

CONTINUING LEGAL EDUCATION

An Endangered Treaty

Appendix Overload and the Limits of CITES Ambition

Margaret E. Everson

Principal, Mill Run Strategies, LLC

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BIO IN BRIEF

Margaret Everson

PRINCIPAL, MILL RUN STRATEGIES, LLC

- ◆ Advise clients on CITES related trade policy
- ◆ Former Acting Director and Principal Deputy Director, U.S. Fish & Wildlife Service and National Park Service
- ◆ U.S. Co-Head of Delegation, CITES CoP18
- ◆ Co-founder, Women in Conservation Fellowship program

What You'll Take Away Today

- ◆ Understand The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) founding purpose, legal structure, and the trade-based hook on which it rests
- ◆ Identify how the treaty's scope has expanded well beyond its original Article II criteria
- ◆ Recognize the practical impact of this expansion on those who are regulated by this Convention
- ◆ Evaluate CITES' current trajectory and the options available for engagement before the next Standing Committee and CoP21

Where We're Headed – What will be Covered

1

Origins & Design

1973–1975: a narrow, conservation & trade-focused treaty

2

How it works

Application by Party state

3

The Drift

From ~800 to 41,000+ CITES listed species

4

Case Studies

General and specific matter creep

5

Where This Leaves Us

Risk to legitimacy — and the path forward

A Treaty was Born

- ✦ Text finalized in Washington, D.C. in March 1973, signed by 21 nations; entered into force July 1, 1975
- ✦ A direct response to unregulated international wildlife trade driving species toward extinction — luxury furs and skins were the original target
- ✦ CITES mandate is narrow and specific: protect species against over-exploitation while regulating international trade where necessary AND recognizing that people and States are and should be the best protectors of their own wild fauna and flora
- ✦ Now one of the most widely joined conservation treaties in the world, with 185 Parties

1973

Treaty signed in Washington, D.C.

185

Parties bound by the Convention today

The Legal Test for Listing: Article II Criteria

Convention Article II, paragraphs 1–3; operationalized by Resolution Conf. 9.24 (Rev. CoP17)

Art. II(1) — Appendix I

Species “threatened with extinction which are or may be affected by trade.” Trade must be subject to particularly strict regulation and authorized only in exceptional circumstances.

Art. II(2)(a) — Appendix II

Species not necessarily now threatened with extinction, but that may become so “unless trade ... is subject to strict regulation.” A precautionary, forward-looking standard.

Art. II(2)(b) — “Look-alike” species

Species regulated solely because they resemble another listed species, so enforcement officers can tell specimens apart at the border — not a judgment about that species' own status.

Art. II(3) — Appendix III

Species a Party already regulates domestically and lists unilaterally, seeking the cooperation of other Parties to control trade.

From text to test: Res. Conf. 9.24 (Rev. CoP17) translates this general language into quantitative biological and trade criteria — and a separate set of “precautionary measures” for use when the data are uncertain. Critics argue that precautionary layer, not Article II's text itself, has done the most to widen what qualifies for listing.

The Mechanics: Appendices & the CoP

Article II & Resolution Conf. 9.24 (Rev. CoP17), Criteria for Amendment of Appendices I and II

Appendix I

Species threatened with extinction.
Commercial international trade is prohibited except in exceptional, non-commercial circumstances.

Examples: mountain gorilla, tiger, sea turtles, giant panda

Appendix II

Species that could become threatened without trade controls. Wild trade continues under export permits backed by a non-detriment finding. ~97% of all listed species sit here.

Examples: African elephant (Botswana, Namibia, South Africa, Zimbabwe populations), most orchid and cactus species, bigleaf mahogany

Appendix III

Species protected in at least one country that has asked other Parties for help controlling trade in that species.

Examples: walrus (Canada), map turtles (United States), Bengal fox (India)

The Conference of the Parties (CoP) meets roughly every 2–3 years — Parties vote by two-thirds majority to add, move, or remove species from the Appendices.

From Committee to CoP: How Decisions Get Made

1

Animals & Plants Committees

Technical, scientific subsidiary bodies that meet between CoPs to review species status, conduct periodic reviews, and apply listing criteria. The Animals Committee met last week as AC34 (July 13–17); the Plants Committee is meeting this week as PC28 (July 17–23), including a joint session between the two.

2

Standing Committee

Oversees policy, compliance, finance, and Secretariat administration between CoPs. Recommends enforcement action — including trade suspensions — against Parties found in non-compliance.

3

Conference of the Parties

The Convention's supreme decision-making body. Adopts Resolutions and Decisions and amends the Appendices by two-thirds vote of Parties present and voting.

A system running out of runway

As the volume of business has grown, committees increasingly push unresolved items into intersessional working groups rather than resolving them at the scheduled meeting. Many developing-country range states lack the staff to track — let alone participate in — this expanding intersessional workload.

Sustainable Use Was the Point, Not the Exception

- ✦ CITES is a trade regulation treaty, not a trade ban treaty.
- ✦ The Appendix II framework presumes trade continues so long as it is not detrimental to the species' survival. (Article IV(2)(a))
- ✦ Well-regulated hunting and wildlife trade were treated by the treaty's original architects as a conservation incentive, funding anti-poaching, rural livelihoods, and habitat protection.
- ✦ Think of the original design as a permit desk, not a prohibition regime.

ARTICLE IV

An export permit requires a scientific finding that trade ***“will not be detrimental to the survival of that species”*** — the legal foundation for regulated, sustainable trade.

Turning Treaty Text Into Domestic Law

- ✦ CITES is not self-executing for most Parties — Article VIII requires each Party to adopt domestic measures implementing the treaty.
- ✦ United States example: the Endangered Species Act, § 8A (16 U.S.C. § 1537a), designates the U.S. Fish & Wildlife Service as the CITES Management Authority, with implementing regulations at 50 C.F.R. Part 23.
- ✦ The European Union implements CITES through a directly binding regulation — Council Regulation (EC) No. 338/97 — enforced uniformly across all Member States.

CITES National Legislation Project — Res. Conf. 8.4 (Rev. CoP15)

Category 1 — legislation believed to meet all four minimum legal requirements **Category 2** — legislation believed to partially meet the requirements **Category 3** — legislation believed not to meet the requirements

From Trade Regulation to Global Conservation Platform

- ◆ From ~800 (1975) to 41,000+ CITES listed species today
- ◆ CoP19 (2022) alone added or reclassified over 500 species in a single meeting — including nearly 100 shark and ray species and more than 150 tree species¹
- ◆ The Appendices now include 6,699 species of animals and 34,358 species of plants²
- ◆ The scope has moved from luxury goods furs to timber, corals, orchids, and entire taxonomic groups

¹ CITES Secretariat, “Record number of species to be regulated by CITES after CoP19” (2022). ² [cites.org](https://www.cites.org/), “The CITES species” (as of 26 May 2026).

The Budget and Staffing Can't Keep Pace

61 → 120

CoP Decisions directed to the Secretariat,
doubling over a single decade

26 → 21

Core, assessed contribution funded Secretariat
staff posts over that same period

19.3%

Share of 2025 core Trust Fund contributions
received as of February 2025

The Secretariat's own reporting to Parties has been blunt: mandates have grown faster than the staff and funding behind them. Six core staff terminations were proposed heading into CoP20 to manage a possible 22% budget shortfall — even as the 2026–2028 triennium budget rises another 7%, to \$6.6–7.6 million per year.

When the Secretariat cannot keep pace with its own mandate, oversight — non-detriment findings, compliance review, permitting guidance — is what slows down first.

New Frontiers: Zoonotic Disease & Sustainable-Use Critique

Zoonotic disease enters the agenda

CITES was not built to address disease risk — its mandate is trade-driven extinction risk. Since COVID-19, Parties have debated One Health resolutions, a proposed CITES One Health Expert Panel, and even an addendum that would layer a public-health mandate onto the Convention.

Examples - World Organisation for Animal Health (WOAH) - an intergovernmental organization with 183 member countries dedicated to improving animal health and welfare globally

IATA Live Animals Regulations

The IPBES Sustainable Use Assessment

IPBES — the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services — is an independent intergovernmental body of 139 member States. Its 2022 Assessment Report on the Sustainable Use of Wild Species was produced by 85 expert authors and 200 contributing authors over four years. A parallel scientific assessment has been cited to argue for more precautionary, restriction-first trade standards — a marked shift from the Convention's original presumption that regulated trade can continue.

Sustainable Use Under Strain

Trophy import policy

National import bans and restrictive permitting increasingly bypass CITES' own non-detriment finding process, layering a second, less predictable review on top of the treaty system.

Quota and permit friction

Range states report growing delay and unpredictability in securing export permits for legally hunted, well-managed populations — even where science supports the offtake.

Community conservation incentives

When legal trade revenue becomes unreliable, the economic case for local communities to protect habitat and deter poaching weakens.

Coalition Pressure at the CoP

- ✦ CoP meetings have become high-visibility venues for advocacy coalitions pursuing broader animal welfare and precautionary agendas — not solely trade-based extinction risk.
- ✦ Organized NGO blocs coordinate proposals, side events, and voting strategy well before delegates arrive.
- ✦ Sustainable-use stakeholders — hunters, ranchers, range-state governments — often arrive with fewer resources dedicated to full-time, multi-year CoP advocacy.

PRACTICE TIP

Registering as an observer NGO early, and building relationships with range-state delegations between CoPs, is far more effective than reacting once an agenda item is published.

Administrative Strain on the System

41,000+

species now listed across all three Appendices

500+

species added or reclassified at CoP19 (2022)
alone

~97%

of listed species fall under Appendix II
permitting

Each expansion multiplies the permitting, inspection, and non-detriment-finding workload for Management and Scientific Authorities that were resourced for a far smaller mandate — a strain felt directly by exporters, outfitters, and importing hunters waiting on paperwork.

A Treaty at a Crossroads

Legitimacy risk

A treaty seen as exceeding its mandate invites non-compliance and reservations from range states.

Party fatigue

Overburdened Management Authorities and endless CoP agendas erode the will to fully implement.

Loss of the sustainable-use bargain

If legal, regulated trade no longer reliably funds conservation, the core incentive structure collapses.

Secretariat capacity

The Secretariat has told Parties that continued mandate growth already exceeds what current staffing and budget can deliver — meaning the oversight functions hunters and industry rely on are the first to slow down.

A Path Back to the Core Mandate

1 Re-anchor listings to Article II criteria

Push proposals and Secretariat guidance back toward trade-driven extinction risk, not general conservation or welfare goals.

2 Demand rigorous, transparent non-detriment findings

Insist science, not political momentum, drives listing and quota decisions, especially for high-volume commodities.

3 Defend the sustainable-use bargain

Advocate for range-state authority over well-managed, legal trade as the incentive structure that funds conservation.

4 Show up early and organized

Engage at the Animals and Standing Committee level between CoPs, not only when a proposal is already on the agenda.

KEY TAKEAWAYS

An Endangered Treaty — But Not a Lost One

- ✦ CITES was built as a narrow, trade-focused, sustainable-use treaty — not a general conservation or welfare regime
- ✦ Four decades of expansion have stretched its scientific, administrative, and political capacity well past that original design
- ✦ The stakes for hunters and sustainable-use industries are real: unpredictable permitting, eroding trade incentives, and a shifting evidentiary bar
- ✦ Practitioners who engage early — at the Committee level, not just at the CoP — have the best chance of steering the treaty back toward its founding mandate

Margaret Everson | Mill Run Strategies, LLC | Margaret@millrunstrategies.com

QUIZ

CITES Species?

1



REFERENCE

Notes & Sources

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