

# Incomplete Bans and Uncertain Markets

Prof. Annecoos Wiersema

16<sup>th</sup> International Wildlife Law Conference

Stetson University College of Law

13-14 April, 2016

# Convention on International Trade in Endangered Species (CITES)

- ▶ Appendix I listing:
  - ▶ For “all species threatened with extinction which are or may be affected by trade.” Art. II(1).
  - ▶ Requires non-detriment findings (NDFs) for import and export permits. Art. II(2)(a) and II(3)(a).
  - ▶ Import permit requires “specimen is not to be used for primarily commercial purposes.” Art. III(3)(c).

# CITES

- ▶ SO:
  - ▶ Appendix I-listed species are subject to an **international trade ban** for commercial purposes.
  - ▶ Around 630 species of fauna are listed on Appendix I, including 300 mammals. (Around 300 plants are listed on Appendix I).

# CITES

- ▶ Appendix II listing:
  - ▶ “(a) all species which **although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival**; and
  - ▶ (b) other species which must be subject to regulation in order that trade in specimens of certain species referred to in sub-paragraph (a) of this paragraph may be brought under effective control.”

## Art. II(2)

- ▶ Requires non-detriment findings (NDFs) for export permits. Art. III(2)(a).
- ▶ No import permit requirement, so no restriction on commercial trade.

# CITES

SO:

- ▶ Appendix II-listed species **can be traded internationally.**
- ▶ Over 4800 fauna are listed on Appendix II, including around 500 mammals. (Around 25,500 plants are listed on Appendix I).
  - ▶ By comparison, recall around 630 fauna are listed on Appendix I, around 300 of which are mammals.

# Middle Ground

- ▶ Some species listed on Appendix I have sub-populations listed on Appendix II.
- ▶ Some Appendix II species are subject to zero export quotas, with some exceptions.
- ▶ For some Appendix II species, some countries will only allow export for certain reasons, for example trophies from hunting.
- ▶ Quotas are not mandated under CITES, but have become a useful tool.
  - ▶ States can set quotas for export for specific reasons.
- ▶ Captive-bred species and domestic trade are not subject to the listing restrictions.
- ▶ Domestic law can add restrictions:
  - ▶ Permit requirements for trophy hunters.
  - ▶ Import restrictions.

# Middle Ground



African elephant (*Loxodonta africana*) is listed on Appendix I, except for populations in Botswana, Namibia, South Africa, and Zimbabwe. These are subject to zero export quotas, with provision for periodic sales between designated countries.

# Middle Ground



White rhinoceros (*Ceratotherium simum*) is listed on Appendix I, except populations of sub-species *Ceratotherium simum simum* in South Africa and Swaziland, which are included in Appendix II “for the exclusive purpose of allowing international trade in live animals to appropriate and acceptable destinations and hunting trophies.”





Annecoos Wiersema 14 April 2016; Use or reproduce only with permission of the author.

# Questions Raised by Incomplete Bans

- ▶ Market behavior
- ▶ Demand
- ▶ Substitutability
- ▶ Laundering
- ▶ Regulatory needs and costs of dual stream markets
- ▶ Conservation
- ▶ Local communities
- ▶ **Cultural ethics**

## Takeways:



- Question assumptions and models
- Parties to CITES have to pay attention to reality on the ground when making high-level decisions
- Certain species may warrant being subject to complete bans, even if others don't
- CITES can't do everything, including create perfect markets