however, it remains to be seen if the existing provincial structure will remain in effect – and even be expanded to the newly-created provinces – or whether a more centralised, national model for implementing CITES and other wildlife trade controls will evolve. Either path may ultimately serve the objectives of the Convention, but it needs to be appreciated that decentralisation as currently practised will not satisfy South Africa's obligations under the Convention or effectively regulate other aspects of the country's wildlife trade.

While the issue of provincial versus national control extends far beyond the purview of wildlife trade and CITES, the development of a national wildlife policy has increasingly been a feature of South Africa's ongoing political debate. Problems associated with the provincial control of wildlife trade

were first articulated in the 1991 *Report of the Three Committees of the President's Council on a National Environmental Management System* (Anon., 1991a). The report noted that provincial legislation aimed at dealing with the conservation of fauna and flora applied only within provincial jurisdictions, and therefore was '*ineffective in dealing with illegal trade in rare and endangered species, as smuggling across provincial boundaries and even into independent states could not be checked*'. The report further recommended that the provincial legislation be consolidated into a '*National Conservation Act*', the enforcement of which could be delegated to the provinces or regions. Although this recommendation was specifically aimed at protecting native fauna and flora, this mandate could equally be applied to exotic species traded to, from and through South Africa.

In 1992, the need for national trade controls was again addressed by government officials during a two-day workshop convened by the Secretariat for Economic Regions of Southern Africa (SECOSAF). Recognising the importance of protecting endangered or threatened species, the objective of the workshop was to '*investigate the viability of, and determine the principles to be applied in, aligned legislation pertaining to endangered species within southern Africa*'. A majority of the workshop participants supported the development of national endangered species legislation to address these problems, and agreed that a so-called *'Endangered Species Act'* should complement, rather than replace, existing national or provincial conservation legislation and regulations. With respect to international treaties, the SECOSAF workshop suggested that the South African government *'formally adopt a policy of complying with international environmental norms, as well as partaking in, and subscribing to, international treaties*', with the policy then '*legislated via the ESA, and the executional function delegated to appropriate levels*'.

Finally, SECOSAF participants identified a range of problems with respect to existing trade controls, including the absence of designated ports of entry; the lack of trained personnel at border posts; uncontrolled air traffic; the lack of authority to inspect all goods/containers entering the country; and undue discretionary power accorded to '*low ranking officials*', especially in the context of permit issuance pertaining to endangered species, leading to '*inconsistencies regarding decision-making and actions*' and precluding '*the effective and efficient enforcement of legislation*'. The group concluded that such problems has '*aggravated the uncontrolled movement/trade of endangered species and products thereof, and severely hampered the successful protection of endangered species*'. Specific reference was made to the use of South Africa as a transit destination for contraband, with illegal goods being *'flown to South Africa, sold at the airport, and exported again, with officials unable to do anything about it*'.

Concerns about South Africa's lack of uniform trade controls have also been highlighted within CITES fora. For example, in 1992, in examining trade controls as part of the review process for South Africa's proposal to transfer its population of African Elephant *Loxodonta Africana* from CITES Appendix I to Appendix II, the CITES Panel of Experts recommended the '*establishment of formal mechanisms to ensure uniform implementation of CITES throughout the country, at all levels of government, including nature conservation authorities, Customs, police and veterinary authorities*' (Anon., 1991b). This echoes the sentiments of Fuggle and Rabie (1993) in describing South Africa's wildlife laws: *There are too many statutes and ordinances, and this plethora of laws represents a serious constraint on the effectiveness of wildlife law [in South Africa].*

While there has been considerable resistance in the provinces to the idea of transferring responsibility for wildlife and other environmental protection matters to the national government, there are increasing signs that some provincial administrators are beginning to acknowledge the need for stronger national wildlife trade controls. In November 1993, the Subcommittee on Flora and Fauna (which now includes the CWG) discussed the development of regulations establishing broader national trade controls under the *Environment Conservation Act*. It was decided, however, that the

power to establish national trade controls was not provided for under the Act. The Act was amended in 1993 to expand its scope to include international treaties and conventions. Further action, however, was delayed by the Subcommittee until after the April 1994 national elections

Since then, there has been a measure of progress on some of the recommendations. For example, DEAT has produced the second draft of an '*Endangered Species Protection Bill*' in an attempt to rationalise the protection of endangered plants and animals throughout the country. The bill, as presently drafted, would provide for three categories of species to cover international, national and provincial lists of taxa, but still has a number of serious anomalies with respect to CITES. For example, Appendix II and III species are excluded; coverage for separate populations of species, and parts and derivatives of listed species is lacking or ambiguous; and the issuance and acceptance of import or export permits is discretionary irrespective of the conditions established under the Convention (de Klemm, in litt., 1995).

The dire need for a national environmental policy has also been prioritised within government and non-government sectors. The Consultative Conference for National Environmental Policy held in August 1995 marks the first coordinated effort to develop such a policy. While it is clear that the process to establish a national environmental policy for South Africa is currently dynamic, ongoing and largely unsettled, a firm committment to the process is a critical requirement for success. The issues of wildlife resources, CITES and the regulation of wildlife trade are slowly becoming ones that no longer can be ignored.

At this point it is worth examining what other CITES parties have done towards instituting effective frameworks for the implementation of the Convention. As previously mentioned, both centralised and decentralised approaches can work if minimum standards are set and appropriate checks and balances are built-in features of the system. This is best illustrated by examining the situations in the US and European Union (EU).

Comprised of 50 states, with the issue of state's rights a constant feature of the country's political debate, the US has opted for a centralised system of wildlife trade controls that has evolved over the last 100 years. At the turn of the century, interstate commerce in protected wildlife species was identified as an issue of national importance. The *Lacey Act* of 1900 made transport across state borders of any wild animals or birds killed in violation of state law a federal crime. (The basic principal addressed by this law is clearly relevant to South Africa where, for example, protected cycads endemic to one province are frequently transported to, and exported from, other parts of the country where they enjoy less protection.) The purview of the *Lacey Act* has since expanded, making it a federal crime to transport wildlife into the US from anywhere in the world if the specimens in question were acquired in violation of legislation in the country of origin.

The early acceptance of federal jurisdiction over interstate and international trade in wildlife paved the way for trade in CITES-listed species to be regulated by the national government (Bean, 1983). This is achieved through the *Endangered Species Act* (ESA), federal legislation first promulgated in 1973, which is implemented by the US Fish and Wildlife Service. The ESA accords coverage to all species listed on Appendices I, II or III of the Convention, and authorises trade in such specimens only in compliance with CITES requirements. The ESA establishes a minimum national standard for the regulation of trade in wildlife species. Individual states are still free to impose stricter requirements for the control of trade or possession of ESA-listed species, or to regulate trade in indigenous or exotic species which are not otherwise covered by the ESA. Under the ESA, the issuance and acceptance of permits for international trade has exclusively remained in the hands of the national government, even for trade in native specimens originating in individual states. In the

meantime, the states still retain jurisdiction over wildlife utilisation and protection at the state-level and, for example, are responsible for establishing quotas, regulating and licensing activities such as fishing and hunting, and controlling domestic possession and sale of wildlife and wildlife products.

Another unique feature of the US system is the degree of public oversight in the permit-issuing process for trade in species listed as "Endangered" under the ESA, which includes all CITES Appendix I taxa. The US CITES Management Authority is required to publish a notice of permit applications in the *Federal Register* in order to allow public comment before issuing permits sanctioning trade. By soliciting information from the general public, questionable trade transactions are often prevented in advance of a permit ever being issued. To enhance law enforcement, the US has also limited the number of ports of entry to 12 and stations Fish and Wildlife Service Law Enforcement officers at these ports to work directly with Customs in the clearance of shipments of wildlife and wildlife products.

With its unique political and economic structure, the EU takes a different approach to CITES altogether. The 15 countries that form the Union have agreed to impose uniform wildlife trade controls in all Member States in order to abolish internal border controls. At the same time, basic implementation functions, such as the issuance and acceptance of CITES permits, remain with the CITES Management and Scientific Authorities in each country. In a sense, this arrangement is not dissimilar to the situation in South Africa if the provinces are viewed as "sovereign countries".

A series of EU Regulations have been adopted to ensure standardised wildlife trade controls, many of which supercede CITES requirements. For instance, imports of species from all three Appendices require an import permit; some Appendix II and III species have enhanced protection (so-called Annex C1 and C2-listed species); the display to the public for commercial purposes, the sale, keeping for sale, offering for sale, or transporting for sale of Appendix I or Annex C-1 species is prohibited within the EU in the absence of exemption certificates; and a transport authorisation must be issued for Appendix I and Annex C-2 species prior to their movement within the EU (Fleming, 1994). All Member States are required to implement these regulations, and new measures are periodically considered to strengthen wildlife trade controls.

Secondly, to ensure standardised permit-issuing practices, a number of useful tools have been developed. The European Commission publishes and circulates a *Complete List of Annex C2 Species, Their Countries of Origin and Decisions Concerning Their Import Into the EU* to the Management Authorities of each Member State. This document is complemented by a computer database version, together with an interrogation program, enabling the rapid retrieval of information upon request. Other similar materials are periodically produced for CITES species not included in Annex C2. This facilitates uniform application of trade controls on a species-by-species and country-by-country basis for all permit-issuing or law enforcement staff within the EU and helps to prevent unscrupulous traders from conducting questionable trade through countries which poorly implement CITES. These materials are regularly updated to incorporate information contained in CITES Notifications and decisions taken by the EU/CITES Committee or the EU/CITES Scientific Working Group, administrative and technical bodies that meet regularly to review trade and establish stronger controls as necessary. The institutionalised process of constant review ensures that problematic issues are identified and dealt with expediently and that all Member States actively work to effect uniform trade controls.

While it cannot be argued that CITES implementation in either the US or the EU is perfect, nonetheless both of these diverse examples offer institutional features which, if similarly implemented in South Africa, could help solve many current problems. It needs to be recognised that

unless there is a fundamental re-assessment of CITES administration in South Africa, adding new CITES authorities within the newly-created provinces will only result in a further proliferation of existing problems. The overriding challenge is to evaluate the range of current problems objectively and to carefully weigh new options which offer a better measure of standardisation, integration and cooperation for CITES implementation in South Africa.

Provincial administration of the Convention might ultimately work, provided that comprehensive national legislation is in place and mechanisms to ensure a standardised approach to permit issuance, information management and other issues are addressed effectively and consistently throughout the nation. On the other hand, it may be administratively expediant as well as cost-effective to centralise certain CITES functions, such as the issuance of import permits, in the hands of a national government authority. Such a move would require the training and provision of fewer staff and make certain information management functions easier. Regardless of the approach, failure to seize this opportunity may cost South Africa – and wildlife – dearly in the future.

CONCLUSIONS

This report demonstrates many fundamental problems with the way CITES is being implemented in South Africa. Firstly, the legal basis for implementing the Convention is inconsistent and in some cases insufficient. While the provincial ordinances collectively provide a basic legal framework, a number of deficiencies or "loopholes" are apparent, placing the Convention on an uneven footing in various parts of the country. Outstanding issues include the lack of coverage for all CITES-listed species and their parts and derivatives; inadequate trade controls; the discretionary issuance and acceptance of CITES permits; and wide discrepancies in the penal code. A piecemeal approach towards addressing outstanding problems will be less efficacious than developing comprehensive national legislation that can support a uniform and consistent approach to CITES and wildlife trade issues nationwide.

Secondly, South Africa's administrative structure for basic implementation of the Convention on a day-to-day basis is problematic. Provincial CITES Management Authority functions, particularly the issuance and acceptance of CITES permits and information management, need to become a standardised, coordinated and integrated process formally linking all players throughout the country. In this regard, national mechanisms will need to be established so that information is regularly reviewed and updated. Far greater emphasis needs to be placed on the regular training of staff and more attention placed on the budgetary requirements of implementing the Convention effectively. The lack of formalised CITES Scientific Authorities also has to be addressed as a priority matter to ensure that the checks and balances originally envisaged by the drafters of the Convention are functioning effectively.

Thirdly, although South Africa has made some important strides in recent years with respect to controlling the illegal trade in wildlife, more attention needs to be placed on law enforcement issues. In particular, Customs and DOA staff who work on the "frontlines" need to be become a more integral part of a comprehensive strategy for controlling shipments of wildlife in South Africa. The fact that very few shipments are inspected prior to export must be addressed as an issue of immediate concern. The Customs Union with four neighbouring countries also poses a unique set of problems for South Africa as the major point of entry and exit into international markets. This arrangement necessitates careful consideration of controls for transit shipments of wildlife. By the same token, the exceptionally large number of potential entry points into the country needs to be addressed with a view towards designating a small number of specific ports of entry for all trade in wildlife.

Among African nations, South Africa continues to play a leadership role in the area of wildlife conservation, especially with regard to the management of protected areas and in situ programmes for endangered species. Unfortunately, attention to wildlife trade issues in general, and CITES in particular, has not traditionally been of the same standard. This study demonstrates a wide range of issues which need to be addressed. Unless corrective measures are put in place, implementation problems will continue to undermine many fundamental objectives of the Convention and leave South Africa vulnerable to charges of irresponsibility in fulfilling its international treaty obligations. More importantly, the country's wildlife will suffer from continuing instances of unsustainable or illegal trade as will wildlife of other countries traded to or through South Africa. It is incumbent upon South Africa to effect a sound policy for CITES implementation. It is hoped that a new policy direction will be charted under the Government of National Unity. South Africa clearly faces many obstacles in this regard, but through a spirit of thoughtful cooperation between all players, there is no reason why the country cannot become an example for effective CITES implementation.

RECOMMENDATIONS

In view of the above findings, TRAFFIC recommends that the following actions be taken:

- **The development of national legislation** to effect uniform legal coverage for the regulation of trade in all CITES-listed species in South Africa should be recognised as a national goal of major and immediate importance. Such legislation should consolidate and standardise the provisions of the provincial ordinances. In developing new legislation, with respect to CITES, particular care needs to be taken to:

  - o strengthen provisions for the regulation of trade in all CITES-listed species, particularly Appendix III species presently excluded from coverage;

  - o establish comprehensive regulations that cover trade not only in live specimens and trophies, but all parts and derivatives of CITES-listed species;

  - o stipulate controls on the domestic trade, transport or possession of specimens of CITES-listed species;

  - o establish a statutory requirement directly linking the issuance and the acceptance of CITES documents (eg permits and certificates) to the requirements of the Convention; and

  - o establish uniform and sufficiently severe penalties for infractions, and provide a solid basis for coordinated law enforcement efforts at the national level.

- **The development of a nationally compatible and integrated administrative structure** that links all national and provincial authorities should be effected at the earliest possible moment. In doing so, the following issues must be addressed:

  - o the structure, role and functions of the CITES Scientific Authorities need to be formalised and strengthened;

  - o the creation of a technical scientific advisory body should be established to review wildlife trade issues periodically, with powers to impose national quotas, trade bans or other trade controls for particular species;

- administrative mechanisms and procedures that standardise the issuance and acceptance of permits for individual species and from particular countries need to be developed and implemented uniformly by all CITES Management Authority staff nationwide;

- better information management procedures, particularly monitoring exports of Appendix II species in compliance with Article IV of the Convention and the preparation of CITES annual reports, need to be developed and institutionalised;

- the committment of adequate financial and human resources must be improved, and attention placed on the provision of regular, formal training opportunities for CITES staff; and

- a CITES administrative working group that effectively links all permit-issuing offices and other key administrative staff should be established and meet regularly to effect better coordination.

- **Further development of a coordinated law enforcement structure** and strategy establishing cooperative linkage between all relevant national and provincial law enforcement bodies needs to be addressed. Issues to address in this regard include:

  - the establishment of a law enforcement working group comprised of representatives of all national and provincial law enforcement bodies that meets regularly to coordinate a national approach to enforcement issues;

  - the designation of selected ports of entry for all wildlife trade shipments;

  - the development and implementation of a strategy for the routine inspection of wildlife shipments immediately prior to export and shortly after arrival;

  - the empowerment of Customs and DOA staff to assist with CITES implementation and enforcement; and

  - the provision of relevant training courses and materials on CITES and species identification issues.

REFERENCES

Anon. 1991a. *Report of the Three Committees of the President's Council on a National Environmental Management System*. South African Government Printers, Cape Town, South Africa.

Anon. 1991b. *Department of Agriculture Directorate of Animal Health Annual Report 1 April 1990 to 31 March 1991*. Department of Agriculture, Pretoria, South Africa.

Balouet, J. 1990. *Extinct Species of the World*. Charles Letts & Co. Ltd, London, United Kingdom.

Bean, M.J. 1983. *The Evolution of National Wildlife Law*. Praeger Publishers, New York, United States.

de Klemm, C. 1993. *Guidelines for Legislation to Implement CITES*. IUCN – The World Conservation Union, Gland, Switzerland.

Fleming, E. 1994. *The Implementation and Enforcement of CITES in the European Union: A TRAFFIC Europe Discussion Paper*. TRAFFIC Europe, Brussels, Belgium.

Forshaw, J.M. 1989. *Parrots of the World*. Weldon Publishing, Willoughby, Australia.

IUCN/SSC and TRAFFIC Network. 1994. *IUCN Analyses of Proposals to Amend the CITES Appendices*. Prepared by IUCN SSC and the TRAFFIC Network for the Ninth Meeting of the Conference of the Parties to CITES. IUCN – The World Conservation Union, Gland, Switzerland.

McNeeley, J.A. 1989. *Economics and Biological Diversity*. IUCN – The World Conservation Union, Gland, Switzerland.

Mulliken, T. 1995. *South Africa's Trade in African Grey Parrots*. TRAFFIC East/Southern Africa, Johannesburg, South Africa.

Nash, S. 1993. Concern about Trade in Red-and-Blue Lories, *TRAFFIC Bulletin* 13 (3): 93-96

Nash, S. 1994. *Making CITES Work: A WWF Report*. WWF, Gland, Switzerland.

Parker, I. and M. Amin. 1983. *Ivory Crisis*. Chatto & Windus, Hogarth Press, London, United Kingdom.

Rabie, M.A. and R.F. Fuggle. 1992. *The Rise of Environmental Concern* in: Fuggle, R.F. and M.A. Rabie (eds.), *Environmental Management in South Africa*, Juta & Co, Cape Town, South Africa. pp. 11 – 25.

Swanson, T.M. and E.B. Barbier. 1992. *Economics for the Wilds, Wildlife, Wildlands, Diversity and Development*. Earthscan Publications Ltd., London, United Kingdom.

PERSONAL COMMUNICATION

Giddy, C, IUCN/SSC Cycad Specialist Group, *in litt.*, 1995

Erasmus, C, Gauteng Department of Nature Conservation and Agriculture, pers. comm., 1995

Coetzee, Q, Johannesburg Zoological Gardens, *in litt.*, 1995

de Klemm, C, IUCN Environmental Law Centre, *in litt.*, 1995

APPENDIX I
LIST OF ABBREVIATIONS

CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CNC	Cape Nature and Environmental Conservation
COP	CITES Conference of the Parties
CWG	CITES Working Group (South Africa)
DEAT	Department of Environmental Affairs and Tourism
DOA	Department of Agriculture
ESA	Endangered Species Act
ESPU	Endangered Species Protection Unit (South African Police)
EU	European Union
NPB	Natal Parks Board
OFSC	Orange Free State Nature and Environmental Conservation
SAP	South African Police
SECOSAF	Secretariat for Economic Regions of Southern Africa
SPCA	Society for the Prevention of Cruelty to Animals
TNC	Transvaal Nature and Environmental Conservation
UK	United Kingdom
US	United States of America

Endangered Wildlife Trust

IUCN
The World Conservation Union

The TRAFFIC Network is the world's largest wildlife trade monitoring programme with offices covering most parts of the world. TRAFFIC is supported by WWF (World Wide Fund For Nature) and IUCN (the World Conservation Union) to monitor trade in and utilisation of wild plants and animals. TRAFFIC in South Africa is supported by WWF South Africa, Endangered Wildlife Trust, The Green Trust, Mazda Wildlife Fund, Compaq Computers and Microsoft South Africa. It works in close co-operation with the Secretariat of the Convention of International Trade in Endangered Species of Wild Fauna and Flora (CITES). As the majority of its funding is provided by WWF, the Network is administered by the WWF Programme Committee on behalf of WWF and IUCN.

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