

LAWS & PAWS

*The official newsletter of the **Committee on Animals and the Law**
A project of the **Publications Subcommittee***

Welcome!

Laws & Paws is the online newsletter of the New York State Bar Association's Committee on Animals and the Law. **Laws & Paws** was designed to serve as a resource to fellow attorneys, animal professionals and caretakers, governmental agencies, NGOs and the general public. The **Laws & Paws** newsletter will be published biannually. Each **Laws & Paws** newsletter will provide animal law related articles, New York State animal cases, animal law related news links, and other useful information. This newsletter will provide useful information to all those who care about the welfare of animals and their human caretakers and to bring us all a little closer to making the world a more humane place for animals and people alike.

Disclaimer

Each section will provide general information about an animal-related topic or issue. This online newsletter is provided as a resource only and is not intended to provide legal advice or counseling. Always remember to check your local municipal laws or codes, as your municipality may have its own laws regarding a topic, in addition to the State law. No one should attempt to interpret or apply any law without the aid of an attorney. For counsel please contact the New York State Bar's Lawyer Referral Service at lr@nysba.org (1-800-342-3361) or your local bar association.

Visit the **Committee's** web site at www.nysba.org/animals to access additional animal publications, reports, forms, upcoming events, our blog and much more.

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Animal Law. Animals and the Law.
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Animal Law has existed for nearly as long as people have interacted with animals and have used laws to manage human behavior. Awareness and recognition of Animal Law as a distinct field within the legal profession has recently become more commonplace.

Since its establishment in 2002 by the late Lorraine Power Tharp, then New York State Bar Association (“NYSBA”) President, the *Committee on Animals and the Law* has been committed to elevating the practice of Animal Law and making a difference for animals and people. Because of Lorraine Power Tharp’s concern for animals, dedication to the legal profession, and vision in establishing the *Committee on Animals and the Law*, this *Laws & Paws* is proudly presented in honor of her memory.

The *Committee on Animals and the Law* is fortunate to have compassionate, diverse and dedicated professionals and students contributing to projects like this issue of *Laws & Paws*. The efforts of the Committee’s Publications Subcommittee and the authors who have contributed to this issue are especially appreciated.

Laws & Paws provides a wonderful overview of several issue areas of Animal Law including housing issues relating to companion animals, elephants and endangered species, and the ever-timely subject of animal cruelty perpetrated by teens. Also featured are summaries of recent New York cases and links to recent Animal Law-related news items. Further Animal Law resources and information on the Committee’s important work can be found online at: www.nysba.org/animals.

Thank you for taking the time to read and use *Laws & Paws*, and for helping the Committee to make a difference for animals and people.

James F. Gesualdi, Esq.
Chair

HOT TOPICS IN ANIMAL LAW PRACTICE

COMPANION ANIMALS AND HOUSING & PET CUSTODY

By: Darryl M. Vernon, Esq.

1.0 INTRODUCTION

The laws concerning companion animals in housing range from a local New York City Law¹ to Federal, State and Local Housing and Discrimination Laws. Even broader are the disputes that arise, whether they live in coops, condominiums or regulated housing.

2.0 UNDERSTANDING THE PET LAW

Section 27-2009.1 of the Administrative Code of the City of New York is often called the Pet Law, or Three Month Rule.² It is a local law that was enacted in 1983. Essentially, it provides that suit must be commenced within three months of openly keeping a pet or when a landlord's agent's has knowledge of the pet. If suit is not timely commenced, then any no pet clause is considered waived and unenforceable. The Pet Law is inapplicable to nuisance proceedings. Issues have arisen over whether knowledge of a pet by various onsite employees is sufficient to constitute a waiver, and when a proceeding is deemed commenced. A tenant's rights under the Pet Law may not be restricted.³ Thus the Pet Law - with its three month waiver of lease provision and its prohibition on any waiver of Pet Law rights - overrides any agreements a tenant may sign to waive such rights, as

¹ §27-2009.1 of the Administrative Code of the City of New York (sometimes called the Three Month Rule or the Pet Law. [hereinafter called "Pet Law"]

² NYC Administrative Code §27-2009.1.

³ NYC Administrative Code §27-2009.1(c).

well as any lease clauses that prohibit pets or require written permission to maintain pets in an apartment.

The Pet Law applies in New York City.⁴ Westchester County enacted a similar law with a three month requirement. Although the Pet Law has an exemption for New York City Housing Authority⁵, federal legislation enacted after §27-2009.1 was passed allows people in federally assisted housing to have pets⁶. Therefore, the New York City Housing Authority now allows pets and has regulations for the ownership of pets.

In the early cases, the constitutionality of the Pet Law was upheld and the law was held to apply retroactively, as it was considered remedial legislation necessary to protect pet owners from potential hardship and dislocation. Shortly after the Pet Law was passed, it was found applicable to cooperative apartments.⁷ The Appellate Division in the Second Department has held that it also

⁴ Knowledge of rent stabilization and rent control laws is important to understand the financial motivations for landlords to bring these kinds of cases. In 1993, laws were enacted allowing a landlord to deregulate altogether (i.e, out of rent control and rent stabilization) apartments that rented for more than \$2,000.00 per month if they became vacant. It is not unusual for an apartment to be renting for far less than the \$2,000.00 threshold rent, and have a market value of several thousand dollars more per month. Thus, the legislature has created often enormous financial incentives to obtain vacancies.

⁵ NYC Administrative Code §27-2009.1(e).

⁶ 14 USC §1437(31).

⁷ In Corlear Gardens Housing Co., Inc. v. Ramos, 481 N.Y.S.2d 577, 126 Misc.2d 416 (Sup. Ct. Bx. Cty, 1984) the court made three crucial findings. First, the Pet Law did not violate the Urstadt law which “was not intended to place restrictions on a municipality other than with respect to rent control regulation...The Urstadt law was passed by the legislature to restrict municipalities from enacting more stringent economic and rent controlled restrictions and in order to encourage the construction of new housing in the City of New York.” The Pet Law therefore did not violate the Urstadt law. Second, the court found that there was no reason to exclude cooperative owner-shareholders and tenants from the pet law. Last, the court found that the pet law was retroactive because it was remedial legislation. The court cited from another case on point called Garsen v. Nimmo, which upheld retroactivity “in light of the laws remedial purpose as expressed in the stated legislative declaration - to wit that under the existence of the continued housing emergency it is necessary to protect pet owners from retaliatory eviction and to safeguard the health, safety and welfare of tenants who harbor pets...[and] to prevent potential hardship and dislocation of tenants within this city.” (See Gordon & Gordon v. Madavin, Ltd., 108 Misc.2d 349, Aff’d 85 A.D.2d 937 (1981); Tegreh Realty Corp. v. Joyce, 88 A.D.2d 820(1982). “And apart from the above cases,

applies to condominiums.⁸ But, the Appellate Division in the First Department, covering the Bronx and Manhattan, came to the opposite conclusion, ruling that the Pet Law does not apply to condominiums.⁹

2.1 Preliminary Issues: Settlement Talks

While it is always important to explore settlement possibilities, it must be done carefully. Although the Appellate Division in Seward v. Cohen, *supra*, recently held that the 1983 case of Park Holding v. Lavigne¹⁰ is not to be followed, the Lavigne court had held that if a landlord reasonably delays commencing suit because of settlement talks, that landlord may be given more time than the usual three months to commence suit under §27-2009.1. It is probably still the better practice for a

the legislative declaration also states that “because household pets are kept for reasons of safety and companionship...it is hereby found that the enactment of the provisions of this section is necessary to prevent potential hardship and physical dislocation of tenants in this city.”

⁸ In Board of Managers v. Lamontanero, 616 N.Y.S.2d 744, 206 A.D.2d 340, (App. Div. 2nd Dept. 1994) the court held that the Pet Law is applicable to condominiums. The court found that while the Pet Law does not “specifically include or exclude condominiums, it is conceded to apply to multiple dwellings that consist of rental apartments and it has been applied to residential cooperative apartments [citations omitted].” Since the only buildings specifically excluded from the Pet Law were those owned and managed by the New York City Housing Authority, the court held that “[t]hus, had it chosen to do so, the city council could easily have broadened the exclusion or more specifically identified other structures not intended to be covered by Article 27 (See, McKinney’s Cons. Laws of N.Y., Book I, §§74, 240; *See also*, Corlear). The court concluded that “it would be pernicious to create an exception for condominiums from the generally beneficial requirements of Article 27 of the Administrative Code [the pet law]. In addition to substantive harms, an exception for condominiums could lead to anomalies such as permitting the tenant of a condominium owner to invoke the protection of the ‘Pet Law’, while the condominium owner himself could not.”

⁹ In Board of Managers v. Quiles, 651 N.Y.S.2d 36, 234 A.D.2d 130 (App. Div. 1st Dept. 1996), the court held that the Pet Law is not applicable to condominiums, reasoning that, by its terms, the Pet Law only applies where there is a landlord tenant relationship, and this is not true of condominiums. The court said that the law refers only to “covenants contained in multiple dwelling leases, and [is not applicable to condominiums, which] are a form of fee ownership.” The First Department disagree[d] with the Second Department that condominiums should be deemed covered by the Pet Law because not explicitly excluded. However, in the recent First Department’s decision in Seward Park Housing Corp v. Cohen, 734 N.Y.S.2d 42, 287 A.D.2d 157 (App. Div. 1st Dept. 2001), the court approved of Board v. Lamontanero, *supra*, for the proposition that only the New York City Housing Authority was excluded from coverage. Perhaps the issue is ripe to be revisited.

¹⁰ Park Holding v. Lavigne, 498 N.Y.S.2d 248, 130 Misc.2d 396 (App. Term 1st Dept. 1985).

tenant to avoid leading a landlord to believe that the tenant may either move out or give up the companion animal.

2.2 When Suit is Considered Commenced Under the Pet Law

It has been held regularly in the First Department that a suit is not commenced until a petition and notice of petition (in the case of a summary landlord/tenant proceeding), or a summons (in the case of an action), is properly served or filed. The predicate notices to such suit, such as a notice to cure or a notice to terminate, are not sufficient to commence suit.¹¹ Well before the enactment of the Pet Law, there stands a long line of cases holding that the commencement of a lawsuit means such service of a summons or notice of petition.¹²

If a suit is dismissed due to improper service, and any subsequent suit is not commenced within the three months, it will be barred. Metropolitan Tower Life Ins. v. Raffes, 34 HCR 970A (2006). Only in a unique case that “turned on a stipulation of discontinuance without prejudice” did a new suit not have to be commenced within the three months.¹³

2.3 Keeping a Pet Openly and Notoriously Under the Pet Law

The three month rule requires either actual knowledge or that a pet be kept openly and

¹¹ In Arwin 74th Street Co. v. Rekant, 544 N.Y.S.2d 406, 151 A.D.2d 1056 (App. Div. 1st Dept. 1989), the Appellate Division affirmed the Appellate Term’s holding that the failure to commence a suit, as opposed to merely serving predicate notices, will cause a waiver of any no pet provision to occur under the Pet Law. *See also*, Park Holding Co. v. Grossman, NYLJ 4/2/93, p.25 col.2 (App. Term 1st Dept. 1993).

¹² Recently in Harmir Realty Co. v. Zagarella, 10 Misc.3d 1070(A) (Sup. Westchester Co. 2005), a lower court in Westchester followed Grossman, *supra*. As often has happened, only the Appellate Term decision in Grossman was cited. The court thus found it would not follow contrary Second Department Appellate Term cases. But the simple conclusion is that the Appellate Division in Arwin 74th Street Co. v. Rekant, *supra*, controls.

¹³ Baumrind v. Fidelman, 584 NYS2d 545, 183 A.D.2d 635 (App. Div. 1st Dept. 1992). In Seward v. Cohen, *supra*, the court held that Baumrind had unique facts and “turned on a stipulation of discontinuance without prejudice.”

notoriously to trigger the benefits of this law.¹⁴ In general, open and notorious has been interpreted to mean that the pet is kept openly, as in visible, apparent, and not hidden.

Thus, in Robinson v. City of New York, 579 N.Y.S.2d 817, 152 Misc. 2d 1007, (Sup. 1991), the landlord argued that because Ms. Robinson's small dog was paper trained and did not go for regular walks, she was therefore not kept openly and notoriously. The court disagreed; finding that requiring that a pet be taken for daily walks was an improperly restrictive and narrow criteria for proving that a pet was harbored "openly and notoriously". It stated that such a criteria:

"would lead to a conclusion that all small dogs or other animals whose masters elected to treat only as house pets could not have the benefit of the law's waiver [referring to the Pet Law] even though they had been seen and noted by management personnel ... Such a reading is arbitrary and capricious also because it would seem to work most harshly against tenants who are housebound for one reason or another, such as age or disability, and who choose to have small dogs (or cats) as a companion without the need to walk them."

Following Robinson, the court in 184 W. 10th St. Corp. v. Marvits, 852 N.Y.S.2d 557, 18 Misc.3d 46 (App. Term 1st Dept. 2007) found that openly keeping evidence of a cat's (i.e., bowels, litter box) can start the three months running. And on the other hand, only showing isolated times a dog was walked, and boarding the dog for an unidentified time, led to a failure to sustain the three month defense. Gidrina Partners v. Marco, 34 HCR 35B (App. Term 1st Dept. 2006).

2.4 Who Needs to Know to Trigger A Waiver Under the Pet Law

In 2001, the Appellate Division First Department wrote at length about, and ruled on, the issues of what kind of on-site employees and agents need to know of the pet to trigger a waiver under

¹⁴ See, Seward v. Cohen, *supra*; Park Holding Co. v. Tzeses, *infra*.

the Three Month Rule. Seward v. Cohen, *supra*. In Seward, Max Cohen purchased a dog for companionship on September 13, 1996 and brought it into his apartment in the Seward Park complex. Various maintenance personnel and porters were soon after aware of the dog, and suit was not commenced until about five months after the knowledge of these maintenance workers. In late November 1996, the managing agent became aware of Max Cohen's dog, and on February 10, 1997 suit was commenced. Although this was less than three months from the knowledge of the managing agent, the court held that the knowledge of the other building employees was sufficient to trigger a waiver.

Seward v. Cohen had previously become a controversial case, with the tenant-shareholder winning at the trial court because the building employees knew of the dog for more than three months. The lower court relied on precedent upholding this view. For example, in Amalgamated Housing Corp. v. Rogers¹⁵, it was held by the Appellate Term, First Department that knowledge of various on-site employees was sufficient to cause a waiver under the Pet Law.

However, in Seward v. Cohen, *supra*, the same Appellate Term that ruled in Amalgamated, *supra*, (but with one of the three judges dissenting), reversed the lower court finding in Seward and held that since the Seward Park complex consisted of some 1,700 apartments, and the subject pet was not there for long, that this was not sufficient under the Pet Law. The majority in the Appellate Term held that since the on-site employees were unidentified and independent contractors who casually observed the pet, Mr. Cohen's rights did not accrue under the pet law. The Appellate Division reversed.

The Appellate Division reviewed its previous decisions, in particular MetLife v. Friedman,

infra, which held that a proceeding or action must be commenced within three months of learning of the pet. The court determined that the MetLife decision was contrary to a previous Appellate Term decision in Park Holding v. Lavigne, *infra*, and

“[H]aving departed from the clear text to the ordinance in Park Holding, the Appellate Term rendered the ordinance ‘toothless.’ We find our 1994 decision in MetLife to be controlling, and the Appellate Term’s 1985 decision in Park Holding should not be followed.”

As for the open and notorious harboring and knowledge requirements of §27-2009.1, either one or the other was held sufficient. Actual knowledge of “the corporate landlord or his non-resident managing agent” was not necessary. In so holding, the court found:

“Common sense dictates that landlords will have an agent or employee checking the property regularly. The council’s assumption [referring to the New York City Council that enacted §27-2009.1] in its ordinance conforms with common sense, providing an easily understood and objective determination of an instance when a waiver should be implied...The ordinance leaves to the landlord’s common sense what needs to be done for the landlord to become apprised of such a situation so that the landlord can, within this time, ‘commence a summary action or proceeding.’”

Thus the term agent in the statute would include maintenance staff, porters and security guards, even if they were employed by an outside company as independent contractors. Under §27-2009.1(8) (which prohibits a restriction of a tenant’s rights under this section as void against public policy), Seward held that a landlord could not create a class of building employees that were not required to report pets, or employ them by an outside source to avoid the restrictions in the law. Rather simply the court held that:

“Three months means three months.”

¹⁵ NYLJ, 8/13/91, p.21, col.2 (App. Term 1st Dept. 1991).

It was also held in Park Holding Co. v. Tzeses that the Pet Law was only intended to require either open harboring, or actual knowledge, for the three month period.¹⁶ Generally, most lower courts try to determine if building agents knew, or should have known because of open and notorious harboring. The length of time may of course be a factor. For example, if it is proved that the pet was there for years, a court is more likely to believe that a landlord is charged with constructive knowledge. However, it should be kept in mind that in Seward v. Cohen, the court stated where:

“There has been no actual knowledge, it can be shown that the possession or use was so open, notorious and visible as to support an inference that the owner must or should have known of it.”

And in Seward, the case began only some five months after Mr. Cohen got his dog.

A final interesting issue on knowledge is when a rental tenant lives in a coop or condominium. In 1725 York Venture v. Block, 19 Misc.3d 81 (2008), the landlord claimed he was a holder of unsold shares and had his own managing agent separate from the coop's. The landlord further postulated that thus any building employees (super, doormen, etc.) were the coop's. Thus even though those building employees knew for more than three months, the landlord urged that no waiver should be found and the lower court agreed.

¹⁶ 17 HCR 251 (Civ. Ct. NY), *aff'd* NYLJ 4/13/89, p.22 col. 6 (App Term, 1st Dept. 1988). The lower court in Tzeses stated:

“Section 27-2009.1: A landlord waives the right to enforce a no-pet clause by failing to commence suit within three months after learning of an animal's presence. The waiver applies where landlord lacks actual knowledge but is chargeable with such knowledge by the tenant's conduct -- e.g., frequent goings and comings in view of building employees. [Note: the statute speaks of the tenant's harboring the pet 'openly and notoriously...and the owner or its agent hav[ing] knowledge of this fact' [my emphasis, but the necessary interpretation of 'and' in this instance is as the disjunctive "or." See McKinney's Statutes, §143, 144, 145 and 341; also see Bowne Overseas Corp. v. Paries, Queens Civil Court, L&T 17956/85 (not reported). Thus, the defense is established even if tenant proves only constructive notice.”

However, the General Business Law Article 23A (352-eeee) prohibits a separate managing agent for rental units. And the Appellate Term in 111 East 88th Partners v. Reich, 2002 WL 77029 (App. Term 1st Dept. 2002) held that knowledge of building employees counts under the GBL §352-eeee and Seward v. Cohen, *supra*, (Seward holds that knowledge of *building* employees counts.) (Emphasis added) So 1725 v. Block, we respectfully submit, was incorrectly decided when the lower court found no waiver.¹⁷

2.5 Proof of A Retaliatory Motive by the Building is Not Required

Throughout the history of the Pet Law, it was often argued that the law should only apply when there is proof that the building is retaliating for some ulterior motives. However, the Appellate Division in Metropolitan Life Insurance v. Friedman¹⁸ held that proof of a retaliatory motive is not required. The court, in ruling that the plaintiff waived a “no pets” lease provision by not commencing its lawsuit within the required three month period, stated:

"We reject plaintiff's argument that the statutory three month period is inapplicable absent a finding that a no-pet provision is being used as a pretext for a retaliatory eviction or some other bad faith motive."

It should be mentioned that there is a statute protecting tenants from retaliatory eviction.¹⁹

2.6 Application of the Pet Law to Cooperatives and Condominiums

The Pet Law states that it applies to tenants with leases and multiple dwellings. Owners in

¹⁷ The case has been argued and submitted to the Appellate Term and our firm represented Appellants/Tenants.

¹⁸ Metropolitan Life Insurance v. Friedman , 613 N.Y.S.2d 8, 205 AD2d 303 (App. Div. 1st Dept.1994). The approval of the Appellate Division for this decision was reiterated in Seward v. Cohen, *supra*.

¹⁹ See Real Property Law § 223-b, which prohibits landlords from commencing a suit to recover an apartment when they are retaliating against a good faith complaint by a tenant to a governmental authority, or for other actions taken in good faith to secure certain rights of a tenant.

cooperatives have proprietary leases. Thus, soon after the Pet Law was enacted, the courts held that it indeed applied to cooperative buildings. In Corlear, *supra*, the court stated that “all tenants, including cooperative tenants, are in need of the protection of the Pet Law.”

Condominiums present a different issue. There is no document entitled a lease between a unit owner and the condominium board. However, in condominiums where pets are prohibited (and this is less the case than in co-ops and other housing), there is a document that indeed restricts a unit owner’s activities much like a lease. That document is generally the house rules, which is incorporated by the by-laws. Also, since condominium unit owners can rent their units to tenants, and would do so with a lease, the relationship between a unit owner and a tenant is certainly subject to the Pet Law. In part, given this anomaly, the Appellate Division Second Department ruled in Board of Managers v. Lamontanero²⁰:

“The legal status of the occupant of a multiple dwelling unit (i.e., whether he pays rent, owns cooperative shares, or is the owner in fee simple of a condominium unit) is not relevant to the purposes of the statute, which include preventing abuses in the enforcement of covenants prohibiting the harboring of household pets and preventing the retaliatory eviction of pet owners for reasons unrelated to the creation of nuisance.

“We conclude that it would be pernicious to create an exception for condominiums from the generally beneficial requirements of Article 27 of the Administrative Code [the pet law]. In addition to substantive harms, an exception for condominiums could lead to anomalies such as permitting the tenant of a condominium owner to invoke the protection of the ‘Pet Law,’ while the condominium owner himself could not.”

Arriving at the opposite conclusion was the Appellate Division First Department in Board of Managers v. Quiles,²¹ where the court reasoned that the Pet Law, by its terms, only applies where

²⁰ Board of Managers v. Lamontanero, 616 N.Y.S.2d 744, 206 A.D.2d 340 (App. Div. 2nd Dept. 1994).

²¹ Board of Managers v. Quiles, 651 N.Y.S.2d 36, 234 A.D.2d 130 (App. Div. 1st Dept. 1996). *But see*

there is a landlord/tenant relationship.

2.7 Old Pet, New Pet

The waiver of a no pet clause in a lease for a particular pet does not act as a waiver of the no pet clause for a different or future pet.²² Thus, a landlord may bring a case against any new pet where the three months has not expired, and a tenant must prove a waiver under the Pet Law for each new pet that she brings into the apartment.

The New York City Council, who had originally passed the Pet Law, may clarify that people can get new pets without the three months having to run all over again. There is legislative history supporting this position. But this awaits either the legislature or a different court determination.

The court in Seward v. Cohen did use language implying that once the three months has run, the clause may be waived for future pets. In particular:

“all extant leases were thereby amended by operation of law [referring to §27-2009.1] to render no pet clauses waivable under the terms of the ordinance.”(Megalopolis Prop. Assn. v. Buvron, *supra*.)

In Megalopolis v. Buvron, 110 A.D.2d 232, 494 N.Y.S.2d 14 (App. Term 2nd Dept. 1985) the Appellate Division Second Department ruled that once the three months passed “the lease provision shall be deemed waived.” There is thus support for the proposition that once the waiver has occurred, it cannot be taken away. Notably, the Appellate Division’s ruling in Baumrind v. Fidelman, *supra*, approved of an earlier decision that held that the waiver applies to future pets.²³

footnote 8 discussing the fact that the Seward v. Cohen court recently cited, with apparent approval, Board v. Lamontanero for the proposition that only the New York City Housing authority is excluded from coverage.

²² Park Holding Co. v. Eimecke, 646 N.Y.S.2d 434, 168 Misc.2d 133 (App. Term 1st Dept. 1995).

²³ The Baumrind court cited Brown v. Johnson, *supra*, for the proposition that “the right to enforce the no pet clause is waived for a ‘failure to bring a proceeding.’” Also Justice Kupferman dissented and would have reversed for the reasons stated in the lower court ruling of Judge Mark H. Spires (who wrote the McCullum v. Brotman decision) and would have thereby held that the failure to properly serve the lawsuit within the three months causes a

3.0 NUISANCE CASES

For rent regulated tenants, nuisance cases are usually brought based on a breach of the rent stabilization and control laws. But, there also may be a lease clause or house rule (for coops or condos) prohibiting nuisance or objectionable conduct, and a case can then be brought under those theories. There is a section of the Pet Law that provides that it will not apply where a pet is a nuisance.²⁴ Thus, if a pet is allowed under the three month waiver provision of the Pet Law but later becomes a nuisance as defined by the law, a landlord could indeed bring a case based solely on nuisance.

Examples of nuisance claims are a landlord alleging that a pet is noisy, has bit or attacked someone, or creates an odor in the building. A nuisance is defined as a condition that threatens the comfort and safety of other tenants in the building.²⁵ A key to the definition is a pattern of continuity or recurrence of objectionable conduct. Some degree of permanency is an essential element of the

waiver under the Pet Law.

²⁴ NYC Administrative Code §27-2009.1(d).

²⁵ Frank v. Park Summit Realty Corp., 573 N.Y.S.2d 655, 175 A.D.2d 33 (App. Div. 1st Dept. 1991); Novak v. Fischbein, Olivieri Rozenholz & Badillo, 542 N.Y.S.2d 568, 151 A.D.2d 296, 299 (App. Div. 1st Dept. 1989); Rasch's Landlord and Tenant including Summary Proceedings, §30:60 [3rd ed.].

conception of nuisance.²⁶ Thus isolated instances of misconduct by a tenant's pet may not rise to the level of nuisance.²⁷

A recent case claiming that harboring pigeons were illegal under the Multiple Dwelling Law §12 and thus an exemption to §27-2009.1 of the Administrative Code of the City of New York was met with defeat. In Midtown v. Kline, 34 HCR 380A (2006), an expert for the tenant proved that there was no biological difference between Antwerp pigeons (which are allowed under MDL §12) and other breeds. The court also ruled the "mere harboring of pigeons" is not a nuisance.

4.0 CPLR§ 4544

As one may be aware from consumer laws, contracts in print that are too small, or unclear, may be unenforceable as they may not be allowed into evidence. Civil Practice Laws and Rules §4544 provides that a residential lease (or other consumer contract) that has printed type less than eight points, or is unclear, is not admissible in evidence. So if the no pet provision is visibly unclear, or the print is too small, then the landlord will not be able to get the lease in evidence to prove a case against a person harboring a pet. A print expert is needed for these issues.

²⁶ Frank v. Park Summit Realty Corp., *supra*; Ford v. Grand Union Co., 270 N.Y.S. 162, 240 A.D.2d 294 (App. Div. 3rd Dept. 1934); Valley Courts, Inc. v. Newton, 263 N.Y.S.2d 863, 47 Misc.2d 1028 (City Ct. of Syracuse 1965).

²⁷ Two weeks of cat odors did not rise to a "pattern of continuity." 87 Realty v. Shoskensky, 11 Misc.3d 128(A) (App. Term 2nd Dept. 2006).

5.0 THE RIGHTS OF THE DISABLED TO ACCOMMODATION ANIMALS

5.1 Introduction

For coops, condos and rental housing, where animals are often prohibited by the lease or house rules, it is crucial to understand that the laws protecting the disabled are not trumped by any private agreement or rule in either coop condo or rental housing.

The landlord, condo or coop board must in the first instance know that Federal, State, and City laws protecting the disabled apply to coops and condos. For coops and condos there is no exemption for them on the theory that they are some sort of democratic sub-society. It would be surprising to those familiar with these laws to hear how many times a landlord's or board's response to a disabled person's request to allow a medically helpful dog is met with the glibly ignorant "We don't allow dogs. Go get some medication, or a fish, perhaps."

A person seeking an accommodation under the law must also know the relevant law, as well as the process for pursuing her rights under the law.

Unlike other reasonable accommodation requests for, let's say a physical change in a building, the request for a service dog, or other animal related to one's disability has little to do with a monetary expenditure. Thus, the issues raised in United Veterans Mutual Housing No. 2 Corp. v. New York City Commission on Human Rights, 616 N.Y.S.2d 84 (App. Div. 1994) and Herrion, John P., *Developments in Housing Law and Reasonable Accommodations for New York City Residents with Disabilities*, 27 Fordham Urb. L.J. 1295 (Jan. 2000), are not implicated. But a Board's or landlord's fury over exceptions to a no pet policy can make monetary issues pale. And the disabled person wanting as equal enjoyment of their home as others, is not pleased either when met with a rejection, or an arduous process of proving how disabled they are and how their animal

helps.

The last issue for all parties to keep in mind is that when there is unlawful discrimination, a landlord, coop or condo, as well as their agents and individual board members, may be liable for significant compensatory damages, at times punitive damages, and legal fees under both the discrimination laws and Real Property Law §234.

5.2 The Statutory Law Affecting The Rights Of the Disabled to Have an Animal

Federal, State, and City Statutory Law. The complete sections of the relevant parts of the Federal, State and City Laws are attached as Appendices A, B, and C respectively. The following summarizes certain sections.

5.2.1 The Federal Law prohibiting discrimination prohibits discrimination based on a disability in the sale for a rental of housing accommodations as well as in the terms, conditions or privileges of the sale or rental of such accommodations and in the provision of services or facilities. The Fair Housing Act, 42 U.S.C.A. §3604.

As part of what is required is the making of a "reasonable accommodation in the rules, policies, practices, or services when such accommodation may be necessary to afford such person equal opportunity to use and enjoy a dwelling." §3604(3)(B)

There is a specific provision that "nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others." §3604(9).

Also, any state or political subdivision of the state which has laws providing greater access to the handicapped shall not be invalidated or limited by the federal law. §3604(8).

5.2.2 The New York State Laws. Starting with the simplest, New York Civil Rights Law §

47 states:

“No person shall be denied admittance to and/or the equal use of and enjoyment of any public facility solely because that person is a person with a disability and is accompanied by a guide dog, hearing dog, or a service dog.”

This section applies to housing and very few disputes arose over the rights of a person needing a hearing or guide dog. Perhaps because the acceptance of guide dogs is more embedded in our culture than the acceptance of service dogs, or comfort animals, it would likely be hard to find a board that would not allow a guide dog. One instructive point here for landlords and boards is to consider that you would likely never think to say to a unit owner go get a cane instead of your guide dog. Thus, a board or landlord should not be so quick to tell someone to take a lot of antidepressants instead of getting a comfort animal. Of course, one difference is that it is not yet nearly as accepted that the benefits of a guide dog could be similar to a service or comfort animal. But there are many reputable studies showing otherwise. For a summary of some, see Appendix D.

The New York State law, at Executive Law §296, §5(a)(2), prohibit discrimination:

"...against any person because of race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status in the terms, conditions or privileges of the sale, rental, or lease of any such housing accommodation or in the furnishing of facilities or services in connection therewith."

Similarly, a landlord or board must concern itself with §296(5)(a)(1), which prohibits discrimination in the sale or rental of housing accommodations.

§296 (18)(2) prohibits an owner to "refuse to make reasonable accommodations and rules, policies, practices or services when such accommodations may be necessary to afford said person with a disability equal opportunity to use and enjoy a dwelling."

5.2.3 The New York City Code. In sum, the New York City Administrative Code, Title A,

provides that it is unlawful to discriminate concerning housing accommodations (NYC Code §8-107(5)). This applies to various categories including "actual or perceived race, creed, color, national origin, color, gender, age, sexual orientation, marital status, partnership status, or alienage or citizenship status", as well as a disability. Thus, discrimination is not allowed not only in the sale, renting or leasing and related activities of the premises, §8-107 (5)(1) but also in the terms or privileges of the rental or leasing and furnishing of facilities for services § 8-107(5)(2).

Unlike the New York State Human Rights Law, the New York City Human Rights Law allows claims by those who are associated with a disabled person (i.e., a corporation and its executive director).²⁸

5.3 Caselaw on Animals and Disabilities

5.3.1 Generally. The case of H.U.D. and Exelberth v. Riverbay Corp. H.U.D. ALJ 02-93-0320-1 (Sept. 8, 1994); FH-FLRPTR 25, 080 (H.U.D. Office of ALJ's 1994) is instructive on many levels. First, it details how an animal can provide emotional and medical benefits. Second, it shows how mental disabilities can severely impact one's life, and more accurately for purposes of the law, one's major activities. Last, the case shows how a disabled person can be protected even if she doesn't know to raise these issues long before a marshal is about to evict.

In short, the case holds that rights under the disability laws can be exercised even after a coop obtained a final judgment of possession and a warrant issued to a marshal who was going to evict. It was all stayed. Ms. Exelberth won. She remained in her home, with her dog, and with a monetary award.

In a case where there was no proof that the daughter of a tenant had a disability that limited a

²⁸ Bartman v. Shenke, 5Misc3d 856, 786 N.Y.S.2d 696 (Sup. NY).

major life activity, and where the dog was not found to be essential to the daughter's use of the apartment, a lower court in King's County ruled for the landlord. 29

However, there is no requirement under the law, either federal, state or city, that the accommodation be essential. The standard is that it is medically helpful. An example of this is a person who is allowed a handrail in a bathroom due to a physical disability. The handrail is medically helpful, but not necessarily essential or absolutely necessary. Similarly, it is not an answer for a coop or a condominium to a discrimination to a request for an accommodation for having an animal due to chronic depression to tell the unit owner to go get medicated instead. In short, if the dog is medically helpful, that is sufficient.

We will discuss a case litigated at the NYC Dept. of Housing and Urban Development (HPD) where a unit owner in a subsidized coop proved her right to have her dog, who helped alleviate the effects of her spasmodic torticollis. A physician at NYU Medical Center's Parkinson's unit testified how the companionship of this dog actually had the physical effect of changing hormone levels to decrease both the spasms and associated depression.

As an example of a coop proceeding in the face of a valid claim, and eventually settling at the first day of trial at an administrative agency, will be discussed. The effect of a probable cause finding will be explored.

29 Contello Towers II Corp. v. N.Y.C. Dept. of HPD, N.Y.L.J. 11/19/04, p 17 col 1 (Sup. Ct. Kings Co.).

5.3.2 The ramifications of Pelton on the rights of the disabled needing an animal. The November 2006 Appellate Division case of Pelton v 77 Park Avenue Condominium was a case concerning the interplay of the business judgment rule and the disability laws for physical alterations to accommodate a disabled unit owner.³⁰

In Pelton, the court found that the Board had made numerous efforts to provide a reasonable accommodation and indeed had provided one. As the court found “[a]side from engaging two separate architects to render opinions as the building’s handicap accessibility, it provided a reasonable accommodation to Pelton by way of the Garaventa lift during the elevator renovation.”³¹

30 Pelton v 77 Park Avenue Condominium 38 A.D.3D1, 825 N.Y.S.2D28 (1st Dept. 2006)

31 Id. at 12.

In Pelton, the appealing defendants were only the individual board member, as the court put it, “the nine volunteer members of the board.” Thus it must first be kept in mind that it is only individual liability with which the court was concerned. Second, while the court said that the business judgment rule can prohibit inquiry into board members’ actions, the case relied on for this rule, Matter of Levandusky v. One Fifth Avenue Apartment Corp. did not concern discrimination laws. No laws of much public concern applied to the dispute over alterations in Levandusky.³² In this regard, more applicable is the Court of Appeals decision in Biondi v. Beekman Hill House Apartment Corp., in which the board discriminated against a mixed race couple. In finding against the individual board members, the court held that “willful racial discrimination cannot be considered an act in the corporation’s best interest.”³³

Last, the Pelton court simply found that the board, with whom the court clearly sympathized, had reasonably accommodated Pelton. As for Mr. Pelton, the court determined that he had essentially agreed to the accommodations anyway and then sued for an amount for compensatory and punitive damages that was “outrageous.”³⁴

As several other cases hold, in Federal and other state courts, a coop’s policies can not trump discrimination laws.³⁵ For this reason, nor could a board claim that the business judgment rule allows them to make a judgment that unlawfully discriminates against the disabled, or for that matter, any other protected class (like Mr. Biondi, for example.)

5.3.3 Although not concerning an animal-related accommodation, the recent case of Hirschmann v Hassapoyannes, is relevant insofar as it held that the board’s action in rescinding the

32 Matter of Levandusky v. One Fifth Avenue Apartment Corp., 75 N.Y.2d 530 (1990).

33 Biondi v. Beekman Hill House Apartment Corp., 94 N.Y.2d 659, 731 N.E.2d 577 (Ct. App. 2000). *See also*, Stern v Nalbandian, 2000 U.S. Dist. LEXIS 19942 (S.D.N.Y. 2000).

34 *See Pelton supra*; *See* 42 U.S.C. §3601 (1999).

35 *See e.g.*, Majors v. Housing Auth. of County of DeKalb Georgia, 652 F.2d 454, 457-58 (5th Cir., 1981);

board's approval of a disabled prospective purchaser was unlawfully discriminatory. The coop argued that as part of its approval process it had a right to be told that Hassapoyannes would need an accommodation in the form of allowing a washing machine in his apartment. Apart from limited exceptions, the law plainly prohibits any inquiry into one's disability (or race, nationality or other protected categories.) In sum, and as with many other cases, the coop's expressed needs for information - even if believed - and their rules limiting the actions of the unit owners, did not trump the laws protecting the disabled.³⁶

Last, the issue of unlawful retaliation must be kept in mind. In the case of Hassapoyannes, one of the interviewing Board members didn't like that Hassapoyannes was "pushing the ADA down their throats." This obviously reeked of retaliation after the filing of an administrative complaint.

5.3.4 Legal Fees. Under the discrimination laws, in addition to compensatory and punitive damage awards, legal fees may also be awarded. Under RPL § 234, a tenant, or a coop unit owner, as a proprietary lessee, has a reciprocal right to legal fees if the lease or proprietary lease has a provision allowing the coop to get legal fees. Since most, if not all, proprietary and regular leases have a clause saying that the coop is entitled to legal fees if the lessee breaches the lease (some are broader), a tenant or a coop unit owner will have a right to legal fees for the "successful defense" of any case brought by the coop to enforce a no pet provision in the house rules. Under §234, a tenant or coop owner can also win legal fees by showing that the landlord or coop breached the lease.

Whittier Terrace Assoc. v. Hampshire, 532 NE2d 712 (Mass. App. Ct., 1989).
³⁶ Hirschmann v Hassapoyannes, N.Y.L.J. 6/25/07, pg. 18, col 3.

RPL § 234 does not apply to condos since there is no lease between the condo owner and the condo. However, sometimes the legal fee provision in a condo's by-law is reciprocal. In that case, the unit owner can win fees under the clause, as well as under the discrimination laws.³⁷

5.4 The Process for A Reasonable Accommodation Animal

5.4.1 Initial Status. Many people already have their service dog, or other disability related animal, before any dispute begins. Some people apply in advance. These two situations set up different processes for approval. If the animal is already there, a landlord, condo or coop that objects will often start the process to evict or for injunctive relief. The tenant or unit owner is then initially on the defensive, although he may apply to an appropriate agency (see below) for a determination of his rights and seek a stay of any lawsuit. Alternatively, a counterclaim under the relevant discrimination laws could be made. But there is a requirement the landlord or board be made aware of the disability and request for an accommodation. The next section addresses this.

Parenthetically, it should be kept in mind that when someone gets an accommodation animal without asking first, and only seeks permission after an objection, a landlord or board will often think that the disability claim is fabricated and only asserted because the tenant or unit owner was, so to speak, caught. There are, however, many times that tenants or unit owners either assume animals are allowed because others are seen around, or they do not know that their rights are not self operative.

5.4.2 The Reasonable Accommodation Request. The best method for all concerned is to begin with a request for a reasonable accommodation in the form of a sufficiently detailed letter. The nature

³⁷ See, Board of Managers v LaMontanero, 616 N.Y.S.2d 744, 206 A.,D.2d 340, (App. Div. 2nd Dept. 1994) (Unit owner won right to have a pet under §27-2009.1 of the Administrative Code of the City of New York and won fees under the reciprocal legal fee provision in the by-laws.)

of the disability and how it impacts major life activities should be described and supported with attached medical documentation. The medical evidence should also describe how the animal will be medically helpful.

One example of a letter is:

Re:

Dear :

We represent _____ and have copies of your _____ letter concerning our client's dog.

As I believe you and the coop board have been advised, our client suffers from a disability that substantially interferes with ___ major life activities. ___ has been under care for _____. For this condition, a _____ animal has been found to be medically helpful. The attached letter from treating physician, Dr. _____, attests to these facts.

Under Federal, State and New York City laws, the coop (and others responsible such as the managing agent) must reasonably accommodate our client's needs.

Please advise by _____ whether you will allow our client to keep ___ dog. Failing that, you will leave our client with little alternative but to file an appropriate complaint against all responsible parties for violations of the Federal, State and local laws prohibiting discrimination against the disabled.

It certainly seems in everyone's best interest that this matter be resolved and our client be allowed to keep ___ dog. Please also have the coop understand that we hope this matter is not pursued and can be resolved, but if it is not our client will make all appropriate claims including claims for compensatory damages, punitive damages if appropriate, and for legal fees and expenses.

The landlord's or board's response may be to ask for more information. Sometimes a blanket HIPAA form is given for the applicant to sign. This might be appropriate, and it might be too broad.

The parties should, in short, stick to what is relevant and ask for, and provide, just that.

The landlord or board should be careful to be fully aware of the law at the point this all begins

and not answer the request by saying simply “we don’t allow dogs.”

A tenant or unit owner should also consider applying for a service animal license as set out in Appendix E.

5.4.3 Administrative Proceedings and Lawsuits. If the landlord, coop or condo does not grant the accommodation request then several different things can occur. A complaint can be filed with the US Dept of Housing and Urban Development (HUD). In New York, HUD typically transfers the case to the New York State Division of Human Rights (DHR), where a complaint could also be directly filed. Last for administrative remedies, a complaint can be filed with the New York City Commission on Human Rights (CCHR).

In the initial stage, the agency investigates by contacting the parties, medical witnesses, and seeking other pertinent information. The agency then issues what is called a “Probable Cause Finding”, which either says that there is probable cause that unlawful discrimination occurred, or not.

After a probable cause finding the parties have various options to proceed at the agency or in court, and the complainant may use the agencies’ counsel, or private counsel.

The legal fees at this point can be substantial in either the agency or in court, but generally much more in court. The standard for Administrative review in an Article 78 should be kept in mind.

A complainant could skip the Administrative process altogether and go straight to court. Sometimes this happens somewhat involuntarily if the unit owner is sued first. This brings us to issues of timing.

5.4.4 The Exelberth case and timing issues. Beatrice Exelberth didn’t raise her rights under the disability laws until her Coop City coop board was literally about to evict her. The resulting case law is that disability claims can be raised as late as Exelberth did. But certainly the better practice is to assert them before an eviction or injunction suit even begins.

If the coop starts suit first, stays are often granted pending the outcome of the administrative proceeding on the right to the accommodation.³⁸

5.5 Conclusion on accommodation animals

When the rights of the disabled and discrimination laws are in issue, landlords, coop and condo boards, as well as the disabled tenant or unit owner, would be well served to have counsel seasoned in these areas. It would certainly seem in the best interests of a landlord, or coop's shareholders or condo's unit owners, as well as the board members, to err, if at all, on the side of not unlawfully discriminating against a disabled neighbor.

6.0 FEDERALLY ASSISTED HOUSING

Not long ago, 42 USC §1437 Sec. 31 was enacted allowing all people in federally assisted housing to have pets. This has had a major effect throughout this country and New York. The New York City Housing Authority, which has federal assistance, and houses many tenants, and previously had brought cases against people with pets, now has regulations allowing pets. This is a particularly relevant change, given that the Pet Law does not apply to New York City Housing Authority.

CONCLUSION ON HOUSING ISSUES

To effectively represent those involved with issues of animals in housing, one must be familiar with laws ranging from real property laws to civil rights laws, to cooperative and condominium laws, as well as the laws governing litigation in general.

³⁸ See, e.g. East 72nd Realty, LLC v. Dakis, QDS: 26700183, 8/26/98 N.Y.L.J. p 22, col. 6.

COMPANION ANIMALS & CUSTODY

1.0 Introduction

“A deep divide separates the attitude of most families, who view pets as family members, from the law, which regards pets as chattels, not different in kind from household property such as a sofa or coffee cup. For years, courts have successfully straddled this divide; however, the influx of pet ownership has shifted the issue of pet custody to the forefront.”¹

There is little doubt that this is true when one looks at the case law in New York regarding pet custody battles. The scenarios in which such cases arise, the current case law, and some ideas for the future are addressed here. As matrimonial law is a body of law largely separate from pet custody issues, it will only be examined collaterally.

1.1 General Scenarios

¹ Bones of Contention: Custody of Family Pets, Ann Hartwell Britton, Journal of American Academy of Matrimonial Lawyers. 20 J.Am. Acad. Matrim. Law. 1

Many people live together as friends, or like family members. More and more people have the companionship of animals in their household. Numerous and significant scholarly research supports the benefits of companion animals on the mental and physical health of people.²

When a member of a household leaves, or partners break apart, what happens to that companion animal? While the future of this animal may be resolved in a civilized manner, and respectful to the interests of the animal, there are cases when there is a bitter dispute.

Typically one person has physical possession of the animal and the other is left to figure out a remedy. Sometimes the police are called, although they generally do not want to get involved in civil disputes. Sometimes people try to go to court on their own, usually Small Claims court, but Small Claims Court has limited jurisdiction and generally does not award possession of anything other than money. Sometimes people go to lawyers.

Unfortunately, whether the animal is adopted, purchased, or rescued, people often think little about the animal's future if the household breaks apart. Written agreements, and in whose name a license will be, is generally thought of when it's too late.

1.2 The Case Law

While the courts say that “pets have a special status in our society”³, the case law does not always treat them as such. Although most people don't agree in advance, courts often look at whether the parties had a clear agreement about the animal's future living arrangements. Who adopted, bought, or rescued and licensed the animal is also given weight.

² Separation, Custody, and Estate Planning Issues Relating to Companion Animals, Rebecca J. Huss, 74 U.Colo. L. Rev. 181.

³ O'Brien v. Exotic Pet Warehouse, NYLJ 10/5/99, p 35 col 2 (Yonkers City Ct. 1999).

In the often cited New York case of Mongelli v. Cabral, 166 Misc.2d 240, 632 N.Y.S.2d 92777 (Civ. Ct. Yonkers 1995), the court had to decide the rights to a pet cockatoo. Looking at the causes of action for a replevin and recovery of a chattel, the court examined the action as one in conversion and cited to general case law that “[t]he tort of conversion is established when one who owns and has a right to possession of personal property proves that the property is in the unauthorized possession of another who has acted to exclude the rights of the owner.”⁴

In Mongelli, the plaintiffs’ bird was boarded due to medical treatment of the plaintiffs, making it difficult to keep the cockatoo. After the Mongellis believed the boarding was over with, the defendants would not return the cockatoo and claimed that she was a gift.

The court found that the burden of proving a gift is on the one asserting it, and it must be demonstrated that there was an intent on the part of the gift giver to give, along with the delivery and acceptance of the animal.

Courts both in the state of New York and outside - that have wrestled with the issue of pet custody have chosen to treat the pet as a sentient being and made rulings based on its “best interests.” Raymond v. Lachman, 264 A.D.2d 340, 695 N.Y.S.2d 308 (1st Dept. 1999). In Raymond nonmarried parties were battling for custody of the cat named “Lovey.” The court ruled that Lovey was to remain in the home of the possessory party where the cat (almost ten years old) had lived for the previous four years:

“Cognizant of the cherished status accorded to pets in our society, the strong emotions engendered by disputes of this nature, and the limited ability of the courts to resolve them satisfactorily, on the record presented, we think it best for all concerned that, given his limited life

⁴ Republic of Haiti v. Duvalier, 211 A.D.2d 379, 626 N.Y.S.2d 472 (1st Dept, 1995).

expectancy, Lovey, who is now almost ten years old, remain where he has lived, prospered, loved and been loved for the past four years.” (Id. at 341).

In divorce proceedings, the courts are also likely to award custody of the family to the partner who was the primary care-giver and with whom the pet had established the greatest bond. C.R.S. v. T.K.S., 192 Misc.2d 547, 746 N.Y.S.2d 568 (N.Y.County 2002). In C.R.S., the court awarded custody of the parties’ Chocolate Labrador Retriever during the pendency of the divorce to the wife for whom the dog had been gift, and who was its primary care-giver. The husband argued that the dog, as marital property was “no different than a sofa, home or bank account” - should not be distributed prior to judgment, but the court disagreed, citing the broad discretion awarded under DRL § 234. (Id. at 548-49).

Other jurisdictions have also awarded custody of pets to the party, taking into account the “best interests” of the animal. Zovko v. Gregory, No. CH 97-544, Cir.Ct., Arl. Co., Va., October 17, 1999. In Zovko the parties were former roommates at which time the defendant had owned a cat named Grady. While the parties lived together, plaintiff took care of Grady. When the parties ended their living arrangement, plaintiff sued for custody of Grady, which the court awarded to plaintiff, the non-owner roommate, basing his decision on the best interests of the cat, whose happiness, he said, took priority over property rights.

Back to Mongelli, it is important to consider that the Mongellis’ final hurdle was the fact that they brought the case in Small Claims court, which generally does not have jurisdiction to award possession of an animal, or anything else other than money. But the court came up with the solution of awarding the plaintiffs \$3,000.00, which award could be avoided by returning the cockatoo instead of paying the judgment.

This leads to a difficulty in these disputes when there is not a matrimonial action already existing, or arising, due to the breakup of a marriage.

The least controversial way to bring an action for custody of an animal would be in Supreme Court, which has equitable jurisdiction (i.e., the court can order who gets custody, and under what terms). While an argument can be made that the Civil Court, although not the Small Claims court, has equitable jurisdiction up to the monetary jurisdictional limit of the court, such an argument will lead to much litigation expense fighting over the jurisdiction of the court. Given that it is not a whole lot easier to litigate in Civil Court as opposed to Supreme, it is likely that Supreme is the better choice. However, both are expensive alternatives so that the person who ended up in possession of the animal is often left the victor.

1.3 Future Considerations

A proposal by Ann Hartwell Britton in Bones of Contention, *supra*, examines various factors to be considered in a pet custody dispute such as:

1. Who initially purchased the animal?
2. Who was responsible for food and medical bills?
3. Who took primary responsibility for companionship and exercise for the animal?
4. Who ensured its health?
5. Who has the better circumstances for the animal for current and future living arrangements?
6. Will certain family members receive more benefits, such as children of divorced parents who adjust better with and without their animals?

CONCLUSION ON PET CUSTODY

Pet custody cases are another area of animal law that point toward the need to progress from the regressive view of animals as property.

Under the current case law, which is often criticized for treating these disputes on an ad hoc basis, people should have a clear, written agreement as to what will happen to the animal in the event of a breakup, or someone leaving the household. This agreement would likely help to either resolve any lawsuit, or ensure that no real dispute arises. When licensing an animal, thought should also be given as to the affect that it can have in favor of the person who has the license.

Appendix A

42 U.S.C.A. § 3604

Effective: [See Text Amendments]

United States Code Annotated Currentness

Title 42. The Public Health and Welfare

Chapter 45. Fair Housing (Refs & Annos)

Subchapter I. Generally (Refs & Annos)

→§ 3604. Discrimination in the sale or rental of housing and other prohibited practices

As made applicable by section 3603 of this title and except as exempted by sections 3603(b) and 3607 of this title, it shall be unlawful--

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin.

© To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, sex, handicap, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, handicap, familial status, or national origin.

(f)(1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of--

(A) that buyer or renter,⁵

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

© any person associated with that buyer or renter.

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of--

(A) that person; or

(B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or

© any person associated with that person.

(3) For purposes of this subsection, discrimination includes--

(A) a refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.⁶

⁵ So in original. The comma probably should be a semicolon.

⁶ So in original. The period probably should be a semicolon.

(B) a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

© in connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is 30 months after September 13, 1988, a failure to design and construct those dwellings in such a manner that--

(I) the public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons;

(ii) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(iii) all premises within such dwellings contain the following features of adaptive design:

(I) an accessible route into and through the dwelling;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(4) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of paragraph (3)(C)(iii).

(5)(A) If a State or unit of general local government has incorporated into its laws the requirements set forth in paragraph (3)©, compliance with such laws shall be deemed to satisfy the requirements of that paragraph.

(B) A State or unit of general local government may review and approve newly constructed covered multifamily dwellings for the purpose of making

determinations as to whether the design and construction requirements of paragraph (3)© are met.

© The Secretary shall encourage, but may not require, States and units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with paragraph (3)©, and shall provide technical assistance to States and units of local government and other persons to implement the requirements of paragraph (3)©.

(D) Nothing in this subchapter shall be construed to require the Secretary to review or approve the plans, designs or construction of all covered multifamily dwellings, to determine whether the design and construction of such dwellings are consistent with the requirements of paragraph 3©.

(6)(A) Nothing in paragraph (5) shall be construed to affect the authority and responsibility of the Secretary or a State or local public agency certified pursuant to section 3610(f)(3) of this title to receive and process complaints or otherwise engage in enforcement activities under this subchapter.

(B) Determinations by a State or a unit of general local government under paragraphs (5)(A) and (B) shall not be conclusive in enforcement proceedings under this subchapter.

(7) As used in this subsection, the term "covered multifamily dwellings" means--

(A) buildings consisting of 4 or more units if such buildings have one or more elevators; and

(B) ground floor units in other buildings consisting of 4 or more units.

(8) Nothing in this subchapter shall be construed to invalidate or limit any law of a State or political subdivision of a State, or other jurisdiction in which this subchapter shall be effective, that requires dwellings to be designed and constructed in a manner that affords handicapped persons greater access than is required by this subchapter.

(9) Nothing in this subsection requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety

of other individuals or whose tenancy would result in substantial physical damage to the property of

others.

CREDIT(S)

(Pub.L. 90-284, Title VIII, § 804, Apr. 11, 1968, 82 Stat. 83; Pub.L. 93-383, Title VIII, § 808(b)(1), Aug. 22, 1974, 88 Stat. 729; Pub.L. 100- 430, §§ 6(a)-(b)(2), (e), 15, Sept. 13, 1988, 102 Stat. 1620, 1622, 1623, 1636.)

Appendix B

N.Y. Executive Law § 296

Effective: August 29, 2005 to September 30, 2007

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Executive Law (Refs & Annos)

Chapter Eighteen. Of the Consolidated Laws

Article 15. Human Rights Law (Refs & Annos)

→§ 296. Unlawful discriminatory practices

1. It shall be an unlawful discriminatory practice:

(a) For an employer or licensing agency, because of the age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, or marital status of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

(b) For an employment agency to discriminate against any individual because of age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, or marital status, in receiving, classifying, disposing or otherwise acting upon applications for its services or in referring an applicant or applicants to an employer or employers.

© For a labor organization, because of the age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, or marital status of any individual, to exclude or to expel from its membership such individual or to discriminate in any way against any of its members or against any employer or any individual employed by an employer.

(d) For any employer or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses directly or indirectly, any limitation, specification or discrimination as to age, race, creed, color, national origin, sexual orientation, military

status, sex, disability, predisposing genetic characteristics, or marital status, or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification; provided, however, that neither this paragraph nor any provision of this chapter or other law shall be construed to prohibit the department of civil service or the department of personnel of any city containing more than one county from requesting information from applicants for civil service examinations concerning any of the aforementioned characteristics, other than sexual orientation, for the purpose of conducting studies to identify and resolve possible problems in recruitment and testing of members of minority groups to insure the fairest possible and equal opportunities for employment in the civil service for all persons, regardless of age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, or marital status.

(e) For any employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because he or she has opposed any practices forbidden under this article or because he or she has filed a complaint, testified or assisted in any proceeding under this article.

(f) Nothing in this subdivision shall affect any restrictions upon the activities of persons licensed by the state liquor authority with respect to persons under twenty-one years of age.

(g) For an employer to compel an employee who is pregnant to take a leave of absence, unless the employee is prevented by such pregnancy from performing the activities involved in the job or occupation in a reasonable manner.

1-a. It shall be an unlawful discriminatory practice for an employer, labor organization, employment agency or any joint labor-management committee controlling apprentice training programs:

(a) To select persons for an apprentice training program registered with the state of New York on any basis other than their qualifications, as determined by objective criteria which permit review;

(b) To deny to or withhold from any person because of race, creed, color, national origin, sexual orientation, military status, sex, age, disability, or marital status, the right to be admitted to or participate in a guidance program, an apprenticeship training program, on-the-job training program, executive training program, or other occupational training or retraining program;

Ⓢ To discriminate against any person in his or her pursuit of such programs or to discriminate against such a person in the terms, conditions or privileges of such programs because of race, creed, color, national origin, sexual orientation, military status, sex, age, disability or marital status;

(d) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for such programs or to make any inquiry in connection with such program which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, sexual orientation, military status, sex, age, disability or marital status, or any intention to make any such limitation, specification or discrimination, unless based on a bona fide occupational qualification.

2. (a) It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement, because of the race, creed, color, national origin, sexual orientation, military status, sex, or disability or marital status of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof, including the extension of credit, or, directly or indirectly, to publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement, to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of race, creed, color, national origin, sexual orientation, military status, sex, or disability or marital status, or that the patronage or custom thereof of any person of or purporting to be of any particular race, creed, color, national origin, sexual orientation, military status, sex or marital status, or having a disability is unwelcome, objectionable or not acceptable, desired or solicited.

(b) Nothing in this subdivision shall be construed to prevent the barring of any person, because of the sex

of such person, from places of public accommodation, resort or amusement if the division grants an exemption based on bona fide considerations of public policy; nor shall this subdivision apply to the rental of rooms in a housing accommodation which restricts such rental to individuals of one sex.

2-a. It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of publicly-assisted housing accommodations or other person having the right of ownership or possession of or the right to rent or lease such accommodations:

(a) To refuse to sell, rent or lease or otherwise to deny to or withhold from any person or group of persons such housing accommodations because of the race, creed, color, disability, national origin, sexual orientation, military status, age, sex, marital status, or familial status of such person or persons, or to represent that any housing accommodation or land is not available for inspection, sale, rental or lease when in fact it is so available.

(b) To discriminate against any person because of his or her race, creed, color, disability, national origin, sexual orientation, military status, age, sex, marital status, or familial status in the terms, conditions or privileges of any publicly-assisted housing accommodations or in the furnishing of facilities or services in connection therewith.

Ⓢ To cause to be made any written or oral inquiry or record concerning the race, creed, color, disability, national origin, sexual orientation, membership in the reserve armed forces of the United States or in the organized militia of the state, age, sex, marital status, or familial status of a person seeking to rent or lease any publicly-assisted housing accommodation; provided, however, that nothing in this subdivision shall prohibit a member of the reserve armed forces of the United States or in the organized militia of the state from voluntarily disclosing such membership.

(c-1) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such housing accommodation or to make any record or inquiry in connection with the prospective purchase, rental or lease of such a housing accommodation which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial

status, or any intent to make any such limitation, specification or discrimination.

(d)(1) To refuse to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by the said person, if the modifications may be necessary to afford the said person full enjoyment of the premises, in conformity with the provisions of the New York state uniform fire prevention and building code, except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

(2) To refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling or

(3) In connection with the design and construction of covered multi-family dwellings for first occupancy after March thirteenth, nineteen hundred ninety-one, a failure to design and construct dwellings in accordance with the accessibility requirements of the New York state uniform fire prevention and building code, to provide that:

(I) The public use and common use portions of the dwellings are readily accessible to and usable by disabled persons with disabilities;

(ii) All the doors are designed in accordance with the New York state uniform fire prevention and building code to allow passage into and within all premises and are sufficiently wide to allow passage by persons in wheelchairs; and

(iii) All premises within covered multi-family dwelling units contain an accessible route into and through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations; there are reinforcements in the bathroom walls to allow later installation of grab bars; and there are usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space, in conformity with the New York state uniform fire prevention and building code.

(e) Nothing in this subdivision shall restrict the consideration of age in the rental of publicly-assisted housing accommodations if the division grants an

exemption based on bona fide considerations of public policy for the purpose of providing for the special needs of a particular age group without the intent of prejudicing other age groups.

(f) Nothing in this subdivision shall be deemed to restrict the rental of rooms in school or college dormitories to individuals of the same sex.

3. (a) It shall be an unlawful discriminatory practice for an employer, licensing agency, employment agency or labor organization to refuse to provide reasonable accommodations to the known disabilities of an employee, prospective employee or member in connection with a job or occupation sought or held or participation in a training program.

(b) Nothing contained in this subdivision shall be construed to require provision of accommodations which can be demonstrated to impose an undue hardship on the operation of an employer's, licensing agency's, employment agency's or labor organization's business, program or enterprise.

In making such a demonstration with regard to undue hardship the factors to be considered include:

(I) The overall size of the business, program or enterprise with respect to the number of employees, number and type of facilities, and size of budget;

(ii) The type of operation which the business, program or enterprise is engaged in, including the composition and structure of the workforce; and

(iii) The nature and cost of the accommodation needed.

3-a. It shall be an unlawful discriminatory practice:

(a) For an employer or licensing agency to refuse to hire or employ or license or to bar or to terminate from employment an individual eighteen years of age or older, or to discriminate against such individual in promotion, compensation or in terms, conditions, or privileges of employment, because of such individual's age.

(b) For any employer, licensing agency or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any

limitation, specification or discrimination on account of age respecting individuals eighteen years of age or
© For any employer, licensing agency or employment agency to discharge or otherwise discriminate against any person because he or she has opposed any practices forbidden under this article or because he or she has filed a complaint, testified or assisted in any proceeding under this article.

(d) Notwithstanding any other provision of law, no employee shall be subject to termination or retirement from employment on the basis of age, except where age is a bona fide occupational qualification reasonably necessary to the normal operation of a particular business, where the differentiation is based on reasonable factors other than age, or as otherwise specified in paragraphs (e) and (f) of this subdivision or in article fourteen-A of the retirement and social security law.

(e) Nothing contained in this subdivision or in subdivision one of this section shall be construed to prevent the compulsory retirement of any employee who has attained sixty-five years of age, and who, for a two-year period immediately before retirement, is employed in a bona fide executive or a high policymaking position, if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of such plans, of the employer of such employee, which equals, in the aggregate, at least forty-four thousand dollars; provided that for the purposes of this paragraph only, the term "employer" includes any employer as otherwise defined in this article but does not include (I) the state of New York, (ii) a county, city, town, village or any other political subdivision or civil division of the state, (iii) a school district or any other governmental entity operating a public school, college or university, (iv) a public improvement or special district, (v) a public authority, commission or public benefit corporation, or (vi) any other public corporation, agency, instrumentality or unit of government which exercises governmental power under the laws of the state. In applying the retirement benefit test of this paragraph, if any such retirement benefit is in a form other than a straight life annuity with no ancillary benefits, or if employees contribute to any such plan or make rollover contributions, such benefit shall be adjusted in accordance with rules and 3-b. It shall be an unlawful discriminatory practice for any real estate broker, real estate salesperson or employee or agent thereof or any other individual, corporation, partnership or organization for the

older, or any intent to make any such limitation, specification, or discrimination.

regulations promulgated by the division, after an opportunity for public hearing, so that the benefit is the equivalent of a straight life annuity with no ancillary benefits under a plan to which employees do not contribute and under which no rollover contributions are made.

(f) Nothing contained in this subdivision, in subdivision one of this section or in article fourteen-A of the retirement and social security law shall be construed to prevent the compulsory retirement of any employee who has attained seventy years of age and is serving under a contract for unlimited tenure, or a similar arrangement providing for unlimited tenure, at a nonpublic institution of higher education. For purposes of such subdivisions or article, the term "institution of higher education" means an educational institution which (I) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, (ii) is lawfully authorized to provide a program of education beyond secondary education, and (iii) provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree.

(g) In the event of a conflict between the provisions of this subdivision and the provisions of article fourteen-A of the retirement and social security law, the provisions of article fourteen-A of such law shall be controlling.

But nothing contained in this subdivision, in subdivision one of this section or in article fourteen-A of the retirement and social security law shall be construed to prevent the termination of the employment of any person who, even upon the provision of reasonable accommodations, is physically unable to perform his or her duties or to affect the retirement policy or system of any employer where such policy or system is not merely a subterfuge to evade the purposes of said subdivisions or said article; nor shall anything in such subdivisions or such article be deemed to preclude the varying of insurance coverages according to an employee's age.

The provisions of this subdivision shall not affect any restriction upon the activities of persons licensed by the state liquor authority with respect to persons under twenty-one years of age.

purpose of inducing a real estate transaction from which any such person or any of its stockholders or members may benefit financially, to represent that a change has occurred or will or may occur in the composition with

respect to race, creed, color, national origin, sexual orientation, military status, sex, disability, marital status, or familial status of the owners or occupants in the block, neighborhood or area in which the real property is located, and to represent, directly or indirectly, that this change will or may result in undesirable consequences in the block, neighborhood or area in which the real property is located, including but not limited to the lowering of property values, an increase in criminal or anti-social behavior, or a decline in the quality of schools or other facilities.

4. It shall be an unlawful discriminatory practice for an education corporation or association which holds itself out to the public to be non-sectarian and exempt from taxation pursuant to the provisions of article four of the real property tax law to deny the use of its facilities to any person otherwise qualified, or to permit the harassment of any student or applicant, by reason of his race, color, religion, disability, national origin, sexual orientation, military status, sex, age or marital status, except that any such institution which establishes or maintains a policy of educating persons of one sex exclusively may admit students of only one sex.

5. (a) It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right to sell, rent or lease a housing accommodation, constructed or to be constructed, or any agent or employee thereof:

(1) To refuse to sell, rent, lease or otherwise to deny to or withhold from any person or group of persons such a housing accommodation because of the race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status of such person or persons, or to represent that any housing accommodation or land is not available for inspection, sale, rental or lease when in fact it is so available.

(2) To discriminate against any person because of race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation or in the furnishing of facilities or services in connection therewith.

(3) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase,

rental or lease of such housing accommodation or to make any record or inquiry in connection with the prospective purchase, rental or lease of such a housing accommodation which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status, or any intent to make any such limitation, specification or discrimination.

The provisions of this paragraph (a) shall not apply (1) to the rental of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other, if the owner resides in one of such housing accommodations, (2) to the restriction of the rental of all rooms in a housing accommodation to individuals of the same sex or (3) to the rental of a room or rooms in a housing accommodation, if such rental is by the occupant of the housing accommodation or by the owner of the housing accommodation and the owner resides in such housing accommodation or (4) solely with respect to age and familial status to the restriction of the sale, rental or lease of housing accommodations exclusively to persons sixty-two years of age or older and the spouse of any such person, or for housing intended and operated for occupancy by at least one person fifty-five years of age or older per unit. In determining whether housing is intended and operated for occupancy by persons fifty-five years of age or older, Sec. 807(b) (2) © (42 U.S.C. 3607 (b) (2) ©) of the federal Fair Housing Act of 1988, as amended, shall apply.

(b) It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent or lease, land or commercial space:

(1) To refuse to sell, rent, lease or otherwise deny to or withhold from any person or group of persons land or commercial space because of the race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status of such person or persons, or to represent that any housing accommodation or land is not available for inspection, sale, rental or lease when in fact it is so available;

(2) To discriminate against any person because of race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status in the terms, conditions or privileges of the sale, rental or lease of any such land or commercial space; or in the furnishing of facilities or services in connection therewith;

(3) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such land or commercial space or to make any record or inquiry in connection with the prospective purchase, rental or lease of such land or commercial space which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status; or any intent to make any such limitation, specification or discrimination.

(4) With respect to age and familial status, the provisions of this paragraph shall not apply to the restriction of the sale, rental or lease of land or commercial space exclusively to persons fifty-five years of age or older and the spouse of any such person, or to the restriction of the sale, rental or lease of land to be used for the construction, or location of housing accommodations exclusively for persons sixty-two years of age or older, or intended and operated for occupancy by at least one person fifty-five years of age or older per unit. In determining whether housing is intended and operated for occupancy by persons fifty-five years of age or older, Sec. 807(b) (2) © (42 U.S.C. 3607(b) (2) ©) of the federal Fair Housing Act of 1988, as amended, shall apply.

© It shall be an unlawful discriminatory practice for any real estate broker, real estate salesperson or employee or agent thereof:

(1) To refuse to sell, rent or lease any housing accommodation, land or commercial space to any person or group of persons or to refuse to negotiate for the sale, rental or lease, of any housing accommodation, land or commercial space to any person or group of persons because of the race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status of such person or persons, or to represent that any housing accommodation, land or commercial space is not available for inspection, sale, rental or lease when in fact it is so available, or otherwise to deny or withhold any housing accommodation, land or

(e) It shall be an unlawful discriminatory practice for the owner, proprietor or managing agent of, or other person having the right to provide care and services in, a private proprietary nursing home, convalescent home, or home for adults, or an intermediate care facility, as defined in section two of the social services

commercial space or any facilities of any housing accommodation, land or commercial space from any person or group of persons because of the race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status of such person or persons.

(2) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of any housing accommodation, land or commercial space or to make any record or inquiry in connection with the prospective purchase, rental or lease of any housing accommodation, land or commercial space which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status; or any intent to make any such limitation, specification or discrimination.

(3) With respect to age and familial status, the provisions of this paragraph shall not apply to the restriction of the sale, rental or lease of any land or commercial space exclusively to persons fifty-five years of age or older and the spouse of any such person, or to the restriction of the sale, rental or lease of any housing accommodation or land to be used for the construction or location of housing accommodations for persons sixty-two years of age or older, or intended and operated for occupancy by at least one person fifty-five years of age or older per unit. In determining whether housing is intended and operated for occupancy by persons fifty-five years of age or older, Sec. 807 (b) (2) © (42 U.S.C. 3607 (b) (2) ©) of the federal Fair Housing Act of 1988, as amended, shall apply.

(d) It shall be an unlawful discriminatory practice for any real estate board, because of the race, creed, color, national origin, sexual orientation, military status, age, sex, disability, marital status, or familial status of any individual who is otherwise qualified for membership, to exclude or expel such individual from membership, or to discriminate against such individual in the terms, conditions and privileges of membership in such board.

law, heretofore constructed, or to be constructed, or any agent or employee thereof, to refuse to provide services and care in such home or facility to any individual or to discriminate against any individual in the terms, conditions, and privileges of such services and care solely because such individual is a blind person. For

purposes of this paragraph, a "blind person" shall mean a person who is registered as a blind person with the commission for the visually handicapped and who meets the definition of a "blind person" pursuant to section three of chapter four hundred fifteen of the laws of nineteen hundred thirteen [FN1] entitled "An act to establish a state commission for improving the condition of the blind of the state of New York, and making an appropriation therefor".

(f) The provisions of this subdivision, as they relate to age, shall not apply to persons under the age of eighteen years.

(g) It shall be an unlawful discriminatory practice for any person offering or providing housing accommodations, land or commercial space as described in paragraphs (a), (b), and © of this subdivision to make or cause to be made any written or oral inquiry or record concerning membership of any person in the state organized militia in relation to the purchase, rental or lease of such housing accommodation, land, or commercial space, provided, however, that nothing in this subdivision shall prohibit a member of the state organized militia from voluntarily disclosing such membership.

6. It shall be an unlawful discriminatory practice for any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this article, or to attempt to do so.

7. It shall be an unlawful discriminatory practice for any person engaged in any activity to which this section applies to retaliate or discriminate against any person because he or she has opposed any practices forbidden under this article or because he or she has filed a complaint, testified or assisted in any proceeding under this article.

8. It shall be an unlawful discriminatory practice for any party to a conciliation agreement made pursuant to section two hundred ninety-seven of this article to violate the terms of such agreement.

9. (a) It shall be an unlawful discriminatory practice for any fire department or fire company therein, through any member or members thereof, officers, board of fire commissioners or other body or office having power of appointment of volunteer firefighters, directly or indirectly, by ritualistic practice, constitutional or by-law prescription, by tacit agreement among its members, or otherwise, to deny to any individual membership in any volunteer fire

department or fire company therein, or to expel or discriminate against any volunteer member of a fire department or fire company therein, because of the race, creed, color, national origin, sexual orientation, military status, sex or marital status of such individual.

(b) Upon a complaint to the division, as provided for under subdivision one of section two hundred ninety-seven of this article, and in the event the commissioner finds that an unlawful discriminatory practice has been engaged in, the board of fire commissioners or other body or office having power of appointment of volunteer firefighters shall be served with any order required, under subdivision four of section two hundred ninety-seven of this article, to be served on any or all respondents requiring such respondent or respondents to cease and desist from such unlawful discriminatory practice and to take affirmative action. Such board shall have the duty and power to appoint as a volunteer firefighter, notwithstanding any other statute or provision of law or by-law of any volunteer fire company, any individual whom the commissioner has determined to be the subject of an unlawful discriminatory practice under this subdivision. Unless such board has been found to have engaged in an unlawful discriminatory practice, service upon such board of such order shall not constitute such board or its members as a respondent nor constitute a finding of an unlawful discriminatory practice against such board or its members.

10. (a) It shall be an unlawful discriminatory practice for any employer, or an employee or agent thereof, to impose upon a person as a condition of obtaining or retaining employment, including opportunities for promotion, advancement or transfers, any terms or conditions that would require such person to violate or forego a sincerely held practice of his or her religion, including but not limited to the observance of any particular day or days or any portion thereof as a sabbath or other holy day in accordance with the requirements of his or her religion, unless, after engaging in a bona fide effort, the employer demonstrates that it is unable to reasonably accommodate the employee's or prospective employee's sincerely held religious observance or practice without undue hardship on the conduct of the employer's business. Notwithstanding any other provision of law to the contrary, an employee shall not be entitled to premium wages or premium benefits for work performed during hours to which such premium wages or premium benefits would ordinarily be applicable, if the employee is working during such hours only as an accommodation to his or her sincerely held religious requirements. Nothing in this paragraph or

paragraph (b) of this subdivision shall alter or abridge the rights granted to an employee concerning the

(b) Except where it would cause an employer to incur an undue hardship, no person shall be required to remain at his or her place of employment during any day or days or portion thereof that, as a requirement of his or her religion, he or she observes as his or her sabbath or other holy day, including a reasonable time prior and subsequent thereto for travel between his or her place of employment and his or her home, provided however, that any such absence from work shall, wherever practicable in the reasonable judgment of the employer, be made up by an equivalent amount of time and work at some other mutually convenient time, or shall be charged against any leave with pay ordinarily granted, other than sick leave, provided further, however, that any such absence not so made up or charged, may be treated by the employer of such person as leave taken without pay.

© It shall be an unlawful discriminatory practice for an employer to refuse to permit an employee to utilize leave, as provided in paragraph (b) of this subdivision, solely because the leave will be used for absence from work to accommodate the employee's sincerely held religious observance or practice.

(d) As used in this subdivision: (1) "undue hardship" shall mean an accommodation requiring significant expense or difficulty (including a significant interference with the safe or efficient operation of the workplace or a violation of a bona fide seniority system). Factors to be considered in determining whether the accommodation constitutes an undue economic hardship shall include, but not be limited to:

(I) the identifiable cost of the accommodation, including the costs of loss of productivity and of retaining or hiring employees or transferring employees from one facility to another, in relation to the size and operating cost of the employer;

(ii) the number of individuals who will need the particular accommodation to a sincerely held religious observance or practice; and

(iii) for an employer with multiple facilities, the degree to which the geographic separateness or administrative or fiscal relationship of the facilities will make the accommodation more difficult or expensive.

Provided, however, an accommodation shall be considered to constitute an undue hardship if it will

payment of wages or privileges of seniority accruing to that employee.

result in the inability of an employee to perform the essential functions of the position in which he or she is employed.

(2) "premium wages" shall include overtime pay and compensatory time off, and additional remuneration for night, weekend or holiday work, or for standby or irregular duty.

(3) "premium benefit" shall mean an employment benefit, such as seniority, group life insurance, health insurance, disability insurance, sick leave, annual leave, or an educational or pension benefit that is greater than the employment benefit due the employee for an equivalent period of work performed during the regular work schedule of the employee.

In the case of any employer other than the state, any of its political subdivisions or any school district, this subdivision shall not apply where the uniform application of terms and conditions of attendance to employees is essential to prevent undue economic hardship to the employer. In any proceeding in which the applicability of this subdivision is in issue, the burden of proof shall be upon the employer. If any question shall arise whether a particular position or class of positions is excepted from this subdivision by this paragraph, such question may be referred in writing by any party claimed to be aggrieved, in the case of any position of employment by the state or any of its political subdivisions, except by any school district, to the civil service commission, in the case of any position of employment by any school district, to the commissioner of education, who shall determine such question and in the case of any other employer, a party claiming to be aggrieved may file a complaint with the division pursuant to this article. Any such determination by the civil service commission shall be reviewable in the manner provided by article seventy-eight of the civil practice law and rules and any such determination by the commissioner of education shall be reviewable in the manner and to the same extent as other determinations of the commissioner under section three hundred ten of the education law.

11. Nothing contained in this section shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, from limiting employment or sales or rental of housing accommodations or admission to or giving

preference to persons of the same religion or denomination or from taking such action as is calculated by such organization to promote the 12. Notwithstanding the provisions of subdivisions one, one-a and three-a of this section, it shall not be an unlawful discriminatory practice for an employer, employment agency, labor organization or joint labor-management committee to carry out a plan, approved by the division, to increase the employment of members of a minority group (as may be defined pursuant to the regulations of the division) which has a state-wide unemployment rate that is disproportionately high in comparison with the state-wide unemployment rate of the general population. Any plan approved under this subdivision shall be in writing and the division's approval thereof shall be for a limited period and may be rescinded at any time by the division.

13. It shall be an unlawful discriminatory practice (I) for any person to discriminate against, boycott or blacklist, or to refuse to buy from, sell to or trade with, any person, because of the race, creed, color, national origin, sexual orientation, military status or sex of such person, or of such person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers or customers, or (ii) for any person wilfully to do any act or refrain from doing any act which enables any such person to take such action. This subdivision shall not apply to:

(a) Boycotts connected with labor disputes; or

(b) Boycotts to protest unlawful discriminatory practices.

14. It shall be an unlawful discriminatory practice for any person engaged in any activity covered by this section to discriminate against a blind person, a hearing impaired person who has a hearing impairment manifested by a speech discrimination score of forty percent or less in the better ear with appropriate correction as certified by a licensed audiologist or otolaryngologist as defined in section seven hundred eighty-nine of the general business law or a physician who has examined such person pursuant to the provisions of article thirty-seven-A of such law or a person with a disability on the basis of his or her use of a guide dog, hearing dog or service dog.

15. It shall be an unlawful discriminatory practice for any person, agency, bureau, corporation or association, including the state and any political

religious principles for which it is established or maintained.

subdivision thereof, to deny any license or employment to any individual by reason of his or her having been convicted of one or more criminal offenses, or by reason of a finding of a lack of "good moral character" which is based upon his or her having been convicted of one or more criminal offenses, when such denial is in violation of the provisions of article twenty-three-A of the correction law.

16. It shall be an unlawful discriminatory practice, unless specifically required or permitted by statute, for any person, agency, bureau, corporation or association, including the state and any political subdivision thereof, to make any inquiry about, whether in any form of application or otherwise, or to act upon adversely to the individual involved, any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, in connection with the licensing, employment or providing of credit or insurance to such individual; provided, however, that the provisions hereof shall not apply to the licensing activities of governmental bodies in relation to the regulation of guns, firearms and other deadly weapons or in relation to an application for employment as a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law.

17. Nothing in this section shall prohibit the offer and acceptance of a discount to a person sixty-five years of age or older for housing accommodations.

18. It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right of ownership of or possession of or the right to rent or lease housing accommodations:

(1) To refuse to permit, at the expense of a person with a disability, reasonable modifications of existing premises occupied or to be occupied by the said person, if the modifications may be necessary to afford the said person full enjoyment of the premises, in conformity with the provisions of the New York state uniform fire prevention and building code except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that

existed before the modification, reasonable wear and tear excepted.

(2) To refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford said person with a disability equal opportunity to use and enjoy a dwelling or

(3) In connection with the design and construction of covered multi-family dwellings for first occupancy after March thirteenth, nineteen hundred ninety-one, a failure to design and construct dwellings in accordance with the accessibility requirements for multi-family dwellings found in the New York state uniform fire prevention and building code to provide that:

(I) The public use and common use portions of the dwellings are readily accessible to and usable by persons with disabilities;

(ii) All the doors are designed in accordance with the New York state uniform fire prevention and building code to allow passage into and within all premises and are sufficiently wide to allow passage by persons in wheelchairs; and

(iii) All premises within covered multi-family dwelling units contain an accessible route into and through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations; there are reinforcements in the bathroom walls to allow later installation of grab bars; and there are usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space, in conformity with the New York state uniform fire prevention and building code.

19. (a) Except as provided in paragraph (b) of this subdivision, it shall be an unlawful discriminatory practice of any employer, labor organization, employment agency, licensing agency, or its employees, agents, or members:

(1) to directly or indirectly solicit, require, or administer a genetic test to a person, or solicit or require information from which a predisposing genetic characteristic can be inferred as a condition of employment, preemployment application, labor organization membership, or licensure; or

(L.1951, c. 800; amended L.1952, c. 284, § 2; L.1952, c. 285, § 6; L.1955, c. 340, § 3; L.1958, c. 738, §§ 1, 2; L.1958, c. 960, § 23; L.1961, c. 414, § 4; L.1961, c. 609; L.1962, c. 164, § 1; L.1963, c. 480; L.1963, c. 481, § 2; L.1964, c. 948, § 1;

(2) to buy or otherwise acquire the results or interpretation of an individual's genetic test results or information from which a predisposing genetic characteristic can be inferred or to make an agreement with an individual to take a genetic test or provide genetic test results or such information.

(b) An employer may require a specified genetic test as a condition of employment where such a test is shown to be directly related to the occupational environment, such that the employee or applicant with a particular genetic anomaly might be at an increased risk of disease as a result of working in said environment.

© Nothing in this section shall prohibit the genetic testing of an employee who requests a genetic test and who provides written and informed consent to taking a genetic test for any of the following purposes:

(1) pursuant to a workers' compensation claim;

(2) pursuant to civil litigation; or

(3) to determine the employee's susceptibility to potentially carcinogenic, toxic, or otherwise hazardous chemicals or substances found in the workplace environment only if the employer does not terminate the employee or take any other action that adversely affects any term, condition or privilege of employment pursuant to the genetic test results.

(d) If an employee consents to genetic testing for any of the aforementioned allowable reasons, he or she must be given and sign an authorization of consent form which explicitly states the specific purpose, uses and limitations of the genetic tests and the specific traits or characteristics to be tested.

20. Nothing in this section shall prohibit the offer and acceptance of a discount for housing accommodations to a person with a disability, as defined in subdivision twenty-one of section two hundred ninety-two of this article.

CREDIT(S)

L.1965, c. 506; L.1965, c. 516, §§ 1, 2; L.1965, c. 851, § 3; L.1967, cc. 202, 298; L.1967, c. 628, § 1; L.1967, c. 667, § 2; L.1968, c. 10, § 1; L.1968, c. 577; L.1969, c. 359, §§ 7, 8; L.1969, cc. 443, 458; L.1969, c. 1070, § 1; L.1970, c. 807; L.1971, cc. 299, 461, 674, 1194;

L.1973, c. 656, § 1; L.1974, c. 27, § 1; L.1974, c. 173, § 5; L.1974, c. 550, § 1; L.1974, c. 988, §§ 2 to 7; L.1975, c. 662, § 1; L.1975, c. 803, §§ 3 to 10; L.1976, c. 177, § 1; L.1976, c. 632, § 2; L.1976, c. 877, § 4; L.1976, c. 931, § 6; L.1977, c. 730, §§ 1 to 3; L.1978, c. 204, §§ 1, 2; L.1978, c. 215, § 1; L.1980, c. 689, §§ 1, 2; L.1980, c. 830, § 1; L.1983, c. 657, § 1; L.1984, c. 98, § 2; L.1984, c. 296, §§ 1, 2; L.1984, c. 414, § 1; L.1985, c. 208, § 2; L.1985, c. 527, § 1; L.1986, c. 404, § 11; L.1989, c. 298, § 1; L.1990, c. 483, § 1; L.1991, c. 74, §§ 1, 2; L.1991, c. 368, §§ 3 to 5; L.1993, c. 478, § 1; L.1994, c. 593, §§ 1, 2; L.1996, c. 204, §§ 4, 5; L.1997, c. 269, §§ 3, 4, eff. Jan. 1, 1998; L.1999, c. 405, pt. D, §§ 2 to 8, eff. Aug. 6, 1999; L.2000, c. 166, §§ 12 to 26, eff. July 18, 2000; L.2002, c. 2, §§ 5 to 13, eff. Jan. 16, 2003; L.2002, c. 539, §§ 1, 2, eff. Nov. 16, 2002; L.2003, c. 106, §§ 13 to 19, eff. July 1, 2003; L.2005, c. 75, §§ 2, 3, eff. Aug. 29, 2005.)

NY CIV RTS §§ 40-, 40-D, 47 and 47-B

Mckinney's Consolidated Laws of New York
Annotated Currentness
Civil Rights Law (Refs & Annos)
Chapter 6. Of the Consolidated Laws
Article 4. Equal Rights in Places of Public
Accommodation and Amusement (Refs & Annos)

§ 40-c. Discrimination

1. All persons within the jurisdiction of this state shall be entitled to the equal protection of the laws of this state or any subdivision thereof.

2. No person shall, because of race, creed, color, national origin, sex, marital status, sexual orientation or disability, as such term is defined in section two hundred ninety-two of the executive law, be subjected to any discrimination in his or her civil rights, or to any harassment, as defined in section 240.25 of the penal law, in the exercise thereof, by any other person or by any firm, corporation or institution, or by the state or any agency or subdivision of the state.

CREDIT(S)

(Added L.1965, c. 1031, § 19; amended L.1981, c. 870, § 1; L.1982, c. 720, § 1; L.2002, c. 2, § 15, eff. Jan. 16, 2003.)

<Laws 1909, Chapter 14>

Mckinney's Consolidated Laws of New York
Annotated Currentness
Civil Rights Law (Refs & Annos)
Chapter 6. Of the Consolidated Laws
Article 4. Equal Rights in Places of Public
Accommodation and Amusement (Refs & Annos)

§ 40-d. Penalty for violation

Any person who shall violate any of the provisions of the foregoing section, or subdivision three of section 240.30 or section 240.31 of the penal law, or who shall aid or incite the violation of any of said provisions shall for each and every violation thereof be liable to a penalty of not less than one hundred dollars nor more than five hundred dollars, to be recovered by the person aggrieved thereby in any court of competent jurisdiction in the county in which the defendant shall reside. In addition, any

person who shall violate any of the provisions of the foregoing section shall be deemed guilty of a class A misdemeanor. At or before the commencement of any action under this section, notice thereof shall be served upon the attorney general.

CREDIT(S)

(Added L.1965, c. 1031, § 20; amended L.1981, c. 870, § 2; L.1982, c. 191, § 3.)

<Laws 1909, Chapter 14>

Mckinney's Consolidated Laws of New York
Annotated Currentness
Civil Rights Law (Refs & Annos)
Chapter 6. Of the Consolidated Laws
Article 4-B. Rights of Persons with a Disability
Accompanied by Guide Dogs, Hearing Dogs or
Service Dogs (Refs & Annos)

§ 47. Use of public facilities by persons with a disability

1. No person shall be denied admittance to and/or the equal use of and enjoyment of any public facility solely because said person is a person with a disability and is accompanied by a guide dog, hearing dog or service dog.

2. For the purposes of this section the term "public facility" shall include, but shall not be limited to, all modes of public and private transportation, all forms of public and private housing accommodations whether permanent or temporary, buildings to which the public is invited or permitted, including those maintained by the state or by any political subdivision thereof, all educational facilities and institutions, including those maintained by the state or by any political subdivision thereof, all places where food is offered for sale, all theatres, including both live playhouses and motion picture establishments and all other places of public accommodations, convenience, resort, entertainment, or business to which the general public or any classification of persons therefrom is normally or customarily invited or permitted.

CREDIT(S)

(Added L.1976, c. 469, § 2; amended L.1979, c. 491, § 4; L.1986, c. 404, § 10.)

<Laws 1909, Chapter 14>
Mckinney's Consolidated Laws of New York
Annotated Currentness
Civil Rights Law (Refs & Annos)
Chapter 6. Of the Consolidated Laws
Article 4-B. Rights of Persons with a Disability
Accompanied by Guide Dogs, Hearing Dogs or
Service Dogs (Refs & Annos)

§ 47-b. Miscellaneous provisions

1. Persons with a disability accompanied by guide dogs, hearing dogs or service dogs shall be guaranteed the right to have such dogs in their immediate custody while exercising any of the rights and privileges set forth in this article. Blind persons shall, further, have the right to carry a cane in their immediate custody while exercising any of the rights and privileges set forth in this section.

2. No person or legal entity, public or private, shall attempt to impose or maintain any direct or indirect additional charge for the admittance of a guide dog, hearing dog or service dog accompanying a person with a disability, nor shall any conditions or restrictions not specifically set forth in this article be imposed on the person's rights as set forth herein.

3. Persons qualified to train dogs to aid and guide persons with a disability, while engaged in such training activities, shall have the same rights and privileges set forth for persons with a disability in this article.

4. The term "guide dog", "hearing dog" or "service dog" shall mean a dog which is properly harnessed and has been or is being trained by a qualified person, to aid and guide a person with a disability.

5. For the purposes of this article the term "disability" shall have the same meaning as provided for in subdivision twenty-one of section two hundred ninety-two of the executive law.

6. Any law, rule, or regulation conflicting with any provision of this article is, to the extent of said conflict only, deemed to be superseded by the provisions of this article.

CREDIT(S)

(Added L.1976, c. 469, § 2; amended L.1979, c. 358, § 1; amended L.1979, c. 358, § 1; L.1979, c. 491, § 4; L.1986, c. 404, § 10.)

<Laws 1909, Chapter 14>

Appendix C

New York City, N.Y., Code § 8-107

**NEW YORK CITY CHARTER, CODE,
AMENDMENTS & RULES
NEW YORK CITY ADMINISTRATIVE CODE
TITLE 8. CIVIL RIGHTS
CHAPTER 1. COMMISSION ON HUMAN
RIGHTS.**

Current through Local Laws 58 of 2006 and
Chapters 1 - 750 of the
Laws of the State of New York for 2006.

§ 8-107. Unlawful discriminatory practices.

1. Employment. It shall be an unlawful discriminatory practice:

(a) For an employer or an employee or agent thereof, because of the actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, sexual orientation or alienage or citizenship status of any person, to refuse to hire or employ or to bar or to discharge from employment such person or to discriminate against such person in compensation or in terms, conditions or privileges of employment.

(b) For an employment agency or an employee or agent thereof to discriminate against any person because of such person's actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, sexual orientation or alienage or citizenship status in receiving, classifying, disposing or otherwise acting upon applications for its services or in referring an applicant or applicants for its services to an employer or employers.

© For a labor organization or an employee or agent thereof, because of the actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, sexual orientation or alienage or citizenship status of any person, to exclude or to expel from its membership such person or to discriminate in any way against any of its members or against any employer or any person employed by an employer.

(d) For any employer, labor organization or employment agency or an employee or agent thereof to declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to age, race, creed, color, national origin, gender, disability, marital status, partnership status, sexual orientation or alienage or citizenship status, or any intent to make any such limitation, specification or discrimination.

(e) The provisions of this subdivision and subdivision two of this section: (i) as they apply to employee benefit plans, shall not be construed to preclude an employer from observing the provisions of any plan covered by the federal employment retirement income security act of nineteen hundred seventy-four that is in compliance with applicable federal discrimination laws where the application of the provisions of such subdivisions to such plan would be preempted by such act; (ii) shall not preclude the varying of insurance coverages according to an employee's age; (iii) shall not be construed to affect any retirement policy or system that is permitted pursuant to paragraph (e) and (f) of subdivision three-a of section two hundred ninety-six of the executive law; (iv) shall not be construed to affect the retirement policy or system of an employer where such policy or system is not a subterfuge to evade the purposes of this chapter.

(f) The provisions of this subdivision shall not govern the employment by an employer of his or her parents, spouse, domestic partner, or children; provided, however, that such family members shall be counted as persons employed by an employer for the purposes of subdivision five of section 8-102 of this chapter.

2. Apprentice training programs. It shall be an unlawful discriminatory practice for an employer, labor organization, employment agency or any joint labor-management

committee controlling apprentice training

(a) To select persons for an apprentice training program registered with the state of New York on any basis other than their qualifications, as determined by objective criteria which permit review.

(b) To deny to or withhold from any person because of his or her actual or perceived race, creed, color, national origin, gender, age, disability, marital status, partnership status, sexual orientation or alienage or citizenship status the right to be admitted to or participate in a guidance program, an apprentice training program, on-the-job training program, or other occupational training or retraining program.

©) To discriminate against any person in his or her pursuit of such program or to discriminate against such a person in the terms, conditions or privileges of such program because of actual or perceived race, creed, color, national origin, gender, age, disability, marital status, partnership status, sexual orientation or alienage or citizenship status.

(d) To declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to use any form of application for such program or to make any inquiry in connection with such program which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, gender, age, disability, marital status, partnership status, sexual orientation or alienage or citizenship status, or any intent to make any such limitation, specification or discrimination.

3. Employment; religious observance. (a) It shall be an unlawful discriminatory practice for an employer or an employee or agent thereof to impose upon a person as a condition of obtaining or retaining employment any terms or conditions, compliance with which would require such person to violate, or forego a practice of, his or her creed or religion, including but not limited to the observance of any particular day or days or any portion thereof as a sabbath or holy day or the observance of any religious custom or usage, and the employer shall make reasonable accommodation to the

programs or an employee or agent thereof: religious needs of such person. Without in any way limiting the foregoing, no person shall be required to remain at his or her place of employment during any day or days or portion thereof that, as a requirement of such person's religion, he or she observes as a sabbath or other holy day, including a reasonable time prior and subsequent thereto for travel between his or her place of employment and his or her home, provided, however, that any such absence from work shall, wherever practicable in the judgment of the employer, be made up by an equivalent amount of time at some other mutually convenient time.

(b) "Reasonable accommodation", as used in this subdivision, shall mean such accommodation to an employee's or prospective employee's religious observance or practice as shall not cause undue hardship in the conduct of the employer's business. The employer shall have the burden of proof to show such hardship.

4. Public accommodations. a. It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place or provider of public accommodation, because of the actual or perceived race, creed, color, national origin, age, gender, disability, marital status, partnership status, sexual orientation or alienage or citizenship status of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof, or, directly or indirectly, to make any declaration, publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement, to the effect that any of the accommodations, advantages, facilities and privileges of any such place or provider shall be refused, withheld from or denied to any person on account of race, creed, color, national origin, age, gender, disability, marital status, partnership status, sexual orientation or alienage or citizenship status or that the patronage or custom of any person belonging to, purporting to be, or perceived to be, of any particular race, creed, color, national origin, age, gender, disability, marital status, partnership status, sexual orientation or

alienage or citizenship status is unwelcome, objectionable or not acceptable, desired or

b. Notwithstanding the foregoing, the provisions of this subdivision shall not apply, with respect to age or gender, to places or providers of public accommodation where the commission grants an exemption based on bona fide considerations of public policy.

c. The provisions of this subdivision relating to discrimination on the basis of gender shall not prohibit any educational institution subject to this subdivision from making gender distinctions which would be permitted (i) for educational institutions which are subject to section thirty-two hundred one-a of the education law or any rules or regulations promulgated by the state commissioner of education relating to gender or (ii) under sections 86.32, 86.33 and 86.34 of title forty-five of the code of federal regulations for educational institutions covered thereunder.

d. Nothing in this subdivision shall be construed to preclude an educational institution--other than a publicly-operated educational institution--which establishes or maintains a policy of educating persons of one gender exclusively from limiting admissions to students of that gender.

e. The provisions of this subdivision relating to disparate impact shall not apply to the use of standardized tests as defined by section three hundred forty of the education law by an educational institution subject to this subdivision provided that such test is used in the manner and for the purpose prescribed by the test agency which designed the test.

f. The provisions of this subdivision as they relate to unlawful discriminatory practices by educational institutions shall not apply to matters that are strictly educational or pedagogic in nature.

5. Housing accommodations, land, commercial space and lending practices. (a) Housing accommodations. It shall be an unlawful discriminatory practice for the owner, lessor, lessee, sublessee, assignee, or managing agent of, or other person having the right to sell, rent or lease or approve the sale, rental or lease of a housing accommodation, constructed or to be

solicited.

constructed, or an interest therein, or any agent or employee thereof:

(1) To refuse to sell, rent, lease, approve the sale, rental or lease or otherwise deny to or withhold from any person or group of persons such a housing accommodation or an interest therein because of the actual or perceived race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, partnership status, or alienage or citizenship status of such person or persons, or because children are, may be or would be residing with such person or persons.

(2) To discriminate against any person because of such person's actual or perceived race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, partnership status, or alienage or citizenship status, or because children are, may be or would be residing with such person, in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation or an interest therein or in the furnishing of facilities or services in connection therewith.

(3) To declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such a housing accommodation or an interest therein or to make any record or inquiry in conjunction with the prospective purchase, rental or lease of such a housing accommodation or an interest therein which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, partnership status, or alienage or citizenship status, or whether children are, may be, or would be residing with a person, or any intent to make such limitation, specification or discrimination.

(4) The provisions of this paragraph (a) shall not apply:

(1) to the rental of a housing accommodation, other than a publicly-assisted housing accommodation, in a building which contains housing

accommodations for not more than two families living independently of each other, if the owner members of the owner's family reside in one of such housing accommodations, and if the available housing (2) to the rental of a room or rooms in a housing accommodation, other than a publicly-assisted housing accommodation, if such rental is by the occupant of the housing accommodation or by the owner of the housing accommodation and the owner or members of the owner's family reside in such housing accommodation.

(b) Land and commercial space. It shall be an unlawful discriminatory practice for the owner, lessor, lessee, sublessee, or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent, or lease, or approve the sale, rental or lease of land or commercial space or an interest therein, or any agency or employee thereof:

(1) To refuse to sell, rent, lease, approve the sale, rental or lease or otherwise deny or to withhold from any person or group of persons land or commercial space or an interest therein because of the actual or perceived race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, partnership status, or alienage or citizenship status of such person or persons, or because children are, may be or would be residing with such person or persons.

(2) To discriminate against any person because of actual or perceived race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, partnership status, or alienage or citizenship status, or because children are, may be or would be residing with such person, in the terms, conditions or privileges of the sale, rental or lease of any such land or commercial space or an interest therein or in the furnishing of facilities or services in connection therewith.

(3) To declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such land or commercial space or an interest therein or to make any record or inquiry in connection with the prospective purchase, rental or lease of such

accommodation has not been publicly advertised, listed, or otherwise offered to the general public; or

land or commercial space or an interest therein which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, partnership status, or alienage or citizenship status, or whether children are, may be or would be residing with such person, or any intent to make any such limitation, specification or discrimination.

© Real estate brokers. It shall be an unlawful discriminatory practice for any real estate broker, real estate salesperson or employee or agent thereof:

(1) To refuse to sell, rent or lease any housing accommodation, land or commercial space or an interest therein to any person or group of persons or to refuse to negotiate for the sale, rental or lease, of any housing accommodation, land or commercial space or an interest therein to any person or group of persons because of the actual or perceived race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, partnership status, or alienage or citizenship status of such person or persons, or because children are, may be or would be residing with such person or persons, or to represent that any housing accommodation, land or commercial space or an interest therein is not available for inspection, sale, rental or lease when in fact it is so available, or otherwise to deny or withhold any housing accommodation, land or commercial space or an interest therein or any facilities of any housing accommodation, land or commercial space or an interest therein from any person or group of persons because of the actual or perceived race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, partnership status, or alienage or citizenship status of such person or persons, or because children are, may be or would be residing with such person or persons.

(2) To declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to

use any form of application for the purchase, rental or lease of any housing accommodation, land or commercial space or an interest therein or to make any record or inquiry in connection with the prospective purchase, rental or lease of any housing accommodation, land or commercial space or an interest therein which expresses, directly or indirectly, any limitation, specification or

(3) To induce or attempt to induce any person to sell or rent any housing accommodation, land or commercial space or an interest therein by representations, explicit or implicit, regarding the entry or prospective entry into the neighborhood or area of a person or persons of any race, creed, color, gender, age, disability, sexual orientation, marital status, partnership status, national origin, alienage or citizenship status or a person or persons with whom children are, may be or would be residing.

(d) Lending practices. It shall be an unlawful discriminatory practice for any person, bank, trust company, private banker, savings bank, industrial bank, savings and loan association, credit union, investment company, mortgage company, insurance company, or other financial institution or lender, doing business in the city and if incorporated regardless of whether incorporated under the laws of the state of New York, the United States or any other jurisdiction, or any officer, agent or employee thereof to whom application is made for a loan, mortgage or other form of financial assistance for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, land or commercial space or an interest therein:

(1) To discriminate against such applicant or applicants because of the actual or perceived race, creed, color, national origin, gender, disability, sexual orientation, age, marital status, partnership status, or alienage or citizenship status of such applicant or applicants or of any member, stockholder, director, officer or employee of such applicant or applicants, or of the occupants or tenants or prospective occupants or tenants of such housing accommodation, land or commercial space, or because children are, may be or would be residing with such applicant or other person, in the granting, withholding, extending or renewing, or in the fixing of rates, terms or

discrimination as to race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, partnership status, or alienage or citizenship status, or to whether children are, may be or would be residing with a person, or any intent to make such limitation, specification or discrimination.

conditions of any such financial assistance or in the appraisal of any housing accommodation, land or commercial space or an interest therein.

(2) To use any form of application for a loan, mortgage, or other form of financial assistance, or to make any record or inquiry in connection with applications for such financial assistance, or in connection with the appraisal of any housing accommodation, land or commercial space or an interest therein, which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, gender, disability, sexual orientation, age, marital status, partnership status, or alienage or citizenship status, or whether children are, may be, or would be residing with a person.

(e) Real estate services. It shall be an unlawful discriminatory practice to deny a person access to, or membership in or participation in, a multiple listing service, real estate brokers' organization, or other service because of the actual or perceived race, creed, color, national origin, gender, disability, sexual orientation, age, marital status, partnership status, or alienage or citizenship status of such person or because children are, may be or would be residing with such person.

(f) Real estate related transactions. It shall be an unlawful discriminatory practice for any person whose business includes the appraisal of housing accommodations, land or commercial space or interest therein or an employee or agent thereof to discriminate in making available or in the terms or conditions of such appraisal on the basis of the actual or perceived race, creed, color, national origin, gender, disability, sexual orientation, age, marital status, partnership status, or alienage or citizenship status of any person or because children are, may be or would be residing with such person.

(g) Applicability; persons under eighteen years of age. The provisions of this subdivision, as they relate to unlawful discriminatory practices in housing accommodations, land and commercial space or an interest therein and lending practices on the basis of age, shall not apply to unemancipated persons under the age of eighteen years.

(l) Applicability; senior citizen housing. The provisions of this subdivision with respect to discrimination on the basis of age shall not apply to the restriction of the sale, rental or lease of any housing accommodation, land or commercial space or an interest therein exclusively to persons fifty-five years of age or older. This paragraph shall not be construed to permit discrimination against such persons fifty-five years of age or older on the basis of whether children are, may be or would be residing in such housing accommodation or land or an interest therein unless such discrimination is otherwise permitted pursuant to paragraph (h) of this subdivision.

(j) Applicability; dormitory residence operated by educational institution. The provisions of this subdivision relating to discrimination on the basis of gender in housing accommodations shall not prohibit any educational institution from making gender distinctions in dormitory residences which would be permitted under sections 86.32 and 86.33 of title forty-five of the code of federal regulations for educational institutions covered thereunder.

(k) Applicability; dormitory-type housing accommodations. The provisions of this subdivision which prohibit distinctions on the basis of gender and whether children are, may be or would be residing with a person shall not apply to dormitory-type housing accommodations including, but not limited to, shelters for the homeless where such distinctions are intended to recognize generally accepted values of personal modesty and privacy or to protect the health, safety or welfare of families with children.

(l) Exemption for special needs of particular age group in publicly-assisted housing accommodations. Nothing in this subdivision

(h) Applicability; discrimination against persons with children. The provisions of this subdivision with respect to discrimination against persons with whom children are, may be or would be residing shall not apply to housing for older persons as defined in paragraphs two and three of subdivision (b) of section thirty-six hundred seven of title forty-two of the United States code and any regulations promulgated thereunder.

shall restrict the consideration of age in the rental of publicly-assisted housing accommodations if the state division of human rights grants an exemption pursuant to section two hundred ninety-six of the executive law based on bona fide considerations of public policy for the purpose of providing for the special needs of a particular age group without the intent of prejudicing other age groups; provided however, that this paragraph shall not be construed to permit discrimination on the basis of whether children are, may be or would be residing in such housing accommodations unless such discrimination is otherwise permitted pursuant to paragraph (h) of this section.

(m) Applicability; use of criteria or qualifications in publicly-assisted housing accommodations. The provisions of this subdivision shall not be construed to prohibit the use of criteria or qualifications of eligibility for the sale, rental, leasing or occupancy of publicly-assisted housing accommodations where such criteria or qualifications are required to comply with federal or state law, or are necessary to obtain the benefits of a federal or state program, or to prohibit the use of statements, advertisements, publications, applications or inquiries to the extent that they state such criteria or qualifications or request information necessary to determine or verify the eligibility of an applicant, tenant, purchaser, lessee or occupant.

(n) Discrimination on the basis of occupation prohibited in housing accommodations. Where a housing accommodation or an interest therein is sought or occupied exclusively for residential purposes, the provisions of this subdivision shall be construed to prohibit discrimination in the sale, rental, or leasing of such housing

accommodation or interest therein and in the terms, conditions and privileges of the sale, rental or leasing of such housing accommodation or interest therein and in the furnishing of facilities or services in connection therewith, on account of a person's occupation.

7. Retaliation. It shall be an unlawful discriminatory practice for any person engaged in any activity to which this chapter applies to retaliate or discriminate in any manner against any person because such person has (i) opposed any practice forbidden under this chapter, (ii) filed a complaint, testified or assisted in any proceeding under this chapter, (iii) commenced a civil action alleging the commission of an act which would be an unlawful discriminatory practice under this chapter, (iv) assisted the commission or the corporation counsel in an investigation commenced pursuant to this title, or (v) provided any information to the commission pursuant to the terms of a conciliation agreement made pursuant to section 8-115 of this chapter. The retaliation or discrimination complained of under this subdivision need not result in an ultimate action with respect to employment, housing or a public accommodation or in a materially adverse change in the terms and conditions of employment, housing, or a public accommodation, provided, however, that the retaliatory or discriminatory act or acts complained of must be reasonably likely to deter a person from engaging in protected activity.

8. Violation of conciliation agreement. It shall be an unlawful discriminatory practice for any party to a conciliation agreement made pursuant to section 8-115 of this chapter to violate the terms of such agreement.

9. Licenses and permits. It shall be an unlawful discriminatory practice:

(a) Except as otherwise provided in paragraph ©, for an agency authorized to issue a license or permit or an employee thereof to discriminate against an applicant for a license or permit because of the actual or perceived race, creed, color, national origin, age, gender, marital status, partnership status, disability, sexual

6. Aiding and abetting. It shall be an unlawful discriminatory practice for any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this chapter, or to attempt to do so.

orientation or alienage or citizenship status of such applicant.

(b) Except as otherwise provided in paragraph ©, for an agency authorized to issue a license or permit or an employee thereof to declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to use any form of application for a license or permit or to make any inquiry in connection with any such application, which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, age, gender, marital status, partnership status, disability, sexual orientation or alienage or citizenship status, or any intent to make any such limitation, specification or discrimination.

© Nothing contained in this subdivision shall be construed to bar an agency authorized to issue a license or permit from using age or disability as a criterion for determining eligibility for a license or permit when specifically required to do so by any other provision of law.

10. Criminal conviction. (a) It shall be unlawful discriminatory practice for any person to deny any license or permit or employment to any person by reason of his or her having been convicted of one or more criminal offenses, or by reason of a finding of a lack of "good moral character" which is based on his or her having been convicted of one or more criminal offenses, when such denial is in violation of the provisions of article twenty-three-a of the correction law.

(b) Pursuant to section seven hundred fifty-five of the correction law, the provisions of this subdivision shall be enforceable against public agencies by a proceeding brought pursuant to article seventy-eight of the civil practice law and rules, and the provisions of this subdivision shall be enforceable against private employers by the commission through the administrative

procedure provided for in this chapter or as provided in chapter five of this title. For purposes of this paragraph only, the terms "public agency" and "private employer" shall have the meaning given such terms in section seven hundred fifty of the correction law.

11. Arrest record. It shall be an unlawful discriminatory practice, unless specifically required or permitted by any other law, for any person to make any inquiry about, whether in any form of application or otherwise, or to act upon adversely to the person involved, any arrest or criminal accusation of such person not then pending against that person which was followed by a

12. Religious principles. Nothing contained in this section shall be construed to bar any religious or denominational institution or organization or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, from limiting employment or sales or rentals of housing accommodations or admission to or giving preference to persons of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

13. Employer liability for discriminatory conduct by employee, agent or independent contractor. a. An employer shall be liable for an unlawful discriminatory practice based upon the conduct of an employee or agent which is in violation of any provision of this section other than subdivisions one and two of this section.

b. An employer shall be liable for an unlawful discriminatory practice based upon the conduct of an employee or agent which is in violation of subdivision one or two of this section only where:

(1) the employee or agent exercised managerial or supervisory responsibility; or

(2) the employer knew of the employee's or agent's discriminatory conduct, and acquiesced in such conduct or failed to take immediate and appropriate corrective action; an employer shall be deemed to have knowledge of an employee's or agent's

termination of that criminal action or proceeding in favor of such person, as defined in subdivision two of section 160.50 of the criminal procedure law, in connection with the licensing, employment or providing of credit to such person; provided, however, that the prohibition of such inquiries or adverse action shall not apply to licensing activities in relation to the regulation of guns, firearms and other deadly weapons or in relation to an application for employment as a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law.

discriminatory conduct where that conduct was known by another employee or agent who exercised managerial or supervisory responsibility; or

(3) the employer should have known of the employee's or agent's discriminatory conduct and failed to exercise reasonable diligence to prevent such discriminatory conduct.

c. An employer shall be liable for an unlawful discriminatory practice committed by a person employed as an independent contractor, other than an agent of such employer, to carry out work in furtherance of the employer's business enterprise only where such discriminatory conduct was committed in the course of such employment and the employer had actual knowledge of and acquiesced in such conduct.

d. Where liability of an employer has been established pursuant to this section and is based solely on the conduct of an employee, agent, or independent contractor, the employer shall be permitted to plead and prove to the discriminatory conduct for which it was found liable it had:

(I) Established and complied with policies, programs and procedures for the prevention and detection of unlawful discriminatory practices by employees, agents and persons employed as independent contractors, including but not limited to:

(I) A meaningful and responsive procedure for investigating complaints of discriminatory practices by employees, agents and persons employed as independent contractors and for

taking appropriate action against those persons who are found to have engaged in such practices;

(ii) A firm policy against such practices which is effectively communicated to employees, agents and persons employed as independent contractors;

(iii) A program to educate employees and agents about unlawful discriminatory practices under local, state, and federal law; and

(iv) Procedures for the supervision of employees and agents and for the oversight of persons employed as independent contractors specifically directed at the prevention and detection of such practices; and

f. The commission may establish by rule policies, programs and procedures which may be implemented by employers for the prevention and detection of unlawful discriminatory practices by employees, agents and persons employed as independent contractors. Notwithstanding any other provision of law to the contrary, an employer found to be liable for an unlawful discriminatory practice based solely on the conduct of an employee, agent or person employed as an independent contractor who pleads and proves that such policies, programs and procedures had been implemented and complied with at the time of the unlawful conduct shall not be liable for any civil penalties which may be imposed pursuant to this chapter or any civil penalties or punitive damages which may be imposed pursuant to chapter four or five of this title for such unlawful discriminatory practice.

14. Applicability; alienage or citizenship status. Notwithstanding any other provision of this section, it shall not be an unlawful discriminatory practice for any person to discriminate on the ground of alienage or citizenship status, or to make any inquiry as to a person's alienage or citizenship status, or to give preference to a person who is a citizen or a national of the United States over an equally qualified person who is an alien, when such discrimination is required or when such preference is expressly permitted by any law or regulation of the United States, the state of

(2) A record of no, or relatively few, prior incidents of discriminatory conduct by such employee, agent or person employed as an independent contractor or other employees, agents or persons employed as independent contractors.

e. The demonstration of any or all of the factors listed above in addition to any other relevant factors shall be considered in mitigation of the amount of civil penalties to be imposed by the commission pursuant to this chapter or in mitigation of civil penalties or punitive damages which may be imposed pursuant to chapter four or five of this title and shall be among the factors considered in determining an employer's liability under subparagraph three of paragraph b of this subdivision.

New York or the city of New York, and when such law or regulation does not provide that state or local law may be more protective of aliens; provided, however, that this provision shall not prohibit inquiries or determinations based on alienage or citizenship status when such actions are necessary to obtain the benefits of a federal program. An applicant for a license or permit issued by the city of New York may be required to be authorized to work in the United States whenever by law or regulation there is a limit on the number of such licenses or permits which may be issued.

15. Applicability; persons with disabilities.

(a) Requirement to make reasonable accommodation to the needs of persons with disabilities. Except as provided in paragraph (b), any person prohibited by the provisions of this section from discriminating on the basis of disability shall make reasonable accommodation to enable a person with a disability to satisfy the essential requisites of a job or enjoy the right or rights in question provided that the disability is known or should have been known by the covered entity.

(b) Affirmative defense in disability cases. In any case where the need for reasonable accommodation is placed in issue, it shall be an affirmative defense that the person aggrieved by the alleged discriminatory practice could not, with reasonable

accommodation, satisfy the essential requisites of the job or enjoy the right or rights in question.

© Use of drugs or alcohol. Nothing contained in this chapter shall be construed to prohibit a covered entity from (i) prohibiting the illegal use of drugs or the use of alcohol at the workplace or on duty impairment from the illegal use of drugs or the use of alcohol, or (ii) conducting drug testing which is otherwise lawful.

16. Applicability; sexual orientation. Nothing in this chapter shall be construed to:

a. Restrict an employer's right to insist that an employee meet bona fide job-related qualifications of employment;

b. Authorize or require employers to establish affirmative action quotas based on sexual orientation or to make inquiries regarding the sexual orientation of current or prospective employees;

(1) the commission or a person who may bring an action under chapter four or five of this title demonstrates that a policy or practice of a covered entity or a group of policies or practices of a covered entity results in a disparate impact to the detriment of any group protected by the provisions of this chapter; and

(2) the covered entity fails to plead and prove as an affirmative defense that each such policy or practice bears a significant relationship to a significant business objective of the covered entity or does not contribute to the disparate impact; provided, however, that if the commission or such person who may bring an action demonstrates that a group of policies or practices results in a disparate impact, the commission or such person shall not be required to demonstrate which specific policies or practices within the group results in such disparate impact; provided further, that a policy or practice or group of policies or practices demonstrated to result in a disparate impact shall be unlawful where the commission or such person who may bring an action produces substantial evidence that an alternative policy or practice with less disparate impact is available to the covered entity and the covered entity fails to prove that

c. Limit or override the present exemptions in the human rights law, including those relating to employment concerns employing fewer than four persons, as provided in subdivision five of section 8-102; owner-occupied dwellings, as provided in paragraph (a) of subdivision five of section 8-107; or any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, as provided in subdivision twelve of section 8-107 of this chapter;

d. Make lawful any act that violates the penal law of the state of New York; or

e. Endorse any particular behavior or way of life.

17. Disparate impact.

a. An unlawful discriminatory practice based upon disparate impact is established when:

such alternative policy or practice would not serve the covered entity as well. "Significant business objective" shall include, but not be limited to, successful performance of the job.

b. The mere existence of a statistical imbalance between a covered entity's challenged demographic composition and the general population is not alone sufficient to establish a prima facie case of disparate impact violation unless the general population is shown to be the relevant pool for comparison, the imbalance is shown to be statistically significant and there is an identifiable policy or practice or group of policies or practices that allegedly causes the imbalance.

c. Nothing contained in this subdivision shall be construed to mandate or endorse the use of quotas; provided, however, that nothing contained in this subdivision shall be construed to limit the scope of the commission's authority pursuant to sections 8-115 and 8-120 of this chapter or to affect court-ordered remedies or settlements that are otherwise in accordance with law.

18. Unlawful boycott or blacklist. It shall be an unlawful discriminatory practice (i) for any

person to discriminate against, boycott or blacklist or to refuse to buy from, sell to or trade with, any person, because of such person's actual or perceived race, creed, color, national origin, gender, disability, age, marital status, partnership status, sexual orientation or alienage or citizenship status or of such person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers or customers, or (ii) for any person willfully to do any act or refrain from doing any act which enables any such person to take such action. This subdivision shall not apply to:

(a) Boycotts connected with labor disputes;

(b) Boycotts to protest unlawful discriminatory practices; or

© Any form of expression that is protected by the First Amendment.

19. Interference with protected rights. It shall be an unlawful discriminatory practice for any person to coerce, intimidate, threaten or interfere with, or attempt to coerce, intimidate, threaten or interfere with, any person in the exercise or enjoyment of, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected pursuant to this section.

20. Relationship or association. The provisions of this section set forth as unlawful discriminatory practices shall be construed to prohibit such discrimination against a person because of the actual or perceived race, creed, color, national origin, disability, age, sexual orientation or alienage or citizenship status of a person with whom such person has a known relationship or association.

Appendix D

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Allen, K., Izzo, L., Shykoff, B.E. (1999). Pet dogs or cats, but not ACE inhibitor therapy, attenuate blood pressure and rennin reactivity among hypertensive stockbrokers: A controlled randomized trial Paper presented at the American Heart Association conference in Atlanta, Nov. 6, 1999.

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Allen, K.M., Blascovich J., Tomaka, J. & Kelsey, R.M. (1991). Presence of human friends and pet dogs as moderators of autonomic responses to stress in women. *Journal of Personality and Social Psychology*, 61, 582-589.

Anderson, W.P., Reid, C.M., Jennings, G.L. (1992). Pet ownership and risk factors for cardiovascular disease. *Medical Journal of Australia*, 157, 298-301.

Baun, M.M., Oetting, K. & Bergstrom, N. (1991). Health benefits of companion animals in relation to physiologic indices of relaxation. *Holistic Nursing Practice*, 5(2) 16-23.

Beck, A.M., Rowan, A.N. (1994). The health benefits of human-animal interactions. *Anthrozoos* 7 (2), 85-88.

Bodmer, N.M. (1998). Impact of pet ownership on the well-being of adolescents with few familial resources. In *Companion Animals in Human Health*. Eds. C.C. Wilson, D.C. Turner, pp. 237-247; Sage Publications, Thousand Oaks, CA. (Available from Dogwise.)

Bulcroft, K. (1990). The benefits of animals to our lives: A four-part review. Part I. Pets in the American family. *People, Animals, Environment*, 8 (4), 13-14.

Bustad, L.K. (1996). Recent discoveries about our relationship with the natural world. In *Compassion: Our Last Great Hope (DLT200)*, 2nd edition, pp. 115-121, Delta Society, Renton, WA. (Available exclusively from Delta Society.)

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Appendix E

VPHS-33 (6/03)

Application for a New York City Dog License

Complete this form and mail with your check or money order (payable to the New York City Department of Health and Mental Hygiene) to:



New York City Department of Health and Mental Hygiene
 Veterinary Public Health Services
 P.O. Box 4768, Church Street Station
 New York, NY 10261-4768

Instrucciones en español en la página siguiente

FOR OFFICE USE ONLY			
LICENSE NUMBER		DATE ISSUED	
		MONTH	DAY
		YEAR	
APPROVAL STATUS		FEE	
<input type="checkbox"/> 1 APPROVED <input type="checkbox"/> 2 PENDING <input type="checkbox"/> 3 DISAPPROVED		DOLLARS CENTS	
		SPAY/NEUTER PROOF SUBMITTED <input type="checkbox"/> YES <input type="checkbox"/> NO	

Check one box below and submit correct payment.
 (Submit PROOF of Spay/Neuter or Notarized Affidavit on back.)

DOG LICENSE FEE (Spayed/Neutered) \$ 8.50

DOG LICENSE FEE (Not Spayed/Neutered)* \$ 11.50

SERVICE DOG TAG FEE † \$ -0-

TOTAL AMOUNT ENCLOSED \$ _____

NOTE ON CHARGES

* New York State law requires that a surcharge of \$3.00 be added to the licensing fee for all dogs not spayed or neutered. If your dog is spayed or neutered you must submit proof from your veterinarian with this application or complete and notarize the affidavit on the reverse side of this form.

† There is no fee charged for a regular dog license or a service dog tag when an applicant submits a statement on letterhead from the applicant's physician describing his/her disability that requires the assistance of a service dog.

*Falsification of any statement made herein is an offense punishable by a fine or imprisonment or both (NYC Administrative Code 10-154)
 The undersigned makes the following statement in accordance with provisions of the New York City Dog License Law.*

OWNER INFORMATION	NAME OF OWNER (LAST NAME)		(FIRST NAME)		INIT.
	HOME ADDRESS				APT. NO.
	CITY			STATE	ZIP CODE
	SIGNATURE OF LICENSEE SIGN HERE		APPLICATION DATE		TELEPHONE
MONTH			DAY	YEAR	AREA CODE

DESCRIPTION OF DOG	NAME OF DOG		SEX OF DOG	YEAR OF BIRTH
			<input type="checkbox"/> MALE <input type="checkbox"/> FEMALE	
	BREED			
	SPAYED/NEUTERED? <input type="checkbox"/> YES <input type="checkbox"/> NO <small>To avoid \$3 surcharge, submit proof from your veterinarian or complete affidavit on reverse side.</small>	ATTACK OR GUARD TRAINED? <input type="checkbox"/> YES <input type="checkbox"/> NO <small>Attack/guard trained dogs must be registered with the Department of Health and Mental Hygiene. For an application call 3-1-1.</small>	COLORS OF DOG DOMINANT COLOR: BLACK BRINDLE RUST BLOND BROWN TAN BLUE GRAY WHITE ORANGE Example, a Dalmatian would be Dominant color White, Secondary color - Black. No third color.	
			TOTAL NUMBER OF DOGS IN HOUSEHOLD:	

Where did you obtain this application? VETERINARIAN PET SHOP ANIMAL SHELTER HEALTH DEPARTMENT WEBSITE OTHER _____

<p style="text-align: center;">NOTE:</p> <p>"If the permittee/licensee, or his employees or agents, refuses to answer questions in relation to this permit/license after being granted testimonial or use immunity, this permit/license may be revoked, or other appropriate action taken."</p>	<p>IF YOU NEED ADDITIONAL APPLICATIONS, PLEASE INDICATE AMOUNT:</p> <p style="text-align: center;">[] []</p>	<p>The New York City Department of Health and Mental Hygiene contracts with the Center for Animal Care and Control (CACC) for animal care and control in NYC. If you would like more information on animal care, rescue and adoption, please sign below to release your name and address to CACC so that they may contact you.</p> <p>SIGNATURE _____</p>
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INSTRUCCIONES PARA LLENAR LA SOLICITUD DE REGISTRO PARA PERROS

La falsificación de cualquiera de las declaraciones realizadas en la presente solicitud constituye un delito punible por multa o prisión o ambas sanciones (Código Administrativo de la Ciudad de Nueva York 10-154)

El que suscribe realiza la siguiente declaración de conformidad con las disposiciones de la Ley de Registro para Perros de la Ciudad de Nueva York.

NOTIFICACIÓN DE CARGOS
 * La ley del Estado de Nueva York requiere que se añada un cargo de \$3.00 al precio de la licencia de todo perro que no esté esterilizado. Si su perro está esterilizado usted debe someter con esta solicitud, una prueba certificada de su veterinario, o completar y notarizar la declaración jurada (affidavit) a la derecha.
 † No se cobra arancel alguno por el registro ordinario de un perro, aparte de la medalla de perro de servicio, cuando el solicitante presenta lo siguiente: "Declaración del médico del solicitante en papel con membrete donde se describe la discapacidad por la cual el solicitante necesita la asistencia de un perro de servicio."

En esta sección debe completar los datos de su perro.

- Primera línea, escriba el apellido y el nombre del dueño del perro.
- Segunda línea, escriba la dirección y número de apartamento del dueño.
- Tercera línea, escriba la ciudad, el estado y el código de área del dueño.
- Cuarta línea, firme en la casilla indicada, escriba la fecha y su número de teléfono.

En esta sección debe completar los datos de su perro.

- Primera línea, escriba Nombre, Sexo, Año de nacimiento de su perro.
- Segunda línea, escriba la raza de su perro.
- Tercera línea— Marque "si," si a su perro lo han esterilizado.
- Marque "si," si su perro está entrenado como perro de ataque o guardián.
- Escriba el color de su perro (se aceptan hasta tres colores). El primer color es el principal, luego el siguiente en importancia y el tercer color, si es necesario.
- Si su perro está vacunado contra la rabia marque la casilla que dice "si" y anote la fecha en que lo vacunaron.
- Anote el número total de perros que tiene actualmente en su casa.

A vuelta de correo, le mandaremos el certificado de registro.

If the dog indicated on the front of this dog license application was spayed/neutered or examined and found to be spayed/neutered by a veterinarian, the notarized affidavit below may be submitted in lieu of a certificate of spay/neuter. The affidavit must be complete and include name of owner, name and address of veterinarian, date of spay/neuter or examination, and be signed and notarized.

Notarized Affidavit for Spayed or Neutered Dog

_____ being duly sworn, says: I reside at the address and am the owner of the dog indicated on the front of this dog license application. This dog was spayed/neutered or examined and found to be spayed/neutered by Dr. _____, Veterinarian at _____, (Street, Number, City, State, Zip) _____ OR (Date) _____.

This affidavit is made to obtain a license for the dog referred to above.

Applicant signature

Sworn to before me this _____ day of _____ 20____.

Notary Public (Stamp & Signature)

Si el perro indicado en el frente de esta solicitud de registro ha sido esterilizado/castrado por un veterinario o ha sido examinado por un veterinario quien determinó que estaba esterilizado/ castrado, se podrá presentar la anterior declaración jurada certificada por escribano público en lugar del certificado de esterilización/castración. La declaración jurada debe ser completada, firmada y certificada por ante escribano público y la misma debe incluir el nombre del dueño, el nombre y dirección del veterinario, y la fecha de la esterilización/castración o examen.

NOTA:

"Si después de haberseles otorgado inmunidad testimonial o de uso, el beneficiario del permiso/licencia o sus empleados o agentes se negaran a responder a las preguntas relacionadas con este permiso/licencia, se podrá revocar este permiso/licencia o tomar cualquier otra medida adecuada."

El Departamento de Salud y Salud Mental de la Ciudad de Nueva York ha celebrado un contrato con el Center for Animal Care and Control o CACC (Centro para el Cuidado y Control de Animales) para el cuidado y control de los animales en la Ciudad de Nueva York. Si desea más información sobre el cuidado de los animales, el rescate y la adopción, por favor firme el frente de esta solicitud de registro para autorizar la comunicación de

This next article is the first place winner of the First Annual New York State Bar Association's, Committee on Animals and the Law, Student Writing Competition. Submissions for the Second Annual Student Writing Competition were accepted through June 15, 2009, and the Committee expects to announce a winner by the end of September, 2009. The Committee thanks the many outstanding students who submitted papers to both competitions.

The author of the winning article is Laurel McNeill, who currently resides in Suffolk County, New York and is starting her third year of law school at Hofstra University.

After having established a career as a paralegal, Ms. McNeill commenced law school at Hofstra University in 2006 to further pursue her ambitions. As a part-time evening student, Ms. McNeill found that managing a career and balancing the rigors of law, though often challenging was also a source of personal satisfaction. She states that her decision to become a lawyer was motivated by a desire to advance her career as well as an opportunity to one day combine it with her passion for animals and their welfare.

Ms. McNeill credits her grandfather for sparking her interest in elephants through his storytelling when she was a child. Therefore, the choice of this topic for her Animal Law class was effortless.

Ms. McNeill's career interests include actively working with legal organizations that aim to protect animals and collaborating with others in the field. In her own words she states:

"I am confident that in the years to come the relationship between humans and animals will be a stark contrast to how it has been historically understood and accepted. Laws affecting this relationship are an integral component of any meaningful change and it is a change that I endeavor to make and be a part of."

Giant Steps:

The African Elephant and The United States' Effect on The Survival of The Species

By: Laurel McNeill
Hofstra University School of Law
J.D. anticipated May 2010

Nature's great master-peece, an Elephant,
The only harmlesse great thing ...¹

Human fascination with elephants can be traced back for centuries, as evidenced by the stirring words of the seventeenth century poet John Donne. Perhaps it is due to their grandeur – they are the “largest land animals on earth”² – or the more recent scientific studies that reveal their capacity for humanistic traits – traveling in familial units,³ the care and nurture of their young,⁴ and the respect shown for their dead,⁵ some are even artists.⁶ “[T]he elephants of today are the relics of a once much more diverse family that ... inhabited [almost] every part of the earth”⁷ Sadly, the survival of the African elephant species is in question due to the effects of human behavior worldwide.

¹ MARTIN MEREDITH, *ELEPHANT DESTINY* 44 (Public Affairs 2003) (2001) (quoting JOHN DONNE, *THE PROGRESS OF THE SOUL* (1601)).

² National Geographic, African Elephant, <http://animals.nationalgeographic.com/animals/mammals/african-elephant.html> (last visited Dec. 7, 2007) (providing general information on elephants).

³ JULIET CLUTTON-BROCK, *DOMESTICATED ANIMALS FROM EARLY TIMES* 115 (1981). (“All elephants are highly social mammals that will remain together as an integrated family group over several generations.”). *Id.*

⁴ MEREDITH, *supra* note 1, at 3.

⁵ *Id.* at 31.

⁶ See The Asian Elephant Art & Conservation Project, <http://www.elephantart.com/catalog/default.php?cPath=48> (“[C]ollaboration with an African elephant, Renee, at the Toledo Zoo in Ohio in 1995. It was here that [the founders] first developed their method of teaching elephants to paint.”). *Id.* Mission statement – “The Asian Elephant Art & Conservation Project (AEACP) is a non-profit organization dedicated to saving the diminishing number of Asian elephants left on our planet through its work with domesticated elephants. The AEACP raises funds through donations and the sale of artwork created by elephants in order to fulfill its mission.” *Id.* at <http://www.elephantart.com/catalog/mission.php> (last visited Dec. 7, 2007).

⁷ CLUTTON-BROCK, *supra* note 3, at 113.

Why should we care about the continued existence of the African elephant? Why does it matter to us, or more precisely, why does it matter to the United States? In the 1900's the African elephant population was estimated at "over ten million animals,"⁸ compared to "fewer than 500,000 by the late 1980's".⁹ In the ten year span from 1979 through 1989 alone, the species was nearly decimated, and the total population was halved.¹⁰

Despite our reverence for the virtues of the elephant, our lust for the ivory they bear and our need to devour the very land they roam, have resulted in "African elephants [being] among the most persecuted animals on earth."¹¹ The effects of poaching for ivory, development of land that was once the elephant's habitat for human consumption and agriculture progression, and corruption in the government that should be protecting this natural resource are just some of the transgressions imposed on these great animals.

This persecution is not new; it has persisted over centuries, culminating in an eye opening reality that our interactions with the African elephant must change if there are to be any future interactions. As far back as the seventeenth century the elephant was regarded as "a subject in which moral virtues stand out, polity prevails, integrity is triumphant and torment and punishment the sole reward for vice."¹² All of this should concern those of us in the United States – half way across the globe – as well. "[W]ildlife ... do[es] not recognize national boundaries."¹³ Similarly, the United States'

⁸ U.S. Fish & Wildlife Service, African Elephant Conservation Fund, http://www.fws.gov/international/pdf/African_Elephant_jan06.pdf (2006) (providing summary and data regarding the African elephant Conservation Fund.).

⁹ *Id.*

¹⁰ See MEREDITH, *supra* note 1, at 4 (stating that the ivory trade was the major cause for extreme decline in the African elephant population during this time period.).

¹¹ *Id.* at 5.

¹² *Id.* at 42 (quoting S. DE PRIEZAC, HISTOIRE DES ELEPHANTS (1650)).

¹³ U.S. Fish & Wildlife, International Affairs, Wildlife Without Borders: <http://www.fws.gov/international/dicprograms/wwbp.htm> (last update June 8, 2007) (providing a summary of the Wildlife Without Borders multinational programs funded by the federal agency.).

affluence has traversed borders. The benefit of “preserv[ing] the planet’s rich abundance of wildlife,” such as the African elephant, “for all the citizens of the Earth”¹⁴ cannot be calculated in dollars and cents, but has an investment value that exceeds many of the United States’ financial endeavors.

Having suggested why the United States’ interest should be piqued, we must proceed to ask how we should get involved in their survival. What are we currently doing and what more can be done? The focus of this paper is on the United States’ involvement in the preservation of the African elephant. As a world leader, our country has great political and financial impact on the conduct of other countries. The United States’ standard should be set at home and across continents.

Initially, this paper will explore the major conditions affecting African elephant populations, the deleterious relationship between these animals and humans, and what is necessary to strike a balance for successful coexistence. The focus will then move towards an examination of the federal agencies that the United States charges with carrying out laws specific to the African elephant and the international organizations and treaties the United States is involved with to perpetuate the existence of the species. The analyses below demonstrate the need for different strategies to achieve long-term, effectual solutions to sustain the African elephant and our continued relations with the species.

I. Detrimental Effects

The interaction of human with elephants may be divided into three categories: firstly, predation for food which was presumably the earliest form of exploitation. Secondly the killing of elephants for their ivory alone, a trade that has been of the greatest importance in human economies since the rise of the earliest civilizations. Finally there is the

¹⁴ *Id.*

taming of live elephants for use in warfare, in circuses and zoos, and as beasts of burden, and this has a history of at least 4000 years.¹⁵

It is undisputed that economic and political causes have had devastating effects on the existence of the African elephant. In modern times, environmental concerns are also playing a role in the demise of the species.¹⁶ However, it is the ivory trade that has taken the greatest toll on the African elephant population. In fact, the elephant is so synonymous with its ivory that as far back as the time of Homer “the greek word Elephas meant ivory not the animal....”¹⁷

Prior to establishing an international ban on illegal ivory trading with the creation of the Convention on International Trade in Endangered Species of Fauna and Flora (hereinafter “CITES”) in 1975,¹⁸ the killing of African elephants by poachers for the ivory found in their tusks was rampant. While this has affected the Asian Elephant as well, the ivory between the two species can be differentiated.¹⁹ Though the ban on export and import of illegal ivory has curtailed the poaching epidemic greatly, it has not halted killings of African elephants for this purpose entirely.²⁰

Awareness that a long-term solution to protect the African elephant was necessary, the governments of many African states created refuges and national parks to

¹⁵ CLUTTON-BROCK, *supra* note 3, at 115.

¹⁶ See Smithsonian National Zoological Park, Friends of the National Zoo, African Savanna, <http://nationalzoo.si.edu/Animals/AfricanSavanna/fact-afelephant.cfm> (2002)(last visited Dec. 7, 2007) (“African elephants have lost much of their habitat to ranches, farms, and desertification. The forest elephant ... is under threat from logging and market hunting for its meat. African elephants are now found mostly in reserves. In some parks, confined elephant populations have major impacts on habitat, changing open forests into grasslands.”). *Id.*

¹⁷ CLUTTON-BROCK, *supra* note 3, at 117.

¹⁸ See Convention on International Trade in Endangered Species of Fauna and Flora, March 3, 1973, 27 U.S.T. 1087, T.I.A.S. No. 8249 (effective July 1, 1975) [hereinafter “CITES”].

¹⁹ See CLUTTON-BROCK, *supra* note 3, at 118. (“Craftsmen in ivory, before the age of plastics, could assess the quality of ivory by its appearance, colour, and feel. The best ivory for billiard balls was obtained from West African elephants. East African elephants produced ‘soft’ ivory and Indian elephants had tusks that, although they are fine-grained, were not so highly esteemed as the African.”). *Id.*

²⁰ See Smithsonian National Zoological Park, *supra* note 16.

house segments of the elephant population.²¹ These parks were to serve as the new habitats for the African elephant, and while offering greater protection than freedom had in the past, many new concerns developed. In addition to the inability to eliminate recurring poaching, the over-population of elephant herds within these contained areas brought a two-fold dilemma – destruction of the delicately balanced ecosystem shared with other endangered species and flora,²² and the escape of Elephants into surrounding neighborhoods. Elephants in search of food and appeasing their natural instinct to roam entered into human communities, reeking havoc on crops and buildings. This human-animal conflict often resulted in death on both sides.²³

The current state of the African elephant population is somewhat paradoxical; an endangered species that overpopulates the spaces set aside for its conservation. This side effect of containment forced an unthinkable solution to be adopted as protocol - culling. To cull means “to reduce or control the size of (as a herd) by removal (as by hunting) of especially weaker animals; *also*: to hunt or kill (animals) as a means of population control.”²⁴ The systematic killing of segments of overpopulated herds became to many conservationists an answer to preserving the overall species. “[E]lephant numbers in national parks and reserves were reduced to counteract excessive immigration” into the parks, in order that the whole ecosystems would not be destroyed, “causing the extinction

²¹ See MEREDITH, *supra* note 1, at 5 (“After decades of slaughter in the nineteenth century, governments of Africa set aside vast areas of land as national parks and wildlife reserves to ensure the survival of endangered species such as elephants.”). *Id.*

²² See Patty F. Storey, *Development vs. Conservation: The Future of the African Elephant*, 18 WM. & MARY J. ENVTL. L. 375, 380 (Spring 1994) (citing to David Western, *The Balance of Nature*, WILDLIFE CONSERVATION, March/April 1993, at 52.).

²³ See U.S. Fish & Wildlife Service, *supra* note 8 (stating the key issues and objectives of the African Elephant Conservation Act and the African Elephant Conservation Fund.); see also P. Omondi et al., *Managing Human-Elephant Conflicts: The Kenyan Experience*, PACHYDERM No. 36, at 80, January – June 2004.

²⁴ Merriam-Webster’s Dictionary, <http://www.m-w.com/dictionary/culling> (referenced on 10/10/07) (emphasis in original) (printed sources apply variations to the wording found on the internet site.).

not only of elephants but of other species.”²⁵ Often, several family members would be selected to die together in order to avoid the traumatic effects experienced by a parent, or calf “lucky” enough to survive,²⁶ and the behavioral reactions handlers would be left to deal with in the remaining herd.

The governments of the African states, facing economic hardship and/or misappropriating monies in their possession,²⁷ could not act alone to counter the problems of co-existing with the African elephant. Fortunately, the international community, including the United States, was willing to aid the cause. This was evidenced by the statement of Congressman Beilenson explaining the bill that became the African Elephant Conservation Act:

Some people argue that the elephants belong to Africa, and that, ultimately, it will be up to the countries there to determine whether or not the elephant will survive. However, it has become apparent that even the best-intentioned and uncorrupted African governments are limited in their ability to control poachers.... I believe very strongly that the United States, and other ivory consuming nations, can and must play a bigger role in restricting the ivory trade.²⁸

II. The Role of the United States

While the African elephant is not indigenous to the United States, our role in the international community and the ivory trade²⁹ explains the United States’ obligation to

²⁵ MEREDITH, *supra* note 1, at 192.

²⁶ *See id.* (“Whole families were wiped out to prevent panic and fear spreading through the park. As they grouped tightly bunched in defensive circles, with mothers facing outwards and calves hidden behind, professional hunters ... opened fire first on older females, then finished off the rest as they milled about.”). *Id.*

²⁷ *See* Richard Leakey, *A Poacher’s Charter: Allowing ‘Sustainable Trade’ in Endangered Species Would Make a Few Dealers Rich, While Wiping Out Africa’s Wildlife*, THE GUARDIAN, October 7, 2004. (Leakey commented that “[f]unding conservation is often a question of political priorities.... Swaziland wants to raise funds ... while the king is reportedly building palaces for each of his 13 wives.”). *Id.*

²⁸ 134 CONG. REC. 21, 012,21,013 (1988) (statement of Rep. Beilenson).

²⁹ *See id.* (“As a major importer of carved ivory, we in the United States can-and indeed must-play a role in seeing that the demand ... is not permitted to continue at such an uncontrolled rate, and at the expense of a truly unique and beautiful species.”). *Id.*

play an active part in preserving the species for all mankind. The United States currently enforces two federal Acts which in turn support the implementation of an international treaty to protect the African elephant. These are the Endangered Species Act (hereinafter “ESA”),³⁰ the African Elephant Conservation Act (hereinafter “AECA”),³¹ and the Convention on International Trade in Endangered Species of Fauna and Flora (“CITES”).³² The purpose and effect of each of these methods of United States involvement are discussed below.

³⁰ See 16 U.S.C. §§ 1531-1544 (2003).

³¹ See 16 U.S.C. §§ 4201-4245 (2003).

³² See CITES, *supra* note 18.

A. Endangered Species Act

The Endangered Species Act (“ESA”) was enacted in 1973. It “is widely considered to be the most powerful environmental law in the nation.”³³ It is essentially designed

[t]o provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the [international] treaties and conventions [to which the United States has pledged itself as a sovereign state].³⁴

The ESA empowers the Secretary of the Interior to list species (domestic or foreign) whose existence is endangered or threatened and designate critical habitats of such species. Steps to protect the listed species then receive the full backing of the United States government and individual state governments. In particular, the ESA requires the Secretary of the Interior to develop and implement recovery plans for the conservation and survival of such species.³⁵

What makes the ESA so “powerful” is the express intention for “the terms ‘conserve’, ‘conserving’, and ‘conservation’ [within the Act to] mean to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary.”³⁶ As evidenced by the historical United States Supreme Court

³³ Ike C. Sigg, *Caught In The Act: Evaluating The Endangered Species Act, Its Effects On Man And Prospects For Reform*, 24 CUMB. L. REV. 1, 2 (1993) (citing to Timothy Egan, *Strongest U.S. Environment Law May Become Endangered Species*, N.Y. TIMES, May 26, 1992, at A-11; and Virginia S. Albrecht & Thomas C. Jackson, *Battle Heats Up as Congress Begins Review of Endangered Species Act*, NAT’L. L. J. (May 18, 1992), at S1) (characterizing the ESA as “the most stringent environmental statute in the world.”). *Id.* at 78, n.2.

³⁴ *Id.* at 22 (citing to 16 U.S.C. § 1531(b)).

³⁵ See 16 U.S.C. § 1533(f)(1).

³⁶ 16 U.S.C. § 1532(3).

holding in *Tennessee Valley Authority v. Hill*,³⁷ “the plain intent of Congress in enacting [the ESA] was to halt and reverse the trend toward species extinction, whatever the cost.”³⁸ Congressional intent is made clear in that,

[t]his subsection *requires* the Secretary and the heads of all other Federal departments and agencies to use their authorities in order to carry out programs for the protection of endangered species, and it further *requires* that those agencies take *the necessary action* that will *not jeopardize* the continuing existence of endangered species or result in the destruction of critical habitat of those species.³⁹

There has been extensive commentary regarding the far-reaching effects of the ESA. Despite negative implications for subjugating all other state and federal laws to the ESA’s requirements for endangered species preservation, it has been said that “[a]ny serious criticism of the Act will be construed as an unholy war against Mother Nature herself.”⁴⁰ As the United States Supreme Court noted, “Congress viewed the value of endangered species as ‘incalculable’.”⁴¹ It is precisely this reasoning that supports United States involvement in species preservation in other countries as well as our own.

Successful actions brought to redress violations of the ESA can result in civil penalties and/or criminal convictions.⁴² The ESA even provides for enforcement of the terms of the Act via “citizen suits”.⁴³ However, the United States Supreme Court holds that individuals initiating such actions must still satisfy the elements of standing as required under Article III of the United States Constitution. It is well-settled law that standing to sue includes a demonstration of an injury in fact, a causal connection between

³⁷ See *Tennessee Valley Authority v. Hill*, 437 U.S. 153 (1978) (renowned decision construing the ESA).

³⁸ *Id.* at 184.

³⁹ *Id.* at 182-183 (quoting H.R. Rep. No. 93-412, at 14 (1973) (emphasis added)).

⁴⁰ Sigg, *supra* note 33, at 3.

⁴¹ *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 187 (1978).

⁴² See 16 U.S.C. § 1540.

⁴³ *Id.* § 1540(g). Such suits may be commenced by any person “to enjoin violations of the Act or its regulations.” *American Society for the Prevention of Cruelty to Animals v. Ringling Bros. and Barnum & Bailey Circus*, 317 F.3d 334, 433 (D.C. Cir. 2003) (citing 16 U.S.C. § 1540(g)(1)(A)).

the injury and a defendant's conduct, and judicial redressability.⁴⁴ The injury in fact element tends to be difficult to prove since "harm to the animals is not [the] main focus. It is [the complainant] who must be suffering injury [at present] or in the immediate future."⁴⁵ Despite the "citizen suit" provision within the ESA, establishing standing to bring an action on behalf of an animal by individuals and/or animal welfare organizations is often an impediment to resolving violations of the Act.⁴⁶

Fortunately for the African elephant, there are other avenues to afford the species an opportunity for additional protection.

B. African Elephant Conservation Act

The African Elephant Conservation Act ("AECA") was enacted "on October 7, 1988."⁴⁷ This was essentially an amendment to the ESA of 1973 – "Title I is the Endangered Species Act of 1988, and Title II is the AECA."⁴⁸ The AECA was deemed necessary to authorize explicit enforcement of illegal ivory trade violations; in this capacity, it "supplements the Endangered Species Act."⁴⁹ The purpose of the AECA "is to perpetuate healthy populations of African elephants."⁵⁰ Among the enumerated reasons for United States involvement, Congress found that,

Although some African countries have effective African elephant conservation programs, many do not have sufficient resources to properly manage, conserve, and protect their elephant populations.

⁴⁴ See generally *American Society for the Prevention of Cruelty to Animals v. Ringling Bros. and Barnum & Bailey Circus*, 317 F.3d 334 (D.C. Cir. 2003).

⁴⁵ *Id.* at 336.

⁴⁶ See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 576 (1992) (noting that Article III standing requirement was not satisfied due to, among other elements, the lack of establishing an immediate injury.).

⁴⁷ 16 U.S.C. §§ 4201-4245; see also *United States v. Grigsby*, 111 F.3d 806, 810, n. 3 (11th Cir. 1997) (citing 54 Fed. Reg. 24, 758 (1989)).

⁴⁸ *United States v. Grigsby*, 111 F.3d 806, 815 (11th Cir. 1997) (citing Endangered Species Act of 1988, codified at 16 U.S.C. §§ 1531-1544; AECA, codified at 16 U.S.C. §§ 1538, 4201-4245).

⁴⁹ *Id.*; see also 16 U.S.C. § 4241 (entitled "Relationship to Endangered Species Act of 1973").

⁵⁰ 16 U.S.C. § 4201.

The United States, as a party to CITES and a large market for worked ivory, shares responsibility for supporting and implementing measures to stop the illegal trade in African elephant ivory and to provide for the conservation of the African elephant.⁵¹

⁵¹ *Id.* §§ 4202(7), (8).

Based on these findings, the AECA explicitly recites:

It is the policy of the United States--

(1) to assist in the conservation and protection of the African elephant by supporting the conservation programs of African countries and the CITES Secretariat; and

(2) to provide financial resources for those programs.⁵²

Pursuant to the AECA, a fund was established to support such conservation projects, known as the Multinational Species Conservation Fund.⁵³ This fund is managed by the U.S. Fish and Wildlife Service,⁵⁴ and all monies deposited to the fund are used to subsidize African elephant conservation programs⁵⁵ as well as provide the source of rewards “to any person who furnishes information which leads to a civil penalty or a criminal conviction under” the Act.⁵⁶

Additionally, the integral function of the AECA was to authorize the Secretary of the Interior to institute moratoriums on the importation of raw and worked ivory from ivory producing countries that do not meet certain criteria – including being a party to CITES.⁵⁷ “The act of importation has been said to be an act of grace, and ... not a vested right of citizens or individuals;”⁵⁸ therefore prohibitions to importation may be declared by Congress. Moreover, moratoriums were imposed on the importation of ivory products from non-ivory producing countries as well, although this initiative did not become

⁵² *Id.* § 4203.

⁵³ *See id.* § 4246 (entitled Multinational Species Conservation Fund).

⁵⁴ *See* U.S. Fish & Wildlife Service, *supra* note 8.

⁵⁵ *See* 16 U.S.C. §§ 4211, 4212. African elephant projects funded in 2006 include 29 grants totaling \$1,384,865. U.S. Fish & Wildlife Service, Division of International Conservation, CFDA 15.620.

⁵⁶ 16 U.S.C. § 4225(a).

⁵⁷ *See id.* § 4222(a)(1).

⁵⁸ 25 C.J.S. *Customs Duties* § 31 (2007) (citing *Buttfield v. Stranahan*, 192 U.S. 470 (1904)).

effective until June 1989.⁵⁹ The AECA also provides for enforcements of its terms via civil penalties and criminal prosecution for violations of the Act.⁶⁰

While the AECA serves to counter the effects of illegal trading in ivory on the African elephant, there is an exception to the statute that should be noted. First, “[i]ndividuals may import sport-hunted elephant trophies that they have legally taken in an ivory producing country that has submitted an ivory quota.”⁶¹ Courts have upheld this exemption and gone further to assert that the statute provides that “the characterization of sport-hunted trophies remains the same, despite a later change in ownership or the subsequent sale for a commercial purpose.”⁶² To some this exemption may seem to defeat the purpose behind the AECA – to perpetuate the African elephant population.⁶³ Yet, the legislative rationale supporting this exception to criminal liability under the Act is that in “allowing sport-hunted trophies ... the African elephant [is preserved] from destruction by Africans, who appreciate the value placed on these elephants by sport hunters.”⁶⁴ In fact, it has been held that “lawful, sport-hunted trophies do not deplete African elephants sufficiently to be protected under the AECA and that preservation of elephants for sports hunters actually protects African elephants by placing considerable value on live elephants.”⁶⁵ This author cannot look past the disparity in the foregoing statement; to state that sport-hunting “*do[es] not deplete African elephants sufficiently*” and “*actually protects African elephants*” seem contradictory remarks.⁶⁶

⁵⁹ See *Grigsby*, 111 F.3d at 810, note 3 (citing 54 Fed. Reg. 24, 758 (1989); 16 U.S.C. §§ 4201-4245).

⁶⁰ See 16 U.S.C. § 4224.

⁶¹ *Id.* § 4222(e).

⁶² *Grigsby*, 111 F.3d at 823 (citing 16 U.S.C. § 4222(e)).

⁶³ See 16 U.S.C. § 4201; see also *Grigsby*, 111 F.3d at 815.

⁶⁴ *Grigsby*, 111 F.3d at 823.

⁶⁵ *Id.*

⁶⁶ *Id.* (emphasis added).

Furthermore, while proof of a mere violation of a provision of the AECA may meet with civil penalties,⁶⁷ “specific intent” of a violation of the AECA must be proven for criminal penalties to apply.⁶⁸ Specifically, a “knowing violation” of the AECA must be demonstrated for a criminal conviction to result.⁶⁹ This specific intent element of a violation, if applied more broadly, may serve as an impediment to effectuate convictions, and consequently, negate the use of AECA to deter conduct that contributes to the endangerment of the African elephant.

The moratorium imposed on imported ivory, even in light of the exceptions mentioned above, has had a dramatic effect on the ivory trade. This United States policy was effective in great part due to a large portion of the international community imposing similar prohibitions and the simultaneous establishment of national parks in African states in an effort to conserve the remaining herds of African elephants.

C. Convention on International Trade in Endangered Species of Fauna and Flora (“CITES”)

Though the ESA and the AECA set out legal requirements for the protection of African elephants and provide their own enforcement mechanisms, they are also the implementing regulations for CITES.⁷⁰ CITES entered into force in July 1975,⁷¹ with the mission “that international cooperation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade.”⁷² Each year,

⁶⁷ See 16 U.S.C. § 4224(b).

⁶⁸ *Grigsby*, 111 F.3d at 823.

⁶⁹ 16 U.S.C. § 4224(a).

⁷⁰ See CITES, *supra* note 18.

⁷¹ See *id.*

⁷² *Id.* at Preamble.; see also *Grigsby*, 111 F.3d at 814.

the trade in international wildlife, including the African elephant, “is estimated to be worth billions of dollars.”⁷³

Prior to the enactment of the AECA, the ESA underwent amendments to reach its current structure and to perform as the implementing legislation for CITES.⁷⁴ Similar to the Statement of Policy⁷⁵ of the AECA, detailed above, the findings of the ESA are as follows:

[T]he United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to--

the Convention on International Trade in Endangered Species of Wild Fauna and Flora....⁷⁶

The importance of the ESA in relation to CITES is clearly explained in *H.J. Justin & Sons, Inc. v. Brown*,⁷⁷

[t]he Convention is not self-executing since implementing legislation must be enacted by Congress before the Convention has the force of law. Moreover, once enacted, it is the implementing legislation, and not the treaty itself, that is the law of the land. *** The implementing legislation of the Convention is the Endangered Species Act of 1973.⁷⁸

⁷³ See What is CITES?, <http://www.cites.org/eng/disc/what.shtml> (last visited Oct. 10, 2007). These rough figures “include hundreds of millions of plant and animal specimens.” *Id.* <http://www.cites.org/eng/disc/what.shtml> (last visited Oct. 10, 2007).

⁷⁴ See Sigg, *supra* note 33, at 20 (quoting Michael J. Bean, *The Evolution Of National Wildlife Law*, 380 (1977)). “Even at its birth, CITES was viewed as ‘quite important, not only because of its substantive restrictions, but also because of the conceptual underpinnings which it provided for subsequent domestic legislation.’ The primary domestic legislation engendered by CITES was the ESA. However, while the ESA became law on December 28, 1973, CITES did not receive sufficient ratifications to become effective until July 1974. Interestingly, Congress justified the passage of the ESA partially on the grounds that it was needed to implement CITES.” *Id.*

⁷⁵ See 16 U.S.C. § 4203.

⁷⁶ 16 U.S.C. § 1531(a)(4)(f).

⁷⁷ 519 F. Supp. 1383 (E.D. Cal. (1981), *affm’d. in pertinent part*, *H.J. Justin & Sons, Inc. v. Deukmejian*, 702 F.2d 758 (9th Cir. 1983).

⁷⁸ *Id.* at 1390; see also CITES, *supra* note 18, at art. XIV.

The same United States Circuit Court of Appeals reiterates this point in a similar matter decided the same date, *Man Hing Ivory and Imports, Inc. v. Deukmejian*,⁷⁹ “[l]egislation must be enacted if any of its provisions are to have the force of United States law.”⁸⁰ In addition, CITES established an ivory quota and marking system to aid in “curtail[ing] illegal trade in African elephant ivory”⁸¹ called the CITES Ivory Control System. Yet, it was the enactment of the AECA that elaborates on this system, and utilizes CITES criteria as a basis for United States’ decisions to initiate moratoriums on the import of raw and/or worked ivory.⁸² Both of the federal court cases referenced above involved the resolution of conflicts between state law and the federal statutes, as well as the proper application of the international CITES treaty. As evidenced from this litigation, there has been occasion for the courts to intervene with a need to explain which laws apply to specific conduct; and in the case of the United States, when more restrictive, individual state laws are or are not preempted by these federal statutes.

Despite any confusion addressed in the United States, CITES is regarded as an international cooperative that performed outstandingly in regards to reducing the number of killings of African elephants for the ivory trade since its institution. “Because the trade in wild animals ... crosses borders between countries, the effort to regulate it requires international cooperation to safeguard certain species from over-exploitation. CITES was conceived in the spirit of such cooperation.”⁸³ In 1975 when the Convention began, 80 countries, including the United States, committed to the principles and

⁷⁹ 702 F.2d 760 (9th Cir. 1983).

⁸⁰ *Id.* at 762.

⁸¹ 16 U.S.C. §§ 4202, 4244.

⁸² *See id.* § 4222.

⁸³ What is CITES?, *supra* note 73.

guidelines set out in the treaty.⁸⁴ Today, there are more than 172 “Party” countries that adhere to the accord.⁸⁵

The species that CITES aims to protect from international trade are listed in one of three appendices. “The level of monitoring and control to which an animal or plant species is subject depends on which of the three appendices the species is listed.”⁸⁶ The African elephant was originally listed under Appendix II of CITES “on February 4, 1977,” but was “upgraded to Appendix I in 1990.”⁸⁷ Due to the successful decrease in the poaching of African elephants for use in the illegal ivory trade since 1990, CITES was able to downgrade the status of certain populations of African elephants to Appendix II again in June, 2007.⁸⁸ This recent amendment to Appendix II applies only to African elephants in certain African states whose conservation efforts have been able to sustain or increase local herd populations, such as “the populations of Botswana, Namibia, South Africa and Zimbabwe, which are included in Appendix II,” all other populations remain in Appendix I.⁸⁹

Article II of the CITES Treaty states the Fundamental Principles regarding pertinent listed species:

1. Appendix I shall include all species threatened with extinction which are or may be affected by trade. Trade in specimens of these species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances.
2. Appendix II shall include:

⁸⁴ *See id.*

⁸⁵ *See* 72 Fed. Reg. 45260-01 (August 3, 2007).

⁸⁶ U.S. Fish & Wildlife Service, General Overview, http://www.fws.gov/international/appendix_III/overview.html (last visited Dec. 7, 2007).

⁸⁷ *Grigsby*, 111 F.3d at 814-815.

⁸⁸ *See* 72 Fed. Reg. 45260 (August 3, 2007); *see also* Conference of the Parties to CITES, CoP14, The Hague, Netherlands, June 3-15, 2007 (effective Sept. 13, 2007).

⁸⁹ CITES, *supra* note 18, at app. I, II, and III, *available at* <http://www.cites.org/eng/app/appendices.shtml> (valid as of Sept. 13, 2007).

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.⁹⁰

There is one key difference in the regulation of trade of a member of an Appendix I species and a member of an Appendix II species. Trade in any species listed in Appendix I requires both an export permit from the originating country of the species and an import permit from the country of destination, while trade in an Appendix II species requires only an export permit from the originating country.⁹¹ Additionally, the treaty includes standardized criteria for permit issuance and shipment of live animals.⁹² The criteria include:

Article I species – Import permits issue only if “specimen is not to be used for primarily commercial purposes, and if the import will be for purposes that are not detrimental to the survival of the species.... In the case of a live animal ... the proposed recipient is suitably equipped to house and care for it.”⁹³

Export permits issue “if specimen was legally obtained; the trade will not be detrimental to the survival of the species; and an import permit has already been issued.”⁹⁴

Article II species – Export permits issue “if specimen was legally obtained and if the export will not be detrimental to the survival of the species.”⁹⁵

⁹⁰ *Id.* at art. II, §§ 1, 2(a).

⁹¹ *See id.* at art. III and IV.

⁹² *See id.* at art. VI.

⁹³ *Id.* at art. III, available at How CITES Works, <http://www.cites.org/eng/disc/how.shtml> (last visited Oct. 10, 2007).

⁹⁴ *Id.* at art. III.

As is the case with the ESA and AECA, there are also exceptions to the general principles of CITES.⁹⁶ Though a permit may still be required, exemptions and special provisions are made in the following circumstances that may apply to African elephants:

- Specimens in transit;
- Specimens acquired prior to the enactment of CITES;
- Specimens that are personal or household effects;
- Animals that were ‘bred in captivity’;
- Specimens that are destined for scientific research; and
- Animals that are part of a traveling collection or exhibition, such as a circus.⁹⁷

In summary, the fact that national laws must be put in place to effectuate the CITES agreement by individual “Party” nations could pose a hindrance to carrying out the intended plan to prosecute offenders once apprehended. Further, the many exceptions that exist to both the United States’ federal laws and the CITES treaty itself, tend to diminish the rationale behind the Acts. While the number of African elephants grows in some African states, there is still much work to be done in others. It seems apparent that the funding for African elephant conservation programs from the international community has contributed to the success of the CITES objectives, yet programs to combat overpopulation in contained spaces and to reduce the occurrences of human-animal conflicts are still pressingly needed.

III. Human-Animal Conflict

The foregoing analyses illustrate that the United States’ international policy and enactment of the Endangered Species Act, along with the African Elephant Conservation Act, are effective in curtailing poaching for ivory and aiding in conservation of this species. However, greater steps need to be taken to reduce the deleterious effects of

⁹⁵ *Id.* at art. IV.

⁹⁶ *See id.* at art. VII.

⁹⁷ *See* How CITES Works, <http://www.cites.org/eng/disc/how.shtml> (last visited Oct. 10, 2007).

conservation efforts to date. This reflects back on the paradox, whereby the African elephant, facing a reprieve from poachers due to the ban on ivory trading, is overpopulating and damaging the habitats set aside in African states to sustain its numbers.⁹⁸ Further, the increase in the number of incidents of human-animal conflict which too often results in death on both sides,⁹⁹ requires a long-term solution be put in place.

“Hand in hand with this increase [in elephant population] has been an increase in human population (from 8.6 million in 1962 to the [2004] estimate of over 30 million) leading to human encroachment into dispersal areas, corridors and available ranges.”¹⁰⁰ As elephants venture out of refuges in search of food and water, they are forced to compete with humans that have settled into communities on the edge of these parks and elephant ranges.¹⁰¹ “Most conflict zones are concentrated in the central part of the country where agriculture is the mainstay of the economy. Due to lack of a national land-use policy that has resulted in changes in types of land use, conflict incidents are increasing....”¹⁰² Considering the impact humans have had on the African elephant in the past with our nearly incessant killing for ivory, it is likely that if these struggles between man and elephant continue unchecked the elephant population will once again suffer severe consequences.

Currently, national parks throughout African states use a variety of methods in an effort to maintain a balance between the total elephant populations their refuges can support and harmonious co-existence with humans that occupy nearby habitats. The

⁹⁸ See Storey, *supra* note 22; see also MEREDITH, *supra* note 1, at 5.

⁹⁹ See Omondi et al., *supra* note 23.

¹⁰⁰ *Id.*

¹⁰¹ See *id.* at 81.

¹⁰² *Id.*

following methods all take aim at managing the elephant populations, with the exception of one: “creating sanctuaries; sensitizing communities; using physical barriers ([such as] electric fences ...); deterring animals through problem-animal control activities...; translocating elephants; and conducting elephant drives.”¹⁰³

The creation of sanctuaries seems to be the optimal solution as it “can generate revenue from eco-tourism activities for local people” and “mitigat[es] conflicts, particularly in areas with low agricultural potential.”¹⁰⁴ This method would likely work well combined with “community sensitization,” as the goal here would be for local inhabitants to “view the elephant as a useful and manageable animal.”¹⁰⁵ The remaining methods have flaws such as great expense, habitat destruction within confined areas, destabilization to the structure of herds, and continuous maintenance due to the “migratory nature of elephants.”¹⁰⁶

The problems inherent in the types of human-animal conflicts discussed above are not easily addressed by one particular solution. The methods reviewed may all need to play a role in managing the interactions of elephants and their human neighbors, at least until some more stable form of government intervention can be implemented, such as an organized program for land-use zoning that considers the needs of both species and the environment they share.

IV. Conservation versus Sustainable Use

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 83.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 81-84.

Conservation has been defined as “the planned management of a natural resource to prevent exploitation, destruction or neglect.”¹⁰⁷ Interestingly, this differs from the goal of most national parks, and even CITES for that matter,¹⁰⁸ which is leaning towards ensuring sustainable use of wildlife. “Sustainable use” is a term currently associated with The Convention on Biological Diversity, a Biodiversity Treaty presented by the United Nations Conference on Environment and Development (UNCED) in 1992.¹⁰⁹ UNCED has been said to “affirm sovereign rights over the biological resources found within their countries, while accepting responsibility for conserving biological diversity and using biological resources in a sustainable manner.”¹¹⁰

There are key issues distinguishing the conservation efforts of CITES and the UNCED Biodiversity Treaty, however. “CITES primarily emphasizes the preservation of individual endangered species,”¹¹¹ while sustainable use “emphasizes the survival of the species, even at the expense of individual animals.”¹¹² Additionally, UNCED would require that developed countries, such as the United States, share intellectual property rights and genetic resources with developing nations that in turn share their natural and

¹⁰⁷ Carol Buckley, *Conservation?*, <http://www.elephants.com/conservation.doc> (last visited on Oct 10, 2007). Ms. Buckley is the Founding Director of The Elephant Sanctuary in Tennessee. Mission Statement – “The Elephant Sanctuary in Tennessee, founded in 1995, is the nation’s largest natural habitat refuge developed specifically for endangered African and Asian elephants. It operates on 2,700 acres in Hohenwald, Tennessee . . .” <http://www.elephants.com/mission.htm> (last visited on Dec. 9, 2007); *see also* Merriam-Webster Dictionary, <http://www.m-w.com/dictionary/conservation> (printed sources apply variations to the wording found on the internet site.).

¹⁰⁸ *See* U.S. Fish & Wildlife Service, Fact Sheet on CITES, <http://www.fws.gov/international/pdf/CITESfall01.pdf> (2003) (last visited Dec. 7, 2007) (stating that CITES is a “global treaty that ensures that international wildlife trade is based on sustainable use and management of wild and captive populations.” *** “The[] data [collected is] used to determine trends in trade and to ensure that significant trade in wildlife is sustainable.”). *Id.*

¹⁰⁹ *See generally* United Nations Convention on Environment and Development – Convention of Biological Diversity, 31 I.L.M. 822 (June 5, 1992); *see also* CIESIN Thematic Guides, The Convention on Biological Diversity, <http://www.ciesin.org/TG/PI/TREATY/bio.html> [hereinafter CIESIN].

¹¹⁰ CIESIN Thematic Guides, The Convention on Biological Diversity, <http://www.ciesin.org/TG/PI/TREATY/bio.html> (comment attributable to the International Union for the Conservation of Nature Assessment of the UNCED Treaty.).

¹¹¹ Storey, *supra* note 22, at 387.

¹¹² *Id.* at 393.

often endangered biodiversity.¹¹³ The UNCED Treaty also calls for financial commitment of wealthier countries to the developing nations to support implementation of the Treaty.¹¹⁴ It is important to note that “[t]he transfers involve an equalization of the standards of living between the developed and developing worlds.”¹¹⁵ The UNCED Biodiversity Treaty was rejected by the United States based on concerns over sharing intellectual property rights and the much broader apprehension regarding a trend towards socialism.¹¹⁶

Additional concerns have been expressed by conservationists such as Richard Leakey. In an article addressing “sustainable trade” and the fear that CITES was being swayed by this doctrine,¹¹⁷ Leakey expressed his concern “that people in developing countries will only hold back from wiping out species if they can see a financial benefit in preserving them.”¹¹⁸ In a fitting rejoinder to those countries that say they have a right to benefit from the natural resources and biodiversity they cohabit with, Leakey states,

Animals are often worth significantly more over a lifetime in terms of tourist dollars than the sale of their body parts, so trading wildlife in the name of either conservation or development is a flawed strategy. Centuries of trade in products such as ivory have never alleviated poverty in Africa, and never will.¹¹⁹

¹¹³ See CIESIN, *supra* note 110.

¹¹⁴ *See id.*

¹¹⁵ Storey, *supra* note 22, at 394.

¹¹⁶ *See id.*

¹¹⁷ Leakey, *supra* note 27.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

V. Conclusion and Recommendations

“[E]lephants of all races have been closely involved with humans for perhaps half a million years and it will be mankind’s loss if we continue the process of extermination that was begun by ... man” since the time of the mammoth.¹²⁰ It is quite distressing that the African elephant species, which the United States has enacted laws and raised funds to support, is facing another crisis. This time they are losing their homeland, instead of their lives; however, the loss of their habitat is also having deadly effects. The African elephant is still sought for its ivory, although CITES, with the aid of the United States, has provided for great reductions in the number of elephants killed for this purpose. It is precisely because of the salvation from ivory poachers that the African elephant has begun to re-populate. Unfortunately, the species is increasing too rapidly for the restrictive environment they are currently housed in throughout African countries. Other than reestablishing unfettered elephant ranges, which would be impossible to protect against poachers, elephant populations must be relegated to the reserves and national parks within the midst of their natural habitat. “In the long term, the survival of the remaining herds depends on the effective management of [these] national parks. ...[T]hey provide elephants with their last refuge.”¹²¹

Of great concern is the fact that “nations that use culling will increase their pressure on the international community to allow a return to ivory trading.”¹²² CITES has already approved the release of stockpiled ivory for certain African states.¹²³ These

¹²⁰ CLUTTON-BROCK, *supra* note 3, at 120.

¹²¹ MEREDITH, *supra* note 1, at 224.

¹²² Storey, *supra* note 22, at 383.

¹²³ See 72 Fed. Reg. 45262 (August 13, 2007). (CITES approved “trade in registered raw ivory for Botswana, Namibia, South Africa and Zimbabwe from existing stockpiles,” upon the condition “that no

stockpiles are not composed of illegally obtained ivory, but are the bounty taken from the culling of thousands of African elephants under the guise of population management. It is not just the ivory that is valuable; other parts of the elephant's body are used in ways that make them a veritable goldmine in the arena of international wildlife trade.¹²⁴ While CITES has put conditions upon the sale, such as a prohibition to resubmit similar proposals from the same African countries for a period of at least nine years,¹²⁵ “[a]s pressure grows for a change to the rules, the ban, in its present form, is unlikely to remain in place.”¹²⁶ According to renowned African elephant researcher, Cynthia Moss,

[a]necdotal evidence suggests that poaching has increased since [the CITES approved] ivory sales. Even if elephant numbers have recovered, there is nothing new since the horrors of the '80s to stop the ivory trade. Laws are just as lax, African wildlife departments are even more poorly funded, and corruption is worse.¹²⁷

Some recommendations to combat the conditions the African elephant presently face are feasible however. First, whether the UNCED Biodiversity Treaty came about through good intentions or not, it is simply unrealistic. The best approach to conservation of the African elephant, while simultaneously supporting rapid human development in African countries is, in this author's opinion, to strengthen CITES. This includes more efficient management of financial and intellectual aid to conservation programs in African states. In contrast to UNCED's concept to manage elephant populations “according to measured effects on biodiversity rather than on absolute numbers of

further proposal to allow trade in elephant ivory from these populations may be submitted until nine years following sale of approved ivory stock.”). *Id.*

¹²⁴ See MEREDITH, *supra* note 1, at 224.

¹²⁵ See 72 Fed. Reg. 45262 (August 13, 2007).

¹²⁶ MEREDITH, *supra* note 1, at 225.

¹²⁷ Simon Robinson, *Kenya's Elephant Team: You Might Not Buy Ivory If You Saw This Family* (February 28, 2000), in *Time's Heroes of the Planet*, <http://www.time.com/time/reports/environment/heroes/heroesgallery/0,2967,moss,00.html> (last visited on Dec. 7, 2007). Cynthia Moss is an Elephant researcher, conservationist and author. Ms. Moss is considered the world's leading expert on African elephants.

elephants,”¹²⁸ focus must remain on controlling the effects of an increasing African elephant population. This should be the main objective of all conservation plans. Since culling as a form of management is sharply contradictory to such an aim, not to mention defies moral reasoning for use on an endangered or threatened species, other methods should be explored. Such methods include, but are not limited to, the use of contraceptives and instituting better processes to accomplish translocation to other parks with the capacity for housing larger populations.¹²⁹

Additionally, African governments can effectuate plans to reduce human-animal conflict with initiatives in land-use zoning. The United States can readily assist in this area by sharing resources from an established and proven set of regulations that address the intricacies involved in zoning and city planning. The United States can, and should, also consider limitations to the exceptions found in the ESA, AECA and CITES to foster a stronger commitment to the purposes of each of these legal enactments. Further complications in the enforcement of these statutes on United States soil can also be averted with a clarification that general intent to violate such statutes would achieve greater deterrence of future violations than “specific intent” will.¹³⁰

Clearly, more can be done to address the needs of the African elephant, in the United States and abroad. The United States, as always, is in a position to set a positive precedent on the issues discussed herein.

¹²⁸ Omondi, *supra* note 23, at 102.

¹²⁹ *See id.*

¹³⁰ *See Grigsby*, 111 F.3d at 823.

UNDERSTANDING (“CITES”)
THE CONVENTION ON INTERNATIONAL TRADE
IN ENDANGERED SPECIES

By, Kris M. McConville, Esq.

This article is presented by the New York State Bar Association’s Committee on Animals and the Law and is intended as a basic introduction to the Convention on International Trade in Endangered Species of Wild Fauna and Flora for both the public and lawyers alike.

INTRODUCTION

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES”) is an international agreement, the concept of which was developed during the International Union for Conservation of Nature and Natural Resources (IUCN) meeting in 1963. The text of the Agreement was drafted at the first meeting of the founding parties representing 80 countries which was held in Washington D.C., United States, on March 3, 1973.¹

CITES was conceived out of a global concern about the threat to survival of many species of plants and animals caused by illegal international trade. Illegal trade of rare and protected species and their parts and derivatives has become very high commodities amounting to “tens of billions of dollars and is second only to narcotics trafficking.”²

¹ The text of the agreement is available at <http://www.cites.org/eng/disc/text.shtml> (last visited November 25, 2008).

² Conservation Treaty Support Fund (hereinafter CTSF), *A Brief on CITES – the Endangered Species Treaty – whose mission we primarily support*, available at <http://www.conservationtreaty.org/cites.html> (last visited November 25, 2008).

Levels of exploitation of some animal and plant species are high and the trade in them, together with other factors such as habitat loss, is capable of heavily depleting their populations and even bringing some species close to extinction.³

The CITES agreement was meant to provide a framework of cooperation and collaboration among the Parties to help prevent such further decline in wild populations of animals and plants.

PARTIES

Countries who want to participate in CITES become “Parties” by agreeing to voluntarily abide by the agreement evidenced by either signing or acceding to the agreement. As of June 17, 2008, 173 countries had become Parties to the Convention.⁴ Although CITES is legally binding on the Parties it does not take the place of national laws. Instead, its purpose is to help guide the individual Parties in developing their own domestic legislation to ensure that CITES is implemented at the national level. Unfortunately, it is often the case that “either domestic legislation is non-existent (especially in Parties that have not ratified it), or it has penalties that are incommensurate with the gravity of the crime and insufficient deterrents to wildlife traders.”⁵

As of 2002, 50% of the Parties were in violation of the terms of the CITES agreement because they lacked plans prohibiting trade in violation of CITES; penalties

³ See CITES, “What is CITES?”, available at <http://www.cites.org/eng/disc/what.shtml> (last visited October 22, 2008).

⁴ See Wikipedia, *CITES*, available at <http://en.wikipedia.org/wiki/CITES> (last visited October 22, 2008).

⁵ See Zimmerman, *The Black Market for Wildlife: Combating Transnational Organized Crime in the Illegal Wildlife Trade*, 36 *Vanderbilt Journal of Transnational Law* 1657 (2003).

for such violations; and/or laws providing for the confiscation of the specimens.⁶

STRUCTURE OF CITES

CITES provides for a permanent “Secretariat who (1) provides the Parties with trade information and technical support; (2) acts as a liaison among Parties; (3) contracts trade studies; (4) informs governments and the public about CITES wildlife trade developments; (5) investigates possible CITES violations and trade threats to wildlife; and (6) organizes meetings of the Conference of the Parties (COPs).⁷

The Parties adopted a resolution that established the CITES Standing Committee, the Animals Committee, the Plants Committee, and the Nomenclature Committee. Each Committee works between the meetings of the COP to resolve issues that arose at the prior meeting as well as identifying any new issues that they want to address at the next meeting of the COP.⁸ Specifically, the role of the Standing Committee is to provide the Secretariat with policy and organizational direction regarding CITES implementation. The Animals and Plants Committees provide the Secretariat with scientific expertise on species, and review trade impacts on species of particular concern. The Nomenclature Committee consists of one botanist and one zoologist, who develop standardized lists of species and provide guidance on matters involving scientific names used in the CITES Appendices.⁹

CONFERENCE OF THE PARTIES (COPs)

⁶ See Reeve, *Policing International Trade in Endangered Species: The CITES Treaty and Compliance Earthscan*, (2000).

⁷ See U.S. Fish & Wildlife Services, Fact Sheet on CITES Meetings of the Conference of Parties, available at http://www.fws.gov/international/DMA_DSA/CITES/pdf/co.pdf (Summer 2003).

⁸ *Id.* at 1.

⁹ *Id.*

A COP (normally lasting about two weeks) is held biennially and is hosted by one of the Parties. Any Party wishing to submit agenda items, proposed resolutions, decisions, and amendments to the Appendices for consideration by the Parties at the COP shall submit them to the Secretariat 150 days prior to the meeting. The Secretariat, Standing Committee, Animals Committee, and Plants Committee may also submit agenda items and proposed resolutions and decisions at a COP.¹⁰

Prior to the start of the COP the Secretariat provides each Party with a copy of the conference agenda including all agenda items, proposed resolutions, proposed decisions, and proposed amendments up for consideration. Any Party who wishes to discuss issues on the agenda may then send one delegation to the COP to participate. Representatives of the Secretariat attend and are responsible for taking the minutes of the meeting and providing the delegations with copies of the meeting documents.¹¹

At the end of each COP, the Parties adopt resolutions and decisions and amendments to the Appendices voted on during the meeting. Resolutions provide long-term guidance on the interpretation and implementation of the treaty whereas decisions typically provide instructions on actions that are to be implemented, often by a specific time and then become out of date.¹²

FUNDING

The core administrative costs of the activities of the Secretariat and the COP and its committees are financed from the CITES Trust Fund, funded solely from Party

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 2.

contributions based on the United Nations scale of assessments, adjusted to take account of the fact that not all members of the United Nations are Parties to the Convention.

Parties can not use the Trust Fund to improve implementation or compliance through training or species specific programs. Such activity must be funded by external funding sources. In the past this funding has been raised from a variety of sources such as aid agencies, intergovernmental organizations, and the private sector. Due to the complex nature of the problems addressed by CITES, the need for funding has increased without the corresponding growth in available funding resources. The traditional sources of CITES funding now supply less than half of what is needed.

Funding is continually needed for the following “priority needs”:

- (1) Studies to obtain hard data on the status and means of conserving and managing species of wildlife impacted directly by international trade.
- (2) Monitoring legal wildlife trade and gathering intelligence on illicit trafficking.
- (3) Technical assistance and training to Parties in implementing and enforcing CITES.
- (4) Key tools, including secure Export/Import permits and an up-to-date Identification Manuals for customs and enforcement officers.
- (5) Enabling developing countries to send delegations to meetings to participate in decisions involving the future of their own wildlife resources.

- (6) Educating the public on the importance of conserving endangered species, worldwide.”

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DISPUTES BETWEEN PARTIES

Although the Agreement itself does not provide for arbitration or dispute in the case of noncompliance, all the years of practice have led to the development of several strategies to deal with infractions by Parties. Upon learning of an alleged infraction by a Party, the Secretariat notifies all other Parties. The Party alleged to have committed an infraction will be allowed a specified amount of time to respond to the allegations. The Party may also request the Secretariat to provide technical assistance to prevent further infractions. Strategies used in the past to deal with infractions of offending parties include: (1) mandatory confirmation of all its permits by the Secretariat; (2) suspension of cooperation of the Secretariat; (3) a formal warning; (4) a visit by the Secretariat to verify capacity; (5) recommendations to all Parties to suspend CITES related trade with the offending Party; or (6) the dictation of corrective measures to be taken by the offending Party before the Secretariat will resume cooperation/recommend resumption of trade. Examples of infractions are (1) negligence with respect to permit issuing, (2) excessive trade, (3) lax enforcement, and (4) failing to produce annual reports (the most common).¹⁴

USING CITIES TO MONITOR TRADE

¹³ See CTSF, *supra* note 2 at 2.

¹⁴ *Id.*

The backbone of CITES is the permit system which facilitates international cooperation in conservation and trade monitoring. Standardized permits forms are only issued only for legal trade that doesn't threaten the species' survival in the wild.¹⁵ The use of standardized permit forms not only allow inspection officials at export or import ports to quickly verify CITES compliance; they're used to create annual reports; and to facilitate the collection of species-specific trade data which can be used to determine trends in trade and to ensure that significant trade in wildlife is sustainable. This monitoring of trade has created a substantial body of information on the management and use of CITES species worldwide.¹⁶

Any species covered by CITES has to be specifically authorized by a standardized permit system to be imported, exported, re-exported and introduction of the species into that county.¹⁷

CITES APPENDICES

Roughly 5,000 species of animals and 28,000 species of plants are protected by CITES against over-exploitation through international trade. These endangered species are divided into three different Appendices according to the degree of threat upon their survival by international trade.¹⁸

As the impact of trade on a population or a species increases or decreases, the species can be added to, removed from, or transferred from one Appendix to another. The listing of a species on a certain Appendix is based on the best biological information

¹⁵ See U.S. Fish & Wildlife Service, *Convention on International Trade in Endangered Species*, (Summer 2003) available at http://www.fws.gov/international/DMA_DSA/CITES/pdf/CITESfall01.pdf (last visited November 25, 2008).

¹⁶ *Id.*

¹⁷ See Wikipedia, *supra* note 2 at page 2.

¹⁸ *Id.*

available at that time and an analysis of how different types of protection can affect specific populations.¹⁹

When a species is ‘transferred’ from Appendix I to Appendix II its protection is not necessarily ‘down-graded’. Rather it’s a sign of success that the species has grown into a well-managed population at which point well-regulated trade is now possible. In addition, by allowing a species to be commercially traded at sustainable levels, an Appendix II listing can actually improve protection by giving local people a greater stake in the species’ survival.²⁰ A listing of the species included in each Appendix is *available* at <http://www.cites.org/eng/disc/text.shtml>.

APPENDIX I

Appendix I is comprised of approximately 800 species which are the most stringently regulated because their status is creeping close to extinction which may or may not be affected by trade (e.g. some cacti, some orchids, African gorillas, and parrots). Permits for the export of these species cannot be issued except under special circumstances, and none of these species can be used for commercial purposes.²¹

APPENDIX II

Appendix II includes approximately 32,500 species which although not necessarily threatened with extinction now may become so if their trade is not strictly regulated (e.g., listing as threatened). International trade of these species may be authorized by granting an export permit or a re-export permit without the requirement of

¹⁹ See Press Release U.S. Fish & Wildlife Service, CITES puts ivory sales on hold (October 5, 2006) available at http://www.cites.org/eng/news/press/2006/061005_ivory.shtml (last visited November 13, 2008).

²⁰ *Id.*

²¹ See Animal and Plant Health Inspection Service, Factsheet: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), (March 2006).

an import permit. Most CITES species are listed in this appendix, and in practice, hundreds of thousands of them are traded annually.²²

APPENDIX III

Appendix III is comprised of about 170 species that Parties deem necessary to regulate to prevent the species exploitation. In order for a species to be listed in this Appendix, the Party country requests other Parties' assistance in controlling trade in the species. Trade of these species is only permitted with an appropriate export permit and a certificate of origin.²³

AN ILLUSTRATION OF CITES IN ACTION

For centuries elephants in Asia and in Africa have been hunted for their tusks leading to dramatic declines in population of these giant animals primarily in the 1970s and 1980s. Despite international efforts to control the ivory trade and stop the declining elephant populations, prices and demand have remained high, thus causing continued elephant poaching and illegal ivory finding its way into international and domestic markets.

A recent study has found the African elephant population to be about 600,000, a decrease of almost 50% in the past 40 years, similarly the Asian elephant population decreased more than 50% from an original number in the beginning of the 21st century of 80,000 to about 20,000 currently.²⁴

²² *Id.*

²³ *Id.*

²⁴ See U.S Fish & Wildlife Service, U.S. Efforts to Control Illegal Elephant Ivory Trade and Internal Markets (January 2008) available at http://www.fws.gov/international/DIC/species/afe/pdf/Ivory_Fact_Sheet.pdf (last visited November 25, 2008).

For the past twenty years nothing has had more influential on the international ivory trade than CITES. In 1989 CITES banned all international trade of commercial ivory by placing all elephant populations on Appendix I.²⁵

The long-running global debate over elephants has focused on the benefits that income from ivory sales can bring to conservation and to the local communities, weighed against concerns that such sales will lead to an increase in poaching.²⁶

At the CITES convention in 1997, the Elephant Trade Information System (ETIS) was established to track illegal trade in elephant products. At that time because some southern African elephant populations were healthy and well-managed, the CITES convention transferred the South African elephant populations to Appendix II, thereby lifting its' ban to permit Botswana, Namibia and Zimbabwe to make a one time sale of ivory to Japan totaling 50 tons. The sale took place in 1999 and raised \$5 million which was used for elephant conservation activities.²⁷

The first analytical results from the (ETIS) monitoring system were presented at the CITES convention in 2002. The reports based upon a comprehensive statistical analysis of the ETIS data were used to show changes in trends of ivory seizures over time, to identify those countries that play leading roles in the illicit ivory trade, and assess the nature of their involvement. In terms of global trends the ETIS reports showed that

²⁵ See CITES puts ivory sales on hold, note 19 at 1.

²⁶ See Press Release: U.S. Fish & Wildlife Service, Ivory sales get the go-ahead (June 2, 2007) available at http://www.cites.org/eng/news/press/2007/070602_ivory.shtml (last visited November 13, 2008).

²⁷ See Press Release: U.S. Fish & Wildlife Service, Illegal ivory trade driven by unregulated domestic markets (October 4, 2002) available at http://www.cites.org/eng/news/press/2002/021004_ivory.shtml (last visited October 22, 2008).

ivory seizure volumes progressively decline from 1989 to 1994, remained stable from 1994 through 1998, but then increased from that point up to 2002.²⁸

Four countries were identified as being the most frequently implicated sources or destinations of illegal ivory trade because of poor law enforcement: China, Nigeria, the Democratic Republic of Congo and Thailand. Other countries including Angola, Burundi, Cote d'Ivoire, Egypt, India, Republic of Korea, Philippines, and Sudan were identified as having either substantial domestic ivory markets that are largely unregulated or they have important roles as illicit exporters of ivory.²⁹

When requests were made by Botswana, Namibia, Zimbabwe, South Africa and Zambia for another sale of ivory, the 2002 CITES convention granted the request for sale with 'one condition', the newly developed Monitoring of Illegal Killing of Elephants (MIKE) system had to be able to establish up-to-date and comprehensive baseline data on elephant poaching and population levels in both Africa and Asia. The system's main purpose was to assess the factors driving elephant killing and to determine whether such killings were linked to the CITES decisions. Once fully operational it was anticipated that 'MIKE could conduct standardized population surveys at least biennially at 45 sites in Africa and 15 in Asia, and also track the degree of law enforcement data on elephant product seizures, corruption, domestic ivory markets, background economic variables and other factors.' To allow time for baseline data to be gathered by MIKE the CITES convention decided to hold off on any sale until May 2004.³⁰

²⁸ *Id.* at pages 1-2.

²⁹ *Id.*

³⁰ See CITES puts ivory sales on hold, *supra* note 19 at page 1. See also Press Release: U.S. Fish & Wildlife Service, CITES sets strict conditions for any possible future ivory sales, (November 12, 2002) available at http://cites.org/eng/news/press/2002/021112_ivory_update.shtml (last visited October 22, 2008).

CITES Secretary-General Willem Wijnstekers stated “we’re concerned that illegal trade in ivory is increasing. At the same time, it is some consolation to note that this increase does not appear to be related to any decisions made under CITES. Instead it is based on a deeper understanding of how the illegal ivory trade works. The ETIS monitoring system has flagged the most important action we can take to protect the African elephant – strict regulation and enforcement of the domestic ivory trade by all countries.”³¹

The ivory trade in Africa has been compared to a double-edged sword. Although richer countries could afford to promote conservation through strict protection, poorer countries in Africa couldn’t. Instead they must promote conservation in ways that benefit local communities *and* bring in cash for conservation (emphasis added). Therefore any conservation strategy must be based on sustainable use that will offer elephants the best possible long-term future. The key would be finding a balance between the benefits to states relying on tourism with states that survive on income from elephant products.”³²

In 2006 the CITES Convention determined that the condition had not been met and therefore the sale was placed on a further hold.³³

By June 2, 2007 the CITES Standing Committee felt that the condition had been met. Since the Standing Committee has authority to implement CITES decisions between

³¹ See *Illegal Ivory Trade*, *supra* note 26 at page 2.

³² See Press Release: CITES sets strict conditions for any possible future ivory sales (November 12, 2002) at page 1.

³³ See CITES puts ivory sales on hold, *supra* note 19 at page 1.

Conventions without waiting until the 2008 Convention, it agreed to another one-time sale from Botswana (20 tons of ivory), Namibia (10 tons), and South Africa (30 tons).³⁴

Botswana and Namibia jointly submitted a new proposal to ease the conditions for permitting future sales of ivory. Botswana also requested permission for a one-off sale of 40 tons of existing ivory stocks followed by an annual report export quota of up to eight tons per year from its national population. In opposition, Kenya and Mali proposed a ban on trade of raw or worked ivory from Botswana, Namibia, South Africa and Zimbabwe for a period of twenty years. The basis of their opposition was that allowing any trade of ivory would increase elephant poaching.³⁵

Because of this opposition, the Ministers of the African elephant range states met among themselves to discuss how to handle the situation. They were able to sign a compromise agreement on June 14, 2007 outlining how the sale of 108 tons would take place. The totals were based on the amounts of the government's owned stocks of ivory as registered by January 31, 2007 from Botswana, Namibia, South Africa, and Zimbabwe. As a concession the Ministers agreed that no further sales from these countries would be considered by the CITES convention for a 'resting period' of nine years. During this period of time the Standing Committee would work on developing a new and more effective approach to making future decisions on the international ivory trade.³⁶

³⁴ See Ivory sales get the go-ahead, *supra* note 25 at page 1.

³⁵ See Press Release: U.S. Fish & Wildlife Service, African governments reach consensus on ivory sales (June 14, 2007), available at http://www.cites.org/eng/news/press/2007/070614_ivory.shtml (last visited November 13, 2008).

³⁶ See Press Release: U.S. Fish & Wildlife Service, CITES meeting to consider ivory and timber trade (July 14, 2008), available at http://www.cites.org/eng/new/press/2008/080714_SC57.shtml, (last visited November 13, 2008).

As outlined in the agreement, each sale is to consist of a single shipment per destination and may only go to countries whose internal controls on ivory sales have been verified as being sufficient under CITES. China's enforcement score was 63% in 2008 which was up from 6% in 2002. Because of this the CITES secretariat declared China to be a trading partner for this one time sale.³⁷ In a separate opinion in 2007 Japan was also found to be a viable trading partner due to its strong domestic trade controls.³⁸

All proceeds of the sale were earmarked exclusively for elephant conservation and local communities living side-by-side with elephants.³⁹

As of November 7, 2008 a total of 102 tons of ivory were sold to Chinese and Japanese traders at four separate auctions in Botswana, Namibia, South Africa and Zimbabwe raising 15.4 million dollars.⁴⁰

The analysis of seizure data over the years has shown no correlation between the controlled sales of ivory and an increase in poaching. In fact for the two years following the controlled sale in 1999 showed a marked decrease in illegal trade levels. It is believed that poaching levels appear to be more closely related to governance problems and political instability in certain regions of the country.⁴¹

It is significant to note that the ETIS seizure database grew from around 4,000 law enforcement cases from 40 countries in 1997 to include over 10,000 cases from 77 countries and territories worldwide today.⁴²

³⁷ *Id.* at 2.

³⁸ See Ivory sales get the go-ahead, *supra* note 25 at pages 1-2.

³⁹ *Id.* at 2.

⁴⁰ See Press Release: U.S. Fish & Wildlife Service, Ivory auctions raise 15 million for elephant conservation (November 7, 2008), available at http://www.cites.org/eng/news/press_release.shtml (last visited November 13, 2008).

⁴¹ *Id.*

⁴² See *FWS*, U.S. Efforts to Control Illegal Elephant Ivory Trade, *supra* note 24 at page 1.

U.S. ENFORCEMENT OF CITES

CITES is administered through the United Nations Environmental Programme (“UNEP”) and is headquartered in Geneva, Switzerland. CITES is implemented in the United States under the Endangered Species Act.⁴³

As the U.S. management authority, the U.S. Department of the Interior’s U.S. Fish and Wildlife Service (FWS) is responsible for overseeing all aspects of CITES within the United States. In particular, FWS enforces all CITES regulations with regard to endangered animals or products from these animals being transported into or out of the United States by ensuring all importers and exporters have the proper permits for transporting and trading these animals or products.⁴⁴

The U.S. Department of Agriculture’s (USDA) Animal and Plant Health Inspection Service (APHIS) enforces the provisions of CITES related to plants and works closely with FWS. Officials from APHIS’ Plant Protection and Quarantine (PPQ) program inspect all plant shipments imported into the United States through the 16 plant-inspection states located nationwide. Depending upon inspection results, APHIS employees may refuse entry, seize, or release plants that are imported or presented for export. APHIS is responsible for enforcing plant quarantine laws and the CITES permit requirements during these plant inspections. In addition, employees of the U.S. Department of Homeland Security’s Customs and Border Protection unit now handle inspection of non-living CITES imports such as lumber, medicinal products, and other related items at U.S. ports-of-entry.⁴⁵

⁴³U.S. FWS, CITES Meetings, *supra* note 7 at page 1.

⁴⁴ See APHIS, Factsheet: CITES, *supra* note 21 at page 2.

⁴⁵ *Id.*

The U.S. is committed to combating illegal ivory trade and has made significant seizures of illegally imported ivory. From 1989 to 2007, the number of seizures of all illegal ivory by FSW accounted for about 30% of all the reported seizures worldwide. Due to the small nature of these seizures FSW does not believe there is a significant illegal ivory trade into the United States. It does recognize however, that it is likely that there is a small internal ivory market.⁴⁶

U.S. CASE LAW INVOLVING CITES

There have been several significant prosecution cases in the United States for CITES violations. In a couple of landmark cases the U.S. District Court for the Southern District of Florida dealt with violations of multiple international laws including CITES which led to forfeiture of the animals.

In the case of United States v. 3,210 crusted sides of Caiman crocodilus yacare, the defendant received a shipment of 10, 875 hides of Caiman crocodilus yacare based on a CITES permit from Bolivia that listed the shipment as being only 3,210 hides of Caiman crocodilus crocodilus. Besides the fact that the permit listed the wrong amount of hides of the wrong species, it was also an unendorsed Xeroxed copy. The Court found that the defendant violated CITES and therefore the animals for seized for forfeiture.⁴⁷

Two years later the same court got the case of United States v. 2,507 Live Canary Winged Parakeets which involved the importation of 2,507 parakeets into the United State from Peru. The defendant Cespedes tried to export the parakeets by sending his agent to Peru with a CITES permit was for exportation of the species brotogeris pyrrhopterus. However, the parakeets actually imported into the United States were of

⁴⁶ See FSW, Efforts to Control Illegal Elephant Ivory Trade, *supra* note 24 at page 2.

⁴⁷ (United States v. 3,210 crusted sides of Caiman crocodilus yacare, 636 F. Supp. 1281 (S.D. Fla. 1986)).

the species *brotoogeris versicolorus*. When the defendant discovered the discrepancy it informed the Director of Forest and Fauna in Peru, who then remedied the situation by typing the change on the original permit and initializing it. However, because Cespedes never signed the CITES permit as required under Peruvian law, it was never valid. Furthermore, the defendant admitted that he knew the species *brotoogeris versicolorus* could not be exported from Peru because it was prohibited. But supposedly he thought that the Director of Forest and Fauna in Peru who issued the permit had the authority to authorize the exportation of the prohibited species. The Court found that the defendant had a duty to verify the legality of the shipment and he didn't, therefore the shipment of *brotoogeris versicolorus* parakeets were subject to forfeiture.⁴⁸

In 2004 the United States District Court for the Eastern District of Wisconsin dealt with an egregious violation of CITES in the case of United States v. Kum. The defendant a Singaporean residing in Thailand conspired with others to illegal import protected and endangered wildlife into the United States from Thailand without even attempting to get a CITES permit. He did this mainly because the animals were listed on Appendix I and II of CITES and he wanted to get them into the United States so he could sell them to U.S. buyers. During the investigation, the government discovered that in order to avoid detection and obviate the need for CITES permits the defendant concealed the wildlife in Federal Express packages which purported to contain arts, crafts, and clothes etc. He also bound some of the animals' mouths and limbs with tape or bandages in an attempt to minimize the risk of detection due to noise or movement. Furthermore he also experimented to determine how long certain animals could survive without food or

⁴⁸ (United States v. 2,507 Live Canary Winged Parakeets, 689 F.Supp. 1106 (S.D. Fla. 1988)).

water, which caused many of the specimens to die en route. Typically, the recipients of those specimens that survived would offer them for re-sale. After one recipient using the alias “John Thompson” was caught, he became a cooperating witness and helped the government catch the defendant. The defendant’s actions were so egregious that the government moved for an upward departure from sentencing guidelines in order to reflect the cruel treatment of the animals. The judge stated in his opinion that he found the defendant’s behavior toward the endangered species reprehensible and agreed with the government that departure from the sentencing range was warranted.⁴⁹

THE FUTURE OF CITES

In response to the thirtieth anniversary of CITES on July 1, 2005, Mr. Wijnstekers stated that he thought CITES had proven highly effective in ensuring human compatibility with wildlife conservation.”⁵⁰

The continual expansion of human populations, economic development, poverty and war, constantly test the ability of many kinds of animals and plants to survive in the modern world. Globalization adds to this pressure as higher levels of international trade and income expand the demand for wildlife and wildlife products. CITES seeks to ease this pressure by supporting national conservation efforts and ensuring that the international trade in wildlife is sustainable.⁵¹

Experience gleaned from thirty years of CITES has shown that poor people in rural areas who share the environment with wild animals and plants need to receive a major share of the economic benefits derived from their use. Without that economic

⁴⁹ (*United States v. Kum*, 309 F.Supp.2d 1084 (E.D. Wis. 2004)).

⁵⁰ See Press Release: U.S. Fish & Wildlife Service, CITES celebrates 30 years of achievement (June 30, 2005), available at http://www.cites.org/eng/news/press/2005/050630_30cites.shtml (last visited November 13, 2008).

⁵¹ *Id.*

benefit, the people have no choice but to pursue economic benefits in other environmentally unsustainable ways that undermine wildlife conservation in order to survive. Examples of this include converting undeveloped land to agriculture, poaching wildlife, and smuggling wildlife products.⁵²

CITES is by no way perfect, in fact in reality it is far from it. There are some obvious shortcomings such as: “by design and intent it focuses on trade at the species level and does not address habitat loss, ecosystem approaches to conservation or poverty; it seeks to prevent use which is unsustainable, rather than to promote the controversial approach of use which is sustainable; it doesn’t explicitly address market demand; and funding does not provide for increased on the ground enforcement.”⁵³

Furthermore the listing of the species on a ‘negative list’ in that trade in all species is permitted and unregulated *unless* the species is on one of the Appendices is seen by many to be a major shortcoming of CITES. Some have suggested that the use of a ‘positive list’ approach could improve CITES and its enforcement, in that “only species that are evaluated and approved for the list could be traded.” This would not only lighten the review requirements of the Parties and Secretariat; but it would also prevent poorly known species from becoming inadvertently threatened by *legal* trade.⁵⁴

For developing countries that are eager to join CITES the annual costs of staffing and maintaining a CITES office and an effective presence at the COPs remains unaffordable for many nations. In practice since these offices are usually the same ones that license, permit, and collect fees for hunting, trade and protection of wild plants and animals. The fees collected represent a significant source of revenue for the CITES office

⁵² *Id.* at pages 1-2.

⁵³ See Wikipedia, *supra* note 4 at page 4.

⁵⁴ *Id.*

operational budget thereby causing a direct conflict of interest between the offices and the resources.⁵⁵

CONCLUSION

CITES is not just an attempt to regulate trade. It sets up a certification system of non-detrimental wildlife trade (based on CITES permits); combats illegal trade and related wildlife offenses; promotes international cooperation; and helps to establish management plans so that range States can monitor and sustainably manage CITES listed species.⁵⁶

CITES long-term objective is rational and sustainable conservation of the Earth's living resources for their own sake and human benefit. The fact remains that thousands of species around the world are still endangered or at risk as a result of human activities such as habitat destruction, over-harvesting and pollution. Thirty years ago CITES was adopted in an attempt to address these problems which continue today. CITES is still as important today as it was the day it was adopted because it is still the World's most important agreement on species conservation and the non-detrimental use of wildlife.

I leave you with the words of Willem Wijnstekers "while human pressure on the natural environment will only grow in the years to come, the history of CITES confirms that it is possible to reconcile the needs of human beings with wildlife. I am confident that CITES will build on its past achievements to make a significant contribution to the environment and human well-being in the 21st century."⁵⁷

⁵⁵ *Id.*

⁵⁶ See CITES puts ivory sales on hold, *supra* note 19 at page 2.

⁵⁷ Press Release: CITES celebrates 30 years, *supra* note 50 at page 2.

Exhibit A

Text of the Convention

(See the notes about the Bonn amendment and the Gaborone amendment)

Preamble	
Article I	Definitions
Article II	Fundamental principles
Article III	Regulation of Trade in Specimens of Species included in Appendix I
Article IV	Regulation of Trade in Specimens of Species included in Appendix II
Article V	Regulation of Trade in Specimens of Species included in Appendix III
Article VI	Permits and Certificates
Article VII	Exemptions and Other Special Provisions Relating to Trade
Article VIII	Measures to be Taken by the Parties
Article IX	Management and Scientific Authorities
Article X	Trade with States not Party to the Convention
Article XI	Conference of the Parties
Article XII	The Secretariat
Article XIII	International Measures
Article XIV	Effect on Domestic Legislation and International Conventions
Article XV	Amendments to Appendices I and II
Article XVI	Appendix III and Amendments thereto
Article XVII	Amendment of the Convention
Article XVIII	Resolution of Disputes
Article XIX	Signature
Article XX	Ratification, Acceptance, Approval
Article XXI	Accession
Article XXII	Entry into Force
Article XXIII	Reservations
Article XXIV	Denunciation
Article XXV	Depositary

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

Signed at Washington, D.C., on 3 March 1973

Amended at Bonn, on 22 June 1979

The Contracting States,

Recognizing that wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for this and the generations to come;

Conscious of the ever-growing value of wild fauna and flora from aesthetic, scientific, cultural, recreational and economic points of view;

Recognizing that peoples and States are and should be the best protectors of their own wild fauna and flora;

Recognizing, in addition, that international co-operation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade;

Convinced of the urgency of taking appropriate measures to this end; *Have agreed* as follows:

Article I **Definitions**

For the purpose of the present Convention, unless the context otherwise requires:

- (a) "Species" means any species, subspecies, or geographically separate population thereof;
- (b) "Specimen" means:
 - (i) any animal or plant, whether alive or dead;
 - (ii) in the case of an animal: for species included in Appendices I and II, any readily recognizable part or derivative thereof; and for species included in Appendix III, any readily recognizable part or derivative thereof specified in Appendix III in relation to the species; and
 - (iii) in the case of a plant: for species included in Appendix I, any readily recognizable part or derivative thereof; and for species included in Appendices II and III, any readily recognizable part or derivative thereof specified in Appendices II and III in relation to the species;
- (c) "Trade" means export, re-export, import and introduction from the sea;
- (d) "Re-export" means export of any specimen that has previously been imported;
- (e) "Introduction from the sea" means transportation into a State of specimens of any species which were taken in the marine environment not under the jurisdiction of any State;
- (f) "Scientific Authority" means a national scientific authority designated in accordance with Article

IX;

(g) "Management Authority" means a national management authority designated in accordance with Article IX;

(h) "Party" means a State for which the present Convention has entered into force.

Article II **Fundamental Principles**

1. Appendix I shall include all species threatened with extinction which are or may be affected by trade. Trade in specimens of these species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances.

2. Appendix II shall include:

(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.

3. Appendix III shall include all species which any Party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the co-operation of other Parties in the control of trade.

4. The Parties shall not allow trade in specimens of species included in Appendices I, II and III except in accordance with the provisions of the present Convention.

Article III **Regulation of Trade in Specimens of Species Included in Appendix I**

1. All trade in specimens of species included in Appendix I shall be in accordance with the provisions of this Article.

2. The export of any specimen of a species included in Appendix I shall require the prior grant and presentation of an export permit. An export permit shall only be granted when the following conditions have been met:

(a) a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species;

(b) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora;

(c) a Management Authority of the State of export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment; and

(d) a Management Authority of the State of export is satisfied that an import permit has been granted for the specimen.

3. The import of any specimen of a species included in Appendix I shall require the prior grant and presentation of an import permit and either an export permit or a re-export certificate. An import permit shall only be granted when the following conditions have been met:

(a) a Scientific Authority of the State of import has advised that the import will be for purposes which are not detrimental to the survival of the species involved;

(b) a Scientific Authority of the State of import is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it; and

(c) a Management Authority of the State of import is satisfied that the specimen is not to be used for primarily commercial purposes.

4. The re-export of any specimen of a species included in Appendix I shall require the prior grant and presentation of a re-export certificate. A re-export certificate shall only be granted when the following conditions have been met:

(a) a Management Authority of the State of re-export is satisfied that the specimen was imported into that State in accordance with the provisions of the present Convention;

(b) a Management Authority of the State of re-export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment; and

(c) a Management Authority of the State of re-export is satisfied that an import permit has been granted for any living specimen.

5. The introduction from the sea of any specimen of a species included in Appendix I shall require the prior grant of a certificate from a Management Authority of the State of introduction. A certificate shall only be granted when the following conditions have been met:

(a) a Scientific Authority of the State of introduction advises that the introduction will not be detrimental to the survival of the species involved;

(b) a Management Authority of the State of introduction is satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for it; and

(c) a Management Authority of the State of introduction is satisfied that the specimen is not to be used for primarily commercial purposes.

Article IV

Regulation of Trade in Specimens of Species Included in Appendix II

1. All trade in specimens of species included in Appendix II shall be in accordance with the provisions of this Article.

2. The export of any specimen of a species included in Appendix II shall require the prior grant and presentation of an export permit. An export permit shall only be granted when the following conditions have been met:

(a) a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species;

(b) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora; and

(c) a Management Authority of the State of export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.

3. A Scientific Authority in each Party shall monitor both the export permits granted by that State for specimens of species included in Appendix II and the actual exports of such specimens. Whenever a Scientific Authority determines that the export of specimens of any such species should be limited in order to maintain that species throughout its range at a level consistent with its role in the ecosystems in which it occurs and well above the level at which that species might become eligible for inclusion in Appendix I, the Scientific Authority shall advise the appropriate Management Authority of suitable measures to be taken to limit the grant of export permits for specimens of that species.

4. The import of any specimen of a species included in Appendix II shall require the prior presentation of either an export permit or a re-export certificate.

5. The re-export of any specimen of a species included in Appendix II shall require the prior grant and presentation of a re-export certificate. A re-export certificate shall only be granted when the following conditions have been met:

(a) a Management Authority of the State of re-export is satisfied that the specimen was imported into that State in accordance with the provisions of the present Convention; and

(b) a Management Authority of the State of re-export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.

6. The introduction from the sea of any specimen of a species included in Appendix II shall require the prior grant of a certificate from a Management Authority of the State of introduction. A certificate shall only be granted when the following conditions have been met:

(a) a Scientific Authority of the State of introduction advises that the introduction will not be detrimental to the survival of the species involved; and

(b) a Management Authority of the State of introduction is satisfied that any living specimen will be so handled as to minimize the risk of injury, damage to health or cruel treatment.

7. Certificates referred to in paragraph 6 of this Article may be granted on the advice of a Scientific Authority, in consultation with other national scientific authorities or, when appropriate, international scientific authorities, in respect of periods not exceeding one year for total numbers of specimens to be introduced in such periods.

Article V

Regulation of Trade in Specimens of Species Included in Appendix III

1. All trade in specimens of species included in Appendix III shall be in accordance with the provisions of this Article.

2. The export of any specimen of a species included in Appendix III from any State which has included that species in Appendix III shall require the prior grant and presentation of an export permit. An export permit shall only be granted when the following conditions have been met:

(a) a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora; and

(b) a Management Authority of the State of export is satisfied that any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.

3. The import of any specimen of a species included in Appendix III shall require, except in circumstances to which paragraph 4 of this Article applies, the prior presentation of a certificate of origin and, where the import is from a State which has included that species in Appendix III, an export permit.

4. In the case of re-export, a certificate granted by the Management Authority of the State of re-export that the specimen was processed in that State or is being re-exported shall be accepted by the State of import as evidence that the provisions of the present Convention have been complied with in respect of the specimen concerned.

Article VI

Permits and Certificates

1. Permits and certificates granted under the provisions of Articles III, IV, and V shall be in accordance with the provisions of this Article.

2. An export permit shall contain the information specified in the model set forth in Appendix IV, and may only be used for export within a period of six months from the date on which it was granted.

3. Each permit or certificate shall contain the title of the present Convention, the name and any identifying stamp of the Management Authority granting it and a control number assigned by the Management Authority.

4. Any copies of a permit or certificate issued by a Management Authority shall be clearly marked as copies only and no such copy may be used in place of the original, except to the extent endorsed thereon.

5. A separate permit or certificate shall be required for each consignment of specimens.

6. A Management Authority of the State of import of any specimen shall cancel and retain the export permit or re-export certificate and any corresponding import permit presented in respect of the import of that specimen.

7. Where appropriate and feasible a Management Authority may affix a mark upon any specimen to assist in identifying the specimen. For these purposes "mark" means any indelible imprint, lead seal or other suitable means of identifying a specimen, designed in such a way as to render its imitation by unauthorized persons as difficult as possible.

Article VII

Exemptions and Other Special Provisions Relating to Trade

1. The provisions of Articles III, IV and V shall not apply to the transit or transshipment of specimens through or in the territory of a Party while the specimens remain in Customs control.

2. Where a Management Authority of the State of export or re-export is satisfied that a specimen was acquired before the provisions of the present Convention applied to that specimen, the provisions of Articles III, IV and V shall not apply to that specimen where the Management Authority issues a certificate to that effect.

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

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

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

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

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

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

4. Specimens of an animal species included in Appendix I bred in captivity for commercial purposes, or of a plant species included in Appendix I artificially propagated for commercial purposes, shall be deemed to be specimens of species included in Appendix II.

5. Where a Management Authority of the State of export is satisfied that any specimen of an animal species was bred in captivity or any specimen of a plant species was artificially propagated, or is a part of such an animal or plant or was derived therefrom, a certificate by that Management Authority to that effect shall be accepted in lieu of any of the permits or certificates required under the provisions of Article III, IV or V.

6. The provisions of Articles III, IV and V shall not apply to the non-commercial loan, donation or exchange between scientists or scientific institutions registered by a Management Authority of their State, of herbarium specimens, other preserved, dried or embedded museum specimens, and live plant material which carry a label issued or approved by a Management Authority.

7. A Management Authority of any State may waive the requirements of Articles III, IV and V and allow the movement without permits or certificates of specimens which form part of a travelling zoo, circus, menagerie, plant exhibition or other travelling exhibition provided that:

(a) the exporter or importer registers full details of such specimens with that Management Authority;

(b) the specimens are in either of the categories specified in paragraph 2 or 5 of this Article; and

(c) the Management Authority is satisfied that any living specimen will be so transported and cared for as to minimize the risk of injury, damage to health or cruel treatment.

Article VIII

Measures to Be Taken by the Parties

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

(a) to penalize trade in, or possession of, such specimens, or both; and

(b) to provide for the confiscation or return to the State of export of such specimens.

2. In addition to the measures taken under paragraph 1 of this Article, a Party may, when it deems it necessary, provide for any method of internal reimbursement for expenses incurred as a result of the confiscation of a specimen traded in violation of the measures taken in the application of the provisions of the present Convention.

3. As far as possible, the Parties shall ensure that specimens shall pass through any formalities required for trade with a minimum of delay. To facilitate such passage, a Party may designate ports of exit and ports of entry at which specimens must be presented for clearance. The Parties shall ensure further that all living specimens, during any period of transit, holding or shipment, are properly cared for so as to minimize the risk of injury, damage to health or cruel treatment.

4. Where a living specimen is confiscated as a result of measures referred to in paragraph 1 of this Article:

(a) the specimen shall be entrusted to a Management Authority of the State of confiscation;

(b) the Management Authority shall, after consultation with the State of export, return the specimen to that State at the expense of that State, or to a rescue centre or such other place as the Management Authority deems appropriate and consistent with the purposes of the present Convention; and

(c) the Management Authority may obtain the advice of a Scientific Authority, or may, whenever it considers it desirable, consult the Secretariat in order to facilitate the decision under sub-paragraph (b) of this paragraph, including the choice of a rescue centre or other place.

5. A rescue centre as referred to in paragraph 4 of this Article means an institution designated by a Management Authority to look after the welfare of living specimens, particularly those that have been confiscated.

6. Each Party shall maintain records of trade in specimens of species included in Appendices I, II and III which shall cover:

(a) the names and addresses of exporters and importers; and

(b) the number and type of permits and certificates granted; the States with which such trade occurred; the numbers or quantities and types of specimens, names of species as included in Appendices I, II and III and, where applicable, the size and sex of the specimens in question.

7. Each Party shall prepare periodic reports on its implementation of the present Convention and shall transmit to the Secretariat:

(a) an annual report containing a summary of the information specified in sub-paragraph (b) of paragraph 6 of this Article; and

(b) a biennial report on legislative, regulatory and administrative measures taken to enforce the provisions of the present Convention.

8. The information referred to in paragraph 7 of this Article shall be available to the public where this is not inconsistent with the law of the Party concerned.

Article IX

Management and Scientific Authorities

1. Each Party shall designate for the purposes of the present Convention:

(a) one or more Management Authorities competent to grant permits or certificates on behalf of that Party; and

(b) one or more Scientific Authorities.

2. A State depositing an instrument of ratification, acceptance, approval or accession shall at that time inform the Depository Government of the name and address of the Management Authority authorized to communicate with other Parties and with the Secretariat.

3. Any changes in the designations or authorizations under the provisions of this Article shall be communicated by the Party concerned to the Secretariat for transmission to all other Parties.

4. Any Management Authority referred to in paragraph 2 of this Article shall, if so requested by the Secretariat or the Management Authority of another Party, communicate to it impression of stamps, seals or other devices used to authenticate permits or certificates.

Article X

Trade with States not Party to the Convention

Where export or re-export is to, or import is from, a State not a Party to the present Convention, comparable documentation issued by the competent authorities in that State which substantially conforms with the requirements of the present Convention for permits and certificates may be accepted in lieu thereof by any Party.

Article XI

Conference of the Parties

1. The Secretariat shall call a meeting of the Conference of the Parties not later than two years after the entry into force of the present Convention.

2. Thereafter the Secretariat shall convene regular meetings at least once every two years, unless the Conference decides otherwise, and extraordinary meetings at any time on the written request of at least one-third of the Parties.

3. At meetings, whether regular or extraordinary, the Parties shall review the implementation of the present Convention and may:

(a) make such provision as may be necessary to enable the Secretariat to carry out its duties, and adopt financial provisions;

(b) consider and adopt amendments to Appendices I and II in accordance with Article XV;

(c) review the progress made towards the restoration and conservation of the species included in Appendices I, II and III;

- (d) receive and consider any reports presented by the Secretariat or by any Party; and
- (e) where appropriate, make recommendations for improving the effectiveness of the present Convention.

4. At each regular meeting, the Parties may determine the time and venue of the next regular meeting to be held in accordance with the provisions of paragraph 2 of this Article.

5. At any meeting, the Parties may determine and adopt rules of procedure for the meeting.

6. The United Nations, its Specialized Agencies and the International Atomic Energy Agency, as well as any State not a Party to the present Convention, may be represented at meetings of the Conference by observers, who shall have the right to participate but not to vote.

7. Any body or agency technically qualified in protection, conservation or management of wild fauna and flora, in the following categories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by observers, shall be admitted unless at least one-third of the Parties present object:

(a) international agencies or bodies, either governmental or non-governmental, and national governmental agencies and bodies; and

(b) national non-governmental agencies or bodies which have been approved for this purpose by the State in which they are located. Once admitted, these observers shall have the right to participate but not to vote.

Article XII **The Secretariat**

1. Upon entry into force of the present Convention, a Secretariat shall be provided by the Executive Director of the United Nations Environment Programme. To the extent and in the manner he considers appropriate, he may be assisted by suitable inter-governmental or non-governmental international or national agencies and bodies technically qualified in protection, conservation and management of wild fauna and flora.

2. The functions of the Secretariat shall be:

(a) to arrange for and service meetings of the Parties;

(b) to perform the functions entrusted to it under the provisions of Articles XV and XVI of the present Convention;

(c) to undertake scientific and technical studies in accordance with programmes authorized by the Conference of the Parties as will contribute to the implementation of the present Convention, including studies concerning standards for appropriate preparation and shipment of living specimens and the means of identifying specimens;

(d) to study the reports of Parties and to request from Parties such further information with respect thereto as it deems necessary to ensure implementation of the present Convention;

(e) to invite the attention of the Parties to any matter pertaining to the aims of the present

Convention;

(f) to publish periodically and distribute to the Parties current editions of Appendices I, II and III together with any information which will facilitate identification of specimens of species included in those Appendices;

(g) to prepare annual reports to the Parties on its work and on the implementation of the present Convention and such other reports as meetings of the Parties may request;

(h) to make recommendations for the implementation of the aims and provisions of the present Convention, including the exchange of information of a scientific or technical nature;

(i) to perform any other function as may be entrusted to it by the Parties.

Article XIII **International Measures**

1. When the Secretariat in the light of information received is satisfied that any species included in Appendix I or II is being affected adversely by trade in specimens of that species or that the provisions of the present Convention are not being effectively implemented, it shall communicate such information to the authorized Management Authority of the Party or Parties concerned.

2. When any Party receives a communication as indicated in paragraph 1 of this Article, it shall, as soon as possible, inform the Secretariat of any relevant facts insofar as its laws permit and, where appropriate, propose remedial action. Where the Party considers that an inquiry is desirable, such inquiry may be carried out by one or more persons expressly authorized by the Party.

3. The information provided by the Party or resulting from any inquiry as specified in paragraph 2 of this Article shall be reviewed by the next Conference of the Parties which may make whatever recommendations it deems appropriate.

Article XIV **Effect on Domestic Legislation and International Conventions**

1. The provisions of the present Convention shall in no way affect the right of Parties to adopt:

(a) stricter domestic measures regarding the conditions for trade, taking, possession or transport of specimens of species included in Appendices I, II and III, or the complete prohibition thereof; or

(b) domestic measures restricting or prohibiting trade, taking, possession or transport of species not included in Appendix I, II or III.

2. The provisions of the present Convention shall in no way affect the provisions of any domestic measures or the obligations of Parties deriving from any treaty, convention, or international agreement relating to other aspects of trade, taking, possession or transport of specimens which is in force or subsequently may enter into force for any Party including any measure pertaining to the Customs, public health, veterinary or plant quarantine fields.

3. The provisions of the present Convention shall in no way affect the provisions of, or the obligations deriving from, any treaty, convention or international agreement concluded or which may be concluded between States creating a union or regional trade agreement establishing or maintaining a common external Customs control and removing Customs control between the

parties thereto insofar as they relate to trade among the States members of that union or agreement.

4. A State party to the present Convention, which is also a party to any other treaty, convention or international agreement which is in force at the time of the coming into force of the present Convention and under the provisions of which protection is afforded to marine species included in Appendix II, shall be relieved of the obligations imposed on it under the provisions of the present Convention with respect to trade in specimens of species included in Appendix II that are taken by ships registered in that State and in accordance with the provisions of such other treaty, convention or international agreement.

5. Notwithstanding the provisions of Articles III, IV and V, any export of a specimen taken in accordance with paragraph 4 of this Article shall only require a certificate from a Management Authority of the State of introduction to the effect that the specimen was taken in accordance with the provisions of the other treaty, convention or international agreement in question.

6. Nothing in the present Convention shall prejudice the codification and development of the law of the sea by the United Nations Conference on the Law of the Sea convened pursuant to Resolution 2750 C (XXV) of the General Assembly of the United Nations nor the present or future claims and legal views of any State concerning the law of the sea and the nature and extent of coastal and flag State jurisdiction.

Article XV

Amendments to Appendices I and II

1. The following provisions shall apply in relation to amendments to Appendices I and II at meetings of the Conference of the Parties:

(a) Any Party may propose an amendment to Appendix I or II for consideration at the next meeting. The text of the proposed amendment shall be communicated to the Secretariat at least 150 days before the meeting. The Secretariat shall consult the other Parties and interested bodies on the amendment in accordance with the provisions of sub-paragraphs (b) and (c) of paragraph 2 of this Article and shall communicate the response to all Parties not later than 30 days before the meeting.

(b) Amendments shall be adopted by a two-thirds majority of Parties present and voting. For these purposes "Parties present and voting" means Parties present and casting an affirmative or negative vote. Parties abstaining from voting shall not be counted among the two-thirds required for adopting an amendment.

(c) Amendments adopted at a meeting shall enter into force 90 days after that meeting for all Parties except those which make a reservation in accordance with paragraph 3 of this Article.

2. The following provisions shall apply in relation to amendments to Appendices I and II between meetings of the Conference of the Parties:

(a) Any Party may propose an amendment to Appendix I or II for consideration between meetings by the postal procedures set forth in this paragraph.

(b) For marine species, the Secretariat shall, upon receiving the text of the proposed amendment, immediately communicate it to the Parties. It shall also consult inter-governmental bodies having a function in relation to those species especially with a view to obtaining scientific data these bodies may be able to provide and to ensuring co-ordination with any conservation measures enforced by such bodies. The Secretariat shall communicate the views expressed and data

provided by these bodies and its own findings and recommendations to the Parties as soon as possible.

(c) For species other than marine species, the Secretariat shall, upon receiving the text of the proposed amendment, immediately communicate it to the Parties, and, as soon as possible thereafter, its own recommendations.

(d) Any Party may, within 60 days of the date on which the Secretariat communicated its recommendations to the Parties under sub-paragraph (b) or (c) of this paragraph, transmit to the Secretariat any comments on the proposed amendment together with any relevant scientific data and information.

(e) The Secretariat shall communicate the replies received together with its own recommendations to the Parties as soon as possible. (f) If no objection to the proposed amendment is received by the Secretariat within 30 days of the date the replies and recommendations were communicated under the provisions of sub-paragraph (e) of this paragraph, the amendment shall enter into force 90 days later for all Parties except those which make a reservation in accordance with paragraph 3 of this Article.

(g) If an objection by any Party is received by the Secretariat, the proposed amendment shall be submitted to a postal vote in accordance with the provisions of sub-paragraphs (h) , (i) and (j) of this paragraph.

(h) The Secretariat shall notify the Parties that notification of objection has been received.

(i) Unless the Secretariat receives the votes for, against or in abstention from at least one-half of the Parties within 60 days of the date of notification under sub-paragraph (h) of this paragraph, the proposed amendment shall be referred to the next meeting of the Conference for further consideration.

(j) Provided that votes are received from one-half of the Parties, the amendment shall be adopted by a two-thirds majority of Parties casting an affirmative or negative vote.

(k) The Secretariat shall notify all Parties of the result of the vote.

(l) If the proposed amendment is adopted it shall enter into force 90 days after the date of the notification by the Secretariat of its acceptance for all Parties except those which make a reservation in accordance with paragraph 3 of this Article.

3. During the period of 90 days provided for by sub-paragraph (c) of paragraph 1 or sub-paragraph (l) of paragraph 2 of this Article any Party may by notification in writing to the Depositary Government make a reservation with respect to the amendment. Until such reservation is withdrawn the Party shall be treated as a State not a Party to the present Convention with respect to trade in the species concerned.

Article XVI

Appendix III and Amendments thereto

1. Any Party may at any time submit to the Secretariat a list of species which it identifies as being subject to regulation within its jurisdiction for the purpose mentioned in paragraph 3 of Article II. Appendix III shall include the names of the Parties submitting the species for inclusion therein, the scientific names of the species so submitted, and any parts or derivatives of the animals or plants concerned that are specified in relation to the species for the purposes of sub-paragraph (b) of Article I.

2. Each list submitted under the provisions of paragraph 1 of this Article shall be communicated to the Parties by the Secretariat as soon as possible after receiving it. The list shall take effect as part of Appendix III 90 days after the date of such communication. At any time after the communication of such list, any Party may by notification in writing to the Depositary Government enter a reservation with respect to any species or any parts or derivatives, and until such reservation is withdrawn, the State shall be treated as a State not a Party to the present Convention with respect to trade in the species or part or derivative concerned.

3. A Party which has submitted a species for inclusion in Appendix III may withdraw it at any time by notification to the Secretariat which shall communicate the withdrawal to all Parties. The withdrawal shall take effect 30 days after the date of such communication.

4. Any Party submitting a list under the provisions of paragraph 1 of this Article shall submit to the Secretariat a copy of all domestic laws and regulations applicable to the protection of such species, together with any interpretations which the Party may deem appropriate or the Secretariat may request. The Party shall, for as long as the species in question is included in Appendix III, submit any amendments of such laws and regulations or any interpretations as they are adopted.

Article XVII

Amendment of the Convention

1. An extraordinary meeting of the Conference of the Parties shall be convened by the Secretariat on the written request of at least one-third of the Parties to consider and adopt amendments to the present Convention. Such amendments shall be adopted by a two-thirds majority of Parties present and voting. For these purposes "Parties present and voting" means Parties present and casting an affirmative or negative vote. Parties abstaining from voting shall not be counted among the two-thirds required for adopting an amendment.

2. The text of any proposed amendment shall be communicated by the Secretariat to all Parties at least 90 days before the meeting.

3. An amendment shall enter into force for the Parties which have accepted it 60 days after two-thirds of the Parties have deposited an instrument of acceptance of the amendment with the Depositary Government. Thereafter, the amendment shall enter into force for any other Party 60 days after that Party deposits its instrument of acceptance of the amendment.

Article XVIII

Resolution of Disputes

1. Any dispute which may arise between two or more Parties with respect to the interpretation or application of the provisions of the present Convention shall be subject to negotiation between the Parties involved in the dispute.

2. If the dispute can not be resolved in accordance with paragraph 1 of this Article, the Parties may, by mutual consent, submit the dispute to arbitration, in particular that of the Permanent Court of Arbitration at The Hague, and the Parties submitting the dispute shall be bound by the arbitral decision.

Article XIX

Signature

The present Convention shall be open for signature at Washington until 30th April 1973 and thereafter at Berne until 31st December 1974.

Article XX

Ratification, Acceptance, Approval

The present Convention shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Government of the Swiss Confederation which shall be the Depositary Government.

Article XXI

Accession

The present Convention shall be open indefinitely for accession. Instruments of accession shall be deposited with the Depositary Government.

Article XXII

Entry into Force

1. The present Convention shall enter into force 90 days after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession, with the Depositary Government.
2. For each State which ratifies, accepts or approves the present Convention or accedes thereto after the deposit of the tenth instrument of ratification, acceptance, approval or accession, the present Convention shall enter into force 90 days after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article XXIII

Reservations

1. The provisions of the present Convention shall not be subject to general reservations. Specific reservations may be entered in accordance with the provisions of this Article and Articles XV and XVI.
2. Any State may, on depositing its instrument of ratification, acceptance, approval or accession, enter a specific reservation with regard to:
 - (a) any species included in Appendix I, II or III; or
 - (b) any parts or derivatives specified in relation to a species included in Appendix III.
3. Until a Party withdraws its reservation entered under the provisions of this Article, it shall be treated as a State not a Party to the present Convention with respect to trade in the particular species or parts or derivatives specified in such reservation.

Article XXIV

Denunciation

Any Party may denounce the present Convention by written notification to the Depositary Government at any time. The denunciation shall take effect twelve months after the Depositary Government has received the notification.

Article XXV

Depositary

1. The original of the present Convention, in the [Chinese](#), English, [French](#), [Russian](#) and [Spanish](#) languages, each version being equally authentic, shall be deposited with the Depositary Government, which shall transmit certified copies thereof to all States that have signed it or deposited instruments of accession to it.
2. The Depositary Government shall inform all signatory and acceding States and the Secretariat of signatures, deposit of instruments of ratification, acceptance, approval or accession, entry into

force of the present Convention, amendments thereto, entry and withdrawal of reservations and notifications of denunciation.

3. As soon as the present Convention enters into force, a certified copy thereof shall be transmitted by the Depositary Government to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

In witness whereof the undersigned Plenipotentiaries, being duly authorized to that effect, have signed the present Convention.

Done at Washington this third day of March, One Thousand Nine Hundred and Seventy-three.

Exhibit B

List of Contracting Parties

in alphabetical order

- Order** Order of entry into force
ISO Two-letter ISO country code
Region CITES region
 – 1 = Africa
 – 2 = Asia
 – 3 = Central and South America and the Caribbean
 – 4 = Europe
 – 5 = North America
 – 6 = Oceania
- Date 1** – (A) Accession
 – (Ac) Acceptance
 – (Ap) Approval
 – (C) Continuation
 – (Ds) Declaration of succession
 – (R) Ratification
- Date 2** Date of entry into force

Order	State	ISO	Region	Date 1	Date 2
88	Afghanistan	AF	2	30/10/1985 (A)	28/01/1986
163	Albania	AL	4	27/06/2003 (A)	25/09/2003
81	Algeria	DZ	1	23/11/1983 (A)	21/02/1984
141	Antigua and Barbuda	AG	3	08/07/1997 (A)	06/10/1997
64	Argentina	AR	3	08/01/1981 (R)	08/04/1981
28	Australia	AU	6	29/07/1976 (R)	27/10/1976
74	Austria	AT	4	27/01/1982 (A)	27/04/1982
145	Azerbaijan	AZ	4	23/11/1998 (A)	21/02/1999
50	Bahamas	BS	3	20/06/1979 (A)	18/09/1979
73	Bangladesh	BD	2	20/11/1981 (R)	18/02/1982
119	Barbados	BB	3	09/12/1992 (A)	09/03/1993

130	Belarus	BY	4	10/08/1995 (A)	08/11/1995
80	Belgium	BE	4	03/10/1983 (R)	01/01/1984
69	Belize	BZ	3	19/08/1986 (Ds)	21/09/1981
84	Benin	BJ	1	28/02/1984 (A)	28/05/1984
160	Bhutan	BT	2	15/08/2002(A)	13/11/2002
51	Bolivia	BO	3	06/07/1979 (R)	04/10/1979
40	Botswana	BW	1	14/11/1977 (A)	12/02/1978
16	Brazil	BR	3	06/08/1975 (R)	04/11/1975
106	Brunei Darussalam	BN	2	04/05/1990 (A)	02/08/1990
109	Bulgaria	BG	4	16/01/1991 (A)	16/04/1991
102	Burkina Faso	BF	1	13/10/1989 (A)	11/01/1990
94	Burundi	BI	1	08/08/1988 (A)	06/11/1988
140	Cambodia	KH	2	04/07/1997 (R)	02/10/1997
68	Cameroon	CM	1	05/06/1981 (A)	03/09/1981
10	Canada	CA	5	10/04/1975 (R)	09/07/1975
169	Cape Verde	CV	1	10/08/2005 (A)	08/11/2005
58	Central African Republic	CF	1	27/08/1980 (A)	25/11/1980
96	Chad	TD	1	02/02/1989 (A)	03/05/1989
8	Chile	CL	3	14/02/1975 (R)	01/07/1975
63	China	CN	2	08/01/1981 (A)	08/04/1981
71	Colombia	CO	3	31/08/1981 (R)	29/11/1981
128	Comoros	KM	1	23/11/1994 (A)	21/02/1995
79	Congo	CG	1	31/01/1983 (A)	01/05/1983

14	Costa Rica	CR	3	30/06/1975 (R)	28/09/1975
127	Côte d'Ivoire	CI	1	21/11/1994 (A)	19/02/1995
151	Croatia	HR	4	14/03/2000 (A)	12/06/2000
105	Cuba	CU	3	20/04/1990 (A)	19/07/1990
6	Cyprus	CY	4	18/10/1974 (R)	01/07/1975
117	Czech Republic	CZ	4	14/04/1993 (Ds)	01/01/1993
26	Democratic Republic of the Congo	CD	1	20/07/1976 (A)	18/10/1976
34	Denmark	DK	4	26/07/1977 (R)	24/10/1977
113	Djibouti	DJ	1	07/02/1992 (A)	07/05/1992
129	Dominica	DM	3	04/08/1995 (A)	02/11/1995
92	Dominican Republic	DO	3	17/12/1986 (A)	17/03/1987
7	Ecuador	EC	3	11/02/1975 (R)	01/07/1975
41	Egypt	EG	1	04/01/1978 (A)	04/04/1978
93	El Salvador	SV	3	30/04/1987 (A)	29/07/1987
114	Equatorial Guinea	GQ	1	10/03/1992 (A)	08/06/1992
125	Eritrea	ER	1	24/10/1994 (A)	22/01/1995
115	Estonia	EE	4	22/07/1992 (A)	20/10/1992
98	Ethiopia	ET	1	05/04/1989 (A)	04/07/1989
143	Fiji	FJ	6	30/09/1997 (A)	29/12/1997
24	Finland	FI	4	10/05/1976 (A)	08/08/1976
43	France	FR	4	11/05/1978 (Ap)	09/08/1978
97	Gabon	GA	1	13/02/1989 (A)	14/05/1989
37	Gambia	GM	1	26/08/1977	24/11/1977

				(A)	
133	Georgia	GE	4	13/09/1996 (A)	12/12/1996
22	Germany	DE	4	22/03/1976 (R)	20/06/1976
20	Ghana	GH	1	14/11/1975 (R)	12/02/1976
118	Greece	GR	4	08/10/1992 (A)	06/01/1993
146	Grenada	GD	3	30/08/1999 (A)	28/11/1999
53	Guatemala	GT	3	07/11/1979 (R)	05/02/1980
72	Guinea	GN	1	21/09/1981 (A)	20/12/1981
107	Guinea-Bissau	GW	1	16/05/1990 (A)	14/08/1990
33	Guyana	GY	3	27/05/1977 (A)	25/08/1977
86	Honduras	HN	3	15/03/1985 (A)	13/06/1985
87	Hungary	HU	4	29/05/1985 (A)	27/08/1985
148	Iceland	IS	4	03/01/2000 (A)	02/04/2000
25	India	IN	2	20/07/1976 (R)	18/10/1976
48	Indonesia	ID	2	28/12/1978 (A)	28/03/1979
30	Iran (Islamic Republic of)	IR	2	03/08/1976 (R)	01/11/1976
157	Ireland	IE	4	08/01/2002 (R)	08/04/2002
56	Israel	IL	2	18/12/1979 (R)	17/03/1980
52	Italy	IT	4	02/10/1979 (R)	31/12/1979
137	Jamaica	JM	3	23/04/1997 (A)	22/07/1997
57	Japan	JP	2	06/08/1980 (Ac)	04/11/1980
47	Jordan	JO	2	14/12/1978 (A)	14/03/1979
149	Kazakhstan	KZ	2	20/01/2000 (A)	19/04/2000

46	Kenya	KE	1	13/12/1978 (R)	13/03/1979
159	Kuwait	KW	2	12/08/2002(R)	10/11/2002
165	Lao People's Democratic Republic	LA	2	01/03/2004 (A)	30/05/2004
135	Latvia	LV	4	11/02/1997 (A)	12/05/1997
164	Lesotho	LS	1	01/10/2003 (R)	30/12/2003
65	Liberia	LR	1	11/03/1981 (A)	09/06/1981
161	Libyan Arab Jamahiriya	LY	1	28/01/2003(A)	28/04/2003
55	Liechtenstein	LI	4	30/11/1979 (A)	28/02/1980
156	Lithuania	LT	4	10/12/2001 (A)	09/03/2002
82	Luxembourg	LU	4	13/12/1983 (R)	12/03/1984
152	Macedonia (see <i>The former Yugoslav Republic of Macedonia</i>)	MK	4	04/07/2000 (A)	02/10/2000
17	Madagascar	MG	1	20/08/1975 (R)	18/11/1975
75	Malawi	MW	1	05/02/1982 (A)	06/05/1982
38	Malaysia	MY	2	20/10/1977 (A)	18/01/1978
123	Mali	ML	1	18/07/1994 (A)	16/10/1994
99	Malta	MT	4	17/04/1989 (A)	16/07/1989
144	Mauritania	MR	1	13/03/1998 (A)	11/06/1998
11	Mauritius	MU	1	28/04/1975 (R)	27/07/1975
110	Mexico	MX	5	02/07/1991 (A)	30/09/1991
42	Monaco	MC	4	19/04/1978 (A)	18/07/1978
131	Mongolia	MN	2	05/01/1996 (A)	04/04/1996
19	Morocco	MA	1	16/10/1975 (R)	14/01/1976
66	Mozambique	MZ	1	25/03/1981 (A)	23/06/1981

139	Myanmar	MM	2	13/06/1997 (A)	11/09/1997
108	Namibia	NA	1	18/12/1990 (A)	18/03/1991
12	Nepal	NP	2	18/06/1975 (A)	16/09/1975
85	Netherlands	NL	4	19/04/1984 (R)	18/07/1984
100	New Zealand	NZ	6	10/05/1989 (A)	08/08/1989
36	Nicaragua	NI	3	06/08/1977 (A)	04/11/1977
18	Niger	NE	1	08/09/1975 (R)	07/12/1975
2	Nigeria	NG	1	09/05/1974 (R)	01/07/1975
27	Norway	NO	4	27/07/1976 (R)	25/10/1976
23	Pakistan	PK	2	20/04/1976 (A)	19/07/1976
166	Palau	PW	6	16/04/2004 (A)	15/07/2004
44	Panama	PA	3	17/08/1978 (R)	15/11/1978
21	Papua New Guinea	PG	6	12/12/1975 (A)	11/03/1976
31	Paraguay	PY	3	15/11/1976 (R)	13/02/1977
13	Peru	PE	3	27/06/1975 (R)	25/09/1975
70	Philippines	PH	2	18/08/1981 (R)	16/11/1981
103	Poland	PL	4	12/12/1989 (R)	12/03/1990
62	Portugal	PT	4	11/12/1980 (R)	11/03/1981
154	Qatar	QA	2	08/05/2001 (A)	06/08/2001
120	Republic of Korea	KR	2	09/07/1993 (A)	07/10/1993
153	Republic of Moldova	MD	4	29/03/2001 (A)	27/06/2001
124	Romania	RO	4	18/08/1994 (A)	16/11/1994
112	Russian Federation	RU	4	13/01/1992	01/01/1992

				(C)	
59	Rwanda	RW	1	20/10/1980 (A)	18/01/1981
122	Saint Kitts and Nevis	KN	3	14/02/1994 (A)	15/05/1994
77	Saint Lucia	LC	3	15/12/1982 (A)	15/03/1983
95	Saint Vincent and the Grenadines	VC	3	30/11/1988 (A)	28/02/1989
167	Samoa	WS	6	09/11/2004 (A)	07/02/2005
168	San Marino	SM	4	22/07/2005 (Ac)	20/10/2005
155	Sao Tome and Principe	ST	1	09/08/2001 (A)	07/11/2001
132	Saudi Arabia	SA	2	12/03/1996 (A)	10/06/1996
35	Senegal	SN	1	05/08/1977 (A)	03/11/1977
158	Serbia	CS	4	27/02/2002 (A)	28/05/2002
32	Seychelles	SC	1	08/02/1977 (A)	09/05/1977
126	Sierra Leone	SL	1	28/10/1994 (A)	26/01/1995
91	Singapore	SG	2	30/11/1986 (A)	28/02/1987
116	Slovakia	SK	4	02/03/1993 (Ds)	01/01/1993
150	Slovenia	SI	4	24/01/2000 (A)	23/04/2000
89	Somalia	SO	1	02/12/1985 (A)	02/03/1986
15	South Africa	ZA	1	15/07/1975 (R)	13/10/1975
90	Spain	ES	4	30/05/1986 (A)	28/08/1986
49	Sri Lanka	LK	2	04/05/1979 (A)	02/08/1979
76	Sudan	SD	1	26/10/1982 (R)	24/01/1983
60	Suriname	SR	3	17/11/1980 (A)	15/02/1981
136	Swaziland	SZ	1	26/02/1997 (A)	27/05/1997

5	Sweden	SE	4	20/08/1974 (R)	01/07/1975
3	Switzerland	CH	4	09/07/1974 (R)	01/07/1975
162	Syrian Arab Republic	SY	2	30/04/2003(A)	29/07/2003
78	Thailand	TH	2	21/01/1983 (R)	21/04/1983
152	The former Yugoslav Republic of Macedonia	MK	4	04/07/2000 (A)	02/10/2000
45	Togo	TG	1	23/10/1978 (R)	21/01/1979
83	Trinidad and Tobago	TT	3	19/01/1984 (A)	18/04/1984
4	Tunisia	TN	1	10/07/1974 (R)	01/07/1975
134	Turkey	TR	4	23/09/1996 (A)	22/12/1996
111	Uganda	UG	1	18/07/1991 (A)	16/10/1991
147	Ukraine	UA	4	30/12/1999 (A)	29/03/2000
104	United Arab Emirates	AE	2	08/02/1990 (A)	09/05/1990
29	United Kingdom of Great Britain and Northern Ireland	GB	4	02/08/1976 (R)	31/10/1976
54	United Republic of Tanzania	TZ	1	29/11/1979 (R)	27/02/1980
1	United States of America	US	5	14/01/1974 (R)	01/07/1975
9	Uruguay	UY	3	02/04/1975 (R)	01/07/1975
142	Uzbekistan	UZ	2	10/07/1997 (A)	08/10/1997
101	Vanuatu	VU	6	17/07/1989 (A)	15/10/1989
39	Venezuela (Bolivarian Republic of)	VE	3	24/10/1977 (R)	22/01/1978
121	Viet Nam	VN	2	20/01/1994 (A)	20/04/1994
138	Yemen	YE	2	05/05/1997 (A)	03/08/1997
61	Zambia	ZM	1	24/11/1980 (A)	22/02/1981
67	Zimbabwe	ZW	1	19/05/1981)	17/08/1981

Exhibit C

Appendices I, II and III

valid from 14 June 2006

Interpretation

Appendix I	Appendix II	Appendix III
FAUNA (ANIMALS)		
PHYLUM CHORDATA		
CLASS MAMMALIA (MAMMALS)		
MONOTREMATA		
Tachyglossidae Echidnas, spiny anteaters		
	<i>Zaglossus spp.</i>	
DASYUROMORPHIA		
Dasyuridae Dunnarts		
<i>Sminthopsis longicaudata</i>		
<i>Sminthopsis psammophila</i>		
Thylacinidae Tasmanian wolf, thylacine		
<i>Thylacinus cynocephalus</i> (possibly extinct)		
PERAMELEMORPHIA		
Peramelidae Bandicoots		
<i>Chaeropus ecaudatus</i> (possibly extinct)		
<i>Macrotis lagotis</i>		
<i>Macrotis leucura</i>		
<i>Perameles bougainville</i>		
DIPROTODONTIA		
Phalangeridae Cuscuses		
	<i>Phalanger orientalis</i>	
	<i>Spilocuscus maculatus</i>	
Vombatidae Northern hairy-nosed wombat		
<i>Lasiorhinus krefftii</i>		

Macropodidae Kangaroos, wallabies		
	<i>Dendrolagus inustus</i>	
	<i>Dendrolagus ursinus</i>	
<i>Lagorchestes hirsutus</i>		
<i>Lagostrophus fasciatus</i>		
<i>Onychogalea fraenata</i>		
<i>Onychogalea lunata</i>		
Potoroidae Rat-kangaroos		
<i>Bettongia spp.</i>		
<i>Caloprymnus campestris</i> (possibly extinct)		
SCANDENTIA		
Tupaiaidae Tree shrews		
	<i>Tupaiaidae spp.</i>	
CHIROPTERA		
Phyllostomidae Broad-nosed bat		
		<i>Platyrrhinus lineatus</i> (Uruguay)
Pteropodidae Fruit bats, flying foxes		
	<i>Acerodon spp.</i> (Except the species included in Appendix I)	
<i>Acerodon jubatus</i>		
<i>Acerodon lucifer</i> (possibly extinct)		
	<i>Pteropus spp.</i> (Except the species included in Appendix I)	
<i>Pteropus insularis</i>		
<i>Pteropus mariannus</i>		
<i>Pteropus molossinus</i>		
<i>Pteropus phaeocephalus</i>		
<i>Pteropus pilosus</i>		
<i>Pteropus samoensis</i>		
<i>Pteropus tonganus</i>		
PRIMATES Apes, monkeys		
	<i>PRIMATES spp.</i> (Except the species included in Appendix I)	
Lemuridae Large lemurs		
<i>Lemuridae spp.</i>		

Megaladapidae Sportive lemurs		
Megaladapidae spp. (possibly extinct)		
Cheirogaleidae Dwarf lemurs		
Cheirogaleidae spp.		
Indridae Avahi, indris, sifakas, woolly lemurs		
Indridae spp.		
Daubentoniidae Aye-aye		
<i>Daubentonia madagascariensis</i>		
Callitrichidae Marmosets, tamarins		
<i>Callimico goeldii</i>		
<i>Callithrix aurita</i>		
<i>Callithrix flaviceps</i>		
<i>Leontopithecus spp.</i>		
<i>Saguinus bicolor</i>		
<i>Saguinus geoffroyi</i>		
<i>Saguinus leucopus</i>		
<i>Saguinus oedipus</i>		
Cebidae New World monkeys		
<i>Alouatta coibensis</i>		
<i>Alouatta palliata</i>		
<i>Alouatta pigra</i>		
<i>Ateles geoffroyi frontatus</i>		
<i>Ateles geoffroyi panamensis</i>		
<i>Brachyteles arachnoides</i>		
<i>Cacajao spp.</i>		
<i>Chiropotes albinasus</i>		
<i>Lagothrix flavicauda</i>		
<i>Saimiri oerstedii</i>		
Cercopithecidae Old World monkeys		
<i>Cercocebus galeritus galeritus</i>		
<i>Cercopithecus diana</i>		
<i>Macaca silenus</i>		
<i>Mandrillus leucophaeus</i>		
<i>Mandrillus sphinx</i>		
<i>Nasalis concolor</i>		
<i>Nasalis larvatus</i>		

<i>Presbytis potenziani</i>		
<i>Procolobus pennantii kirkii</i>		
<i>Procolobus rufomitratu</i> s		
<i>Pygathrix</i> spp.		
<i>Semnopithecus entellus</i>		
<i>Trachypithecus geei</i>		
<i>Trachypithecus pileatus</i>		
Hylobatidae Gibbons		
Hylobatidae spp.		
Hominidae Chimpanzees, gorilla, orang-utan		
<i>Gorilla gorilla</i>		
<i>Pan</i> spp.		
<i>Pongo pygmaeus</i>		
XENARTHRA		
Myrmecophagidae American anteaters		
	<i>Myrmecophaga tridactyla</i>	
		<i>Tamandua mexicana</i> (Guatemala)
Bradypodidae Three-toed sloth		
	<i>Bradypus variegatus</i>	
Megalonychidae Two-toed sloth		
		<i>Choloepus hoffmanni</i> (Costa Rica)
Dasypodidae Armadillos		
		<i>Cabassous centralis</i> (Costa Rica)
		<i>Cabassous tatouay</i> (Uruguay)
	<i>Chaetophractus nationi</i> (A zero annual export quota has been established. All specimens shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly)	
<i>Prionodontes maximus</i>		
PHOLIDOTA		
Manidae Pangolins		
	<i>Manis</i> spp. (A zero	

	annual export quota has been established for <i>Manis crassicaudata</i> , <i>M. javanica</i> and <i>M. pentadactyla</i> for specimens removed from the wild and traded for primarily commercial purposes)	
LAGOMORPHA		
Leporidae Hispid hare, volcano rabbit		
<i>Caprolagus hispidus</i>		
<i>Romerolagus diazi</i>		
RODENTIA		
Sciuridae Ground squirrels, tree squirrels		
<i>Cynomys mexicanus</i>		
		<i>Epixerus ebii</i> (Ghana)
		<i>Marmota caudata</i> (India)
		<i>Marmota himalayana</i> (India)
	<i>Ratufa spp.</i>	
		<i>Sciurus deppei</i> (Costa Rica)
Anomaluridae African flying squirrels		
		<i>Anomalurus beecrofti</i> (Ghana)
		<i>Anomalurus derbianus</i> (Ghana)
		<i>Anomalurus pelii</i> (Ghana)
		<i>Idiurus macrotis</i> (Ghana)
Muridae Mice, rats		
<i>Leporillus conditor</i>		
<i>Pseudomys praeconis</i>		
<i>Xeromys myoides</i>		
<i>Zyomys pedunculatus</i>		
Hystricidae Crested porcupine		
		<i>Hystrix cristata</i> (Ghana)
Erethizontidae New World porcupines		
		<i>Sphiggurus mexicanus</i> (Honduras)
		<i>Sphiggurus spinosus</i> (Uruguay)

Agoutidae Paca		
		<i>Agouti paca</i> (Honduras)
Dasyproctidae Agouti		
		<i>Dasyprocta punctata</i> (Honduras)
Chinchillidae Chinchillas		
Chinchilla spp. (Specimens of the domesticated form are not subject to the provisions of the Convention)		
CETACEA Dolphins, porpoises, whales		
	CETACEA spp. (Except the species included in Appendix I. A zero annual export quota has been established for live specimens from the Black Sea population of <i>Tursiops truncatus</i> removed from the wild and traded for primarily commercial purposes)	
Platanistidae River dolphins		
Lipotes vexillifer		
Platanista spp.		
Ziphiidae Beaked whales, bottle-nosed whales		
Berardius spp.		
Hyperoodon spp.		
Physeteridae Sperm whales		
Physeter catodon		
Delphinidae Dolphins		
Orcaella brevirostris		
Sotalia spp.		
Sousa spp.		
Phocoenidae Porpoises		
Neophocaena phocaenoides		
Phocoena sinus		
Eschrichtiidae Grey whale		
Eschrichtius robustus		
Balaenopteridae Humpback whale, rorquals		
Balaenoptera acutorostrata (Except the population of West		

Greenland, which is included in Appendix II)		
<i>Balaenoptera bonaerensis</i>		
<i>Balaenoptera borealis</i>		
<i>Balaenoptera edeni</i>		
<i>Balaenoptera musculus</i>		
<i>Balaenoptera physalus</i>		
<i>Megaptera novaeangliae</i>		
Balaenidae Bowhead whale, right whales		
<i>Balaena mysticetus</i>		
<i>Eubalaena spp.</i>		
Neobalaenidae Pygmy right whale		
<i>Caperea marginata</i>		
CARNIVORA		
Canidae Bush dog, foxes, wolves		
		<i>Canis aureus</i> (India)
<i>Canis lupus</i> (Only the populations of Bhutan, India, Nepal and Pakistan; all other populations are included in Appendix II)		
	<i>Canis lupus</i> (Except the populations of Bhutan, India, Nepal and Pakistan, which are included in Appendix I)	
	<i>Cerdocyon thous</i>	
	<i>Chrysocyon brachyurus</i>	
	<i>Cuon alpinus</i>	
	<i>Pseudalopex culpaeus</i>	
	<i>Pseudalopex griseus</i>	
	<i>Pseudalopex gymnocercus</i>	
<i>Speothos venaticus</i>		
		<i>Vulpes bengalensis</i> (India)
	<i>Vulpes cana</i>	
		<i>Vulpes vulpes griffithi</i> (India)
		<i>Vulpes vulpes montana</i> (India)
		<i>Vulpes vulpes pusilla</i> (India)

	<i>Vulpes zerda</i>	
Ursidae Bears, pandas		
	Ursidae spp. (Except the species included in Appendix I)	
<i>Ailuropoda melanoleuca</i>		
<i>Ailurus fulgens</i>		
<i>Helarctos malayanus</i>		
<i>Melursus ursinus</i>		
<i>Tremarctos ornatus</i>		
<i>Ursus arctos</i> (Only the populations of Bhutan, China, Mexico and Mongolia; all other populations are included in Appendix II)		
<i>Ursus arctos isabellinus</i>		
<i>Ursus thibetanus</i>		
Procyonidae Coatis, kinkajou, olingos		
		<i>Bassaricyon gabbii</i> (Costa Rica)
		<i>Bassariscus sumichrasti</i> (Costa Rica)
		<i>Nasua narica</i> (Honduras)
		<i>Nasua nasua solitaria</i> (Uruguay)
		<i>Potos flavus</i> (Honduras)
Mustelidae Badgers, martens, weasels, etc.		
Lutrinae Otters		
	Lutrinae spp. (Except the species included in Appendix I)	
<i>Aonyx congicus</i> (Only the populations of Cameroon and Nigeria; all other populations are included in Appendix II)		
<i>Enhydra lutris nereis</i>		
<i>Lontra felina</i>		
<i>Lontra longicaudis</i>		
<i>Lontra provocax</i>		
<i>Lutra lutra</i>		
<i>Pteronura brasiliensis</i>		
Mellivorinae Honey badger		

		<i>Mellivora capensis</i> (Botswana, Ghana)
Mephitinae Hog-nosed skunk		
	<i>Conepatus humboldtii</i>	
Mustelinae Grisons, martens, tayra, weasels		
		<i>Eira barbara</i> (Honduras)
		<i>Galictis vittata</i> (Costa Rica)
		<i>Martes flavigula</i> (India)
		<i>Martes foina intermedia</i> (India)
		<i>Martes gwatkinsii</i> (India)
		<i>Mustela altaica</i> (India)
		<i>Mustela erminea ferganae</i> (India)
		<i>Mustela kathiah</i> (India)
	<i>Mustela nigripes</i>	
		<i>Mustela sibirica</i> (India)
Viverridae Binturong, civets, falanouc, fossa, linsangs, otter-civet, palm civets		
		<i>Arctictis binturong</i> (India)
		<i>Civettictis civetta</i> (Botswana)
	<i>Cryptoprocta ferox</i>	
	<i>Cynogale bennettii</i>	
	<i>Eupleres goudotii</i>	
	<i>Fossa fossana</i>	
	<i>Hemigalus derbyanus</i>	
		<i>Paguma larvata</i> (India)
		<i>Paradoxurus hermaphroditus</i> (India)
		<i>Paradoxurus jerdoni</i> (India)
	<i>Prionodon linsang</i>	
	<i>Prionodon pardicolor</i>	
		<i>Viverra civettina</i> (India)
		<i>Viverra zibetha</i> (India)
		<i>Viverricula indica</i> (India)
Herpestidae Mongooses		
		<i>Herpestes brachyurus fuscus</i> (India)
		<i>Herpestes edwardsii</i>

		(India)
		<i>Herpestes javanicus auropunctatus</i> (India)
		<i>Herpestes smithii</i> (India)
		<i>Herpestes urva</i> (India)
		<i>Herpestes vitticollis</i> (India)
Hyaenidae Aardwolf		
		<i>Proteles cristatus</i> (Botswana)
Felidae Cats		
	Felidae spp. (Except the species included in Appendix I. Specimens of the domesticated form are not subject to the provisions of the Convention)	
<i>Acinonyx jubatus</i> (Annual export quotas for live specimens and hunting trophies are granted as follows: Botswana: 5; Namibia: 150; Zimbabwe: 50. The trade in such specimens is subject to the provisions of Article III of the Convention)		
<i>Caracal caracal</i> (Only the population of Asia; all other populations are included in Appendix II)		
<i>Catopuma temminckii</i>		
<i>Felis nigripes</i>		
<i>Herpailurus yaguarondi</i> (Only the populations of Central and North America; all other populations are included in Appendix II)		
<i>Leopardus pardalis</i>		
<i>Leopardus tigrinus</i>		
<i>Leopardus wiedii</i>		
<i>Lynx pardinus</i>		
<i>Neofelis nebulosa</i>		
<i>Oncifelis geoffroyi</i>		

<i>Oreailurus jacobita</i>		
<i>Panthera leo persica</i>		
<i>Panthera onca</i>		
<i>Panthera pardus</i>		
<i>Panthera tigris</i>		
<i>Pardofelis marmorata</i>		
<i>Prionailurus bengalensis bengalensis</i> (Only the populations of Bangladesh, India and Thailand; all other populations are included in Appendix II)		
<i>Prionailurus planiceps</i>		
<i>Prionailurus rubiginosus</i> (Only the population of India; all other populations are included in Appendix II)		
<i>Puma concolor coryi</i>		
<i>Puma concolor costaricensis</i>		
<i>Puma concolor couguar</i>		
<i>Uncia uncia</i>		
Otariidae Fur seals, sealions		
	<i>Arctocephalus spp.</i> (Except the species included in Appendix I)	
<i>Arctocephalus townsendi</i>		
Odobenidae Walrus		
		<i>Odobenus rosmarus</i> (Canada)
Phocidae Seals		
	<i>Mirounga leonina</i>	
<i>Monachus spp.</i>		
PROBOSCIDEA		
Elephantidae Elephants		
<i>Elephas maximus</i>		
<i>Loxodonta africana</i> (Except the populations of Botswana, Namibia, South Africa and Zimbabwe, which are included in Appendix II)		

	<i>Loxodonta africana</i> (Only the populations of Botswana ¹ , Namibia ¹ , South Africa ¹ and Zimbabwe ² ; all other populations are included in Appendix I)	
SIRENIA		
Dugongidae Dugong		
<i>Dugong dugon</i>		
Trichechidae Manatees		
<i>Trichechus inunguis</i>		
<i>Trichechus manatus</i>		
	<i>Trichechus senegalensis</i>	
PERISSODACTYLA		
Equidae Horses, wild asses, zebras		
<i>Equus africanus</i> (Excludes the domesticated form, which is referenced as <i>Equus asinus</i> , and is not subject to the provisions of the Convention)		
<i>Equus grevyi</i>		
	<i>Equus hemionus</i> (Except the subspecies included in Appendix I)	
<i>Equus hemionus hemionus</i>		
	<i>Equus kiang</i>	
	<i>Equus onager</i> (Except the subspecies included in Appendix I)	
<i>Equus onager khur</i>		
<i>Equus przewalskii</i>		
	<i>Equus zebra hartmannae</i>	
<i>Equus zebra zebra</i>		
Tapiridae Tapirs		
Tapiridae spp. (Except the species included in Appendix II)		
	<i>Tapirus terrestris</i>	
Rhinocerotidae Rhinoceroses		
Rhinocerotidae spp.		

(Except the subspecies included in Appendix II)		
	<i>Ceratotherium simum simum</i> (Only the population of South Africa and Swaziland; all other populations are included in Appendix I. For the exclusive purpose of allowing international trade in live animals to appropriate and acceptable destinations and hunting trophies. All other specimens shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly)	
ARTIODACTYLA		
Tragulidae Mouse-deer		
		<i>Hyemoschus aquaticus</i> (Ghana)
Suidae Babirusa, pygmy hog		
<i>Babyrousa babyrussa</i>		
<i>Sus salvanius</i>		
Tayassuidae Peccaries		
	Tayassuidae spp. (Except the species included in Appendix I and the populations of <i>Pecari tajacu</i> of Mexico and the United States of America, which are not included in the Appendices)	
<i>Catagonus wagneri</i>		
Hippopotamidae Hippopotamuses		
	<i>Hexaprotodon liberiensis</i>	
	<i>Hippopotamus amphibius</i>	
Camelidae Guanaco, vicuna		
	<i>Lama guanicoe</i>	
<i>Vicugna vicugna</i> (Except the populations of: Argentina [the populations of the Provinces of Jujuy		

and Catamarca and the semi-captive populations of the Provinces of Jujuy, Salta, Catamarca, La Rioja and San Juan]; Bolivia [the whole population]; Chile [population of the Primera Región]; and Peru [the whole population]; which are included in Appendix II)		
	<i>Vicugna vicugna</i> (Only the populations of Argentina ³ [the populations of the Provinces of Jujuy and Catamarca and the semi-captive populations of the Provinces of Jujuy, Salta, Catamarca, La Rioja and San Juan]; Bolivia ⁴ [the whole population]; Chile ⁵ [population of the Primera Región]; Peru ⁶ [the whole population]; all other populations are included in Appendix I)	
Moschidae Musk deer		
<i>Moschus spp.</i> (Only the populations of Afghanistan, Bhutan, India, Myanmar, Nepal and Pakistan; all other populations are included in Appendix II)		
	<i>Moschus spp.</i> (Except the populations of Afghanistan, Bhutan, India, Myanmar, Nepal and Pakistan, which are included in Appendix I)	
Cervidae Deer, guemals, muntjacs, pudus		
<i>Axis calamianensis</i>		
<i>Axis kuhlii</i>		
<i>Axis porcinus annamiticus</i>		
<i>Blastocerus dichotomus</i>		
<i>Cervus duvaucelii</i>		
	<i>Cervus elaphus bactrianus</i>	

		<i>Cervus elaphus barbarus</i> (Tunisia)
<i>Cervus elaphus hanglu</i>		
<i>Cervus eldii</i>		
<i>Dama mesopotamica</i>		
<i>Hippocamelus spp.</i>		
		<i>Mazama americana cerasina</i> (Guatemala)
<i>Megamuntiacus vuquanghensis</i>		
<i>Muntiacus crinifrons</i>		
		<i>Odocoileus virginianus mayensis</i> (Guatemala)
<i>Ozotoceros bezoarticus</i>		
	<i>Pudu mephistophiles</i>	
<i>Pudu puda</i>		
Antilocapridae Pronghorn		
<i>Antilocapra americana</i> (Only the population of Mexico; no other population is included in the Appendices)		
Bovidae Antelopes, cattle, duikers, gazelles, goats, sheep, etc.		
<i>Addax nasomaculatus</i>		
	<i>Ammotragus lervia</i>	
		<i>Antilope cervicapra</i> (Nepal)
	<i>Bison bison athabasca</i>	
<i>Bos gaurus</i> (Excludes the domesticated form, which is referenced as <i>Bos frontalis</i> , and is not subject to the provisions of the Convention)		
<i>Bos mutus</i> (Excludes the domesticated form, which is referenced as <i>Bos grunniens</i> , and is not subject to the provisions of the Convention)		
<i>Bos sauveli</i>		
		<i>Bubalus arnee</i> (Nepal) (Excludes the domesticated form, which is referenced as <i>Bubalus bubalis</i>)

<i>Bubalus depressicornis</i>		
<i>Bubalus mindorensis</i>		
<i>Bubalus quarlesi</i>		
	<i>Budorcas taxicolor</i>	
<i>Capra falconeri</i>		
	<i>Cephalophus dorsalis</i>	
<i>Cephalophus jentinki</i>		
	<i>Cephalophus monticola</i>	
	<i>Cephalophus ogilbyi</i>	
	<i>Cephalophus silvicultor</i>	
	<i>Cephalophus zebra</i>	
		<i>Damaliscus lunatus</i> (Ghana)
	<i>Damaliscus pygargus pygargus</i>	
		<i>Gazella cuvieri</i> (Tunisia)
<i>Gazella dama</i>		
		<i>Gazella dorcas</i> (Tunisia)
		<i>Gazella leptoceros</i> (Tunisia)
<i>Hippotragus niger variani</i>		
	<i>Kobus leche</i>	
<i>Naemorhedus baileyi</i>		
<i>Naemorhedus caudatus</i>		
<i>Naemorhedus goral</i>		
<i>Naemorhedus sumatraensis</i>		
<i>Oryx dammah</i>		
<i>Oryx leucoryx</i>		
	<i>Ovis ammon</i> (Except the subspecies included in Appendix I)	
<i>Ovis ammon hodgsonii</i>		
<i>Ovis ammon nigrimontana</i>		
	<i>Ovis canadensis</i> (Only the population of Mexico; no other population is included in the Appendices)	
<i>Ovis orientalis ophion</i>		
	<i>Ovis vignei</i> (Except the	

	subspecies included in Appendix I)	
<i>Ovis vignei vignei</i>		
<i>Pantholops hodgsonii</i>		
<i>Pseudoryx nghetinhensis</i>		
<i>Rupicapra pyrenaica ornata</i>		
	<i>Saiga tatarica</i>	
		<i>Tetracerus quadricornis</i> (Nepal)
		<i>Tragelaphus eurycerus</i> (Ghana)
		<i>Tragelaphus spekii</i> (Ghana)
CLASS AVES (BIRDS)		
STRUTHIONIFORMES		
Struthionidae Ostrich		
<i>Struthio camelus</i> (Only the populations of Algeria, Burkina Faso, Cameroon, the Central African Republic, Chad, Mali, Mauritania, Morocco, the Niger, Nigeria, Senegal and the Sudan; all other populations are not included in the Appendices)		
RHEIFORMES		
Rheidae Rheas		
	<i>Rhea americana</i>	
<i>Rhea pennata</i> (Except <i>Rhea pennata pennata</i> which is included in Appendix II)		
	<i>Rhea pennata pennata</i>	
TINAMIFORMES		
Tinamidae Tinamou		
<i>Tinamus solitarius</i>		
SPHENISCIFORMES		
Spheniscidae Penguins		
	<i>Spheniscus demersus</i>	
<i>Spheniscus humboldti</i>		

PODICIPEDIFORMES		
Podicipedidae Grebe		
<i>Podilymbus gigas</i>		
PROCELLARIIFORMES		
Diomedidae Albatross		
<i>Diomedea albatrus</i>		
PELECANIFORMES		
Pelecanidae Pelican		
<i>Pelecanus crispus</i>		
Sulidae Booby		
<i>Papasula abbotti</i>		
Fregatidae Frigatebird		
<i>Fregata andrewsi</i>		
CICONIIFORMES		
Ardeidae Egrets, herons		
		<i>Ardea goliath</i> (Ghana)
		<i>Bubulcus ibis</i> (Ghana)
		<i>Casmerodius albus</i> (Ghana)
		<i>Egretta garzetta</i> (Ghana)
Balaenicipitidae Shoebill, whale-headed stork		
	<i>Balaeniceps rex</i>	
Ciconiidae Storks		
<i>Ciconia boyciana</i>		
	<i>Ciconia nigra</i>	
		<i>Ephippiorhynchus senegalensis</i> (Ghana)
<i>Jabiru mycteria</i>		
		<i>Leptoptilos crumeniferus</i> (Ghana)
<i>Mycteria cinerea</i>		
Threskiornithidae Ibises, spoonbills		
		<i>Bostrychia hagedash</i> (Ghana)
		<i>Bostrychia rara</i> (Ghana)
	<i>Eudocimus ruber</i>	
	<i>Geronticus calvus</i>	
<i>Geronticus eremita</i>		
<i>Nipponia nippon</i>		
	<i>Platalea leucorodia</i>	
		<i>Threskiornis</i>

		<i>aethiopicus</i> (Ghana)
Phoenicopteridae Flamingos		
	Phoenicopteridae spp.	
ANSERIFORMES		
Anatidae Ducks, geese, swans, etc.		
		<i>Alopochen aegyptiacus</i> (Ghana)
		<i>Anas acuta</i> (Ghana)
<i>Anas aucklandica</i>		
	<i>Anas bernieri</i>	
		<i>Anas capensis</i> (Ghana)
		<i>Anas clypeata</i> (Ghana)
		<i>Anas crecca</i> (Ghana)
	<i>Anas formosa</i>	
<i>Anas laysanensis</i>		
<i>Anas oustaleti</i>		
		<i>Anas penelope</i> (Ghana)
		<i>Anas querquedula</i> (Ghana)
		<i>Aythya nyroca</i> (Ghana)
<i>Branta canadensis leucopareia</i>		
	<i>Branta ruficollis</i>	
<i>Branta sandvicensis</i>		
		<i>Cairina moschata</i> (Honduras)
<i>Cairina scutulata</i>		
	<i>Coscoroba coscoroba</i>	
	<i>Cygnus melanocorypha</i>	
	<i>Dendrocygna arborea</i>	
		<i>Dendrocygna autumnalis</i> (Honduras)
		<i>Dendrocygna bicolor</i> (Ghana, Honduras)
		<i>Dendrocygna viduata</i> (Ghana)
		<i>Nettapus auritus</i> (Ghana)
	<i>Oxyura leucocephala</i>	
		<i>Plectropterus gambensis</i> (Ghana)
		<i>Pteronetta hartlaubii</i>

		(Ghana)
<i>Rhodonessa caryophyllacea</i> (possibly extinct)		
	<i>Sarkidiornis melanotos</i>	
FALCONIFORMES Eagles, falcons, hawks, vultures		
	FALCONIFORMES spp. (Except the species included in Appendices I and III and the species of the family Cathartidae)	
Cathartidae New World vultures		
<i>Gymnogyps californianus</i>		
		<i>Sarcoramphus papa</i> (Honduras)
<i>Vultur gryphus</i>		
Accipitridae Hawks, eagles		
<i>Aquila adalberti</i>		
<i>Aquila heliaca</i>		
<i>Chondrohierax uncinatus wilsonii</i>		
<i>Haliaeetus albicilla</i>		
<i>Harpia harpyja</i>		
<i>Pithecophaga jefferyi</i>		
Falconidae Falcons		
<i>Falco araea</i>		
<i>Falco jugger</i>		
<i>Falco newtoni</i> (Only the population of Seychelles)		
<i>Falco pelegrinoides</i>		
<i>Falco peregrinus</i>		
<i>Falco punctatus</i>		
<i>Falco rusticolus</i>		
GALLIFORMES		
Megapodiidae Megapodes, scrubfowl		
<i>Macrocephalon maleo</i>		
Cracidae Chachalacas, curassows, guans		
		<i>Crax alberti</i> (Colombia)
<i>Crax blumenbachii</i>		
		<i>Crax daubentoni</i> (Colombia)

		<i>Crax globulosa</i> (Colombia)
		<i>Crax rubra</i> (Colombia, Costa Rica, Guatemala, Honduras)
<i>Mitu mitu</i>		
<i>Oreophasis derbianus</i>		
		<i>Ortalis vetula</i> (Guatemala, Honduras)
		<i>Pauxi pauxi</i> (Colombia)
<i>Penelope albipennis</i>		
		<i>Penelope purpurascens</i> (Honduras)
		<i>Penelopina nigra</i> (Guatemala)
<i>Pipile jacutinga</i>		
<i>Pipile pipile</i>		
Phasianidae Grouse, guineafowl, partridges, pheasants, tragopans		
		<i>Agelastes meleagrides</i> (Ghana)
		<i>Agriocharis ocellata</i> (Guatemala)
		<i>Arborophila charltonii</i> (Malaysia)
		<i>Arborophila orientalis</i> (Malaysia)
	<i>Argusianus argus</i>	
		<i>Caloperdix oculea</i> (Malaysia)
<i>Catreus wallichii</i>		
<i>Colinus virginianus ridgwayi</i>		
<i>Crossoptilon crossoptilon</i>		
<i>Crossoptilon harmani</i>		
<i>Crossoptilon mantchuricum</i>		
	<i>Gallus sonneratii</i>	
	<i>Ithaginis cruentus</i>	
<i>Lophophorus impejanus</i>		
<i>Lophophorus lhuysii</i>		
<i>Lophophorus sclateri</i>		
<i>Lophura edwardsi</i>		
		<i>Lophura</i>

		<i>erythropthalma</i> (Malaysia)
		<i>Lophura ignita</i> (Malaysia)
<i>Lophura imperialis</i>		
<i>Lophura swinhoii</i>		
		<i>Melanoperdix nigra</i> (Malaysia)
	<i>Pavo muticus</i>	
	<i>Polyplectron bicalcaratum</i>	
<i>Polyplectron emphanum</i>		
	<i>Polyplectron germaini</i>	
		<i>Polyplectron inopinatum</i> (Malaysia)
	<i>Polyplectron malacense</i>	
	<i>Polyplectron schleiermacheri</i>	
<i>Rheinardia ocellata</i>		
		<i>Rhizothera longirostris</i> (Malaysia)
		<i>Rollulus rouloul</i> (Malaysia)
<i>Syrmaticus ellioti</i>		
<i>Syrmaticus humiae</i>		
<i>Syrmaticus mikado</i>		
<i>Tetraogallus caspius</i>		
<i>Tetraogallus tibetanus</i>		
<i>Tragopan blythii</i>		
<i>Tragopan caboti</i>		
<i>Tragopan melanocephalus</i>		
		<i>Tragopan satyra</i> (Nepal)
<i>Tympanuchus cupido attwateri</i>		
GRUIFORMES		
Gruidae Cranes		
	Gruidae spp. (Except the species included in Appendix I)	
<i>Grus americana</i>		
<i>Grus canadensis nesiotis</i>		

<i>Grus canadensis pulla</i>		
<i>Grus japonensis</i>		
<i>Grus leucogeranus</i>		
<i>Grus monacha</i>		
<i>Grus nigricollis</i>		
<i>Grus vipio</i>		
Rallidae Rail		
<i>Gallirallus sylvestris</i>		
Rhynochetidae Kagu		
<i>Rhynochetos jubatus</i>		
Otididae Bustards		
	Otididae spp. (Except the species included in Appendix I)	
<i>Ardeotis nigriceps</i>		
<i>Chlamydotis undulata</i>		
<i>Eupodotis bengalensis</i>		
CHARADRIIFORMES		
Burhinidae Thick-knee		
		<i>Burhinus bistriatus</i> (Guatemala)
Scolopacidae Curlews, greenshanks		
<i>Numenius borealis</i>		
<i>Numenius tenuirostris</i>		
<i>Tringa guttifer</i>		
Laridae Gull		
<i>Larus relictus</i>		
COLUMBIFORMES		
Columbidae Doves, pigeons		
<i>Caloenas nicobarica</i>		
		<i>Columba guinea</i> (Ghana)
		<i>Columba iriditorques</i> (Ghana)
		<i>Columba livia</i> (Ghana)
		<i>Columba mayeri</i> (Mauritius)
		<i>Columba unicincta</i> (Ghana)
<i>Ducula mindorensis</i>		
	<i>Gallicolumba luzonica</i>	

	Goura spp.	
		<i>Oena capensis</i> (Ghana)
		<i>Streptopelia decipiens</i> (Ghana)
		<i>Streptopelia roseogrisea</i> (Ghana)
		<i>Streptopelia semitorquata</i> (Ghana)
		<i>Streptopelia senegalensis</i> (Ghana)
		<i>Streptopelia turtur</i> (Ghana)
		<i>Streptopelia vinacea</i> (Ghana)
		<i>Treron calva</i> (Ghana)
		<i>Treron waalia</i> (Ghana)
		<i>Turtur abyssinicus</i> (Ghana)
		<i>Turtur afer</i> (Ghana)
		<i>Turtur brehmeri</i> (Ghana)
		<i>Turtur tympanistria</i> (Ghana)
PSITTACIFORMES Amazons, cockatoos, lories, lorikeets, macaws, parakeets, parrots		
	PSITTACIFORMES spp. (Except the species included in Appendix I and Appendix III, and excluding <i>Agapornis roseicollis</i> , <i>Melopsittacus undulatus</i> and <i>Nymphicus hollandicus</i> , which are not included in the Appendices)	
Cacatuidae Cockatoos		
	<i>Cacatua goffini</i> <i>Cacatua haematuropygia</i> <i>Cacatua moluccensis</i> <i>Cacatua sulphurea</i> <i>Probosciger aterrimus</i>	
Loriidae Lories, lorikeets		
	<i>Eos histrio</i>	
	<i>Vini ultramarina</i>	
Psittacidae Amazons, macaws, parakeets, parrots		
	<i>Amazona arausiaca</i>	
	<i>Amazona barbadensis</i>	

<i>Amazona brasiliensis</i>		
<i>Amazona finschi</i>		
<i>Amazona guildingii</i>		
<i>Amazona imperialis</i>		
<i>Amazona leucocephala</i>		
<i>Amazona ochrocephala auropalliata</i>		
<i>Amazona ochrocephala belizensis</i>		
<i>Amazona ochrocephala caribaea</i>		
<i>Amazona ochrocephala oratrix</i>		
<i>Amazona ochrocephala parvipes</i>		
<i>Amazona ochrocephala tresmariae</i>		
<i>Amazona pretrei</i>		
<i>Amazona rhodocorytha</i>		
<i>Amazona tucumana</i>		
<i>Amazona versicolor</i>		
<i>Amazona vinacea</i>		
<i>Amazona viridigenalis</i>		
<i>Amazona vittata</i>		
<i>Anodorhynchus spp.</i>		
<i>Ara ambigua</i>		
<i>Ara glaucogularis</i> (Often traded under the incorrect designation <i>Ara caninde</i>)		
<i>Ara macao</i>		
<i>Ara militaris</i>		
<i>Ara rubrogenys</i>		
<i>Cyanopsitta spixii</i>		
<i>Cyanoramphus forbesi</i>		
<i>Cyanoramphus novaezelandiae</i>		
<i>Cyclopsitta diophthalma coxeni</i>		
<i>Eunymphicus cornutus</i>		
<i>Geopsittacus occidentalis</i> (possibly extinct)		
<i>Guarouba guarouba</i>		

<i>Neophema chrysogaster</i>		
<i>Ognorhynchus icterotis</i>		
<i>Pezoporus wallicus</i>		
<i>Pionopsitta pileata</i>		
<i>Propyrrhura couloni</i>		
<i>Propyrrhura maracana</i>		
<i>Psephotus chrysopterygius</i>		
<i>Psephotus dissimilis</i>		
<i>Psephotus pulcherrimus</i> (possibly extinct)		
<i>Psittacula echo</i>		
		<i>Psittacula krameri</i> (Ghana)
<i>Pyrrhura cruentata</i>		
<i>Rhynchopsitta</i> spp.		
<i>Strigops habroptilus</i>		
CUCULIFORMES		
Musophagidae Turacos		
		<i>Corythaeola cristata</i> (Ghana)
		<i>Crinifer piscator</i> (Ghana)
	<i>Musophaga porphyreolopha</i>	
		<i>Musophaga violacea</i> (Ghana)
	<i>Tauraco</i> spp.	
STRIGIFORMES Owls		
	STRIGIFORMES spp. (Except the species included in Appendix I)	
Tytonidae Barn owl		
<i>Tyto soumagnei</i>		
Strigidae Owls		
<i>Athene blewitti</i>		
<i>Mimizuku gurneyi</i>		
<i>Ninox novaeseelandiae undulata</i>		
<i>Ninox squamipila natalis</i>		
APODIFORMES		
Trochilidae Hummingbirds		

	Trochilidae spp. (Except the species included in Appendix I)	
<i>Glaucis dohrnii</i>		
TROGONIFORMES		
Trogonidae Quetzal		
<i>Pharomachrus mocinno</i>		
CORACIIFORMES		
Bucerotidae Hornbills		
	<i>Aceros spp.</i> (Except the species included in Appendix I)	
<i>Aceros nipalensis</i>		
<i>Aceros subruficollis</i>		
	<i>Anorrhinus spp.</i>	
	<i>Anthracoceros spp.</i>	
	<i>Buceros spp.</i> (Except the species included in Appendix I)	
<i>Buceros bicornis</i>		
<i>Buceros vigil</i>		
	<i>Penelopides spp.</i>	
PICIFORMES		
Capitonidae Barbet		
		<i>Semnornis ramphastinus</i> (Colombia)
Ramphastidae Toucans		
		<i>Bailloni bailloni</i> (Argentina)
	<i>Pteroglossus aracari</i>	
		<i>Pteroglossus castanotis</i> (Argentina)
	<i>Pteroglossus viridis</i>	
		<i>Ramphastos dicolorus</i> (Argentina)
	<i>Ramphastos sulfuratus</i>	
	<i>Ramphastos toco</i>	
	<i>Ramphastos tucanus</i>	
	<i>Ramphastos vitellinus</i>	
		<i>Selenidera maculirostris</i> (Argentina)
Picidae Woodpeckers		

<i>Campephilus imperialis</i>		
<i>Dryocopus javensis richardsi</i>		
PASSERIFORMES		
Cotingidae Cotingas		
		<i>Cephalopterus ornatus</i> (Colombia)
		<i>Cephalopterus penduliger</i> (Colombia)
<i>Cotinga maculata</i>		
	<i>Rupicola spp.</i>	
<i>Xipholena atropurpurea</i>		
Pittidae Pittas		
	<i>Pitta guajana</i>	
<i>Pitta gurneyi</i>		
<i>Pitta kochi</i>		
	<i>Pitta nympha</i>	
Atrichornithidae Scrub-bird		
<i>Atrichornis clamosus</i>		
Hirundinidae Martin		
<i>Pseudochelidon sirintarae</i>		
Pycnonotidae Bulbul		
	<i>Pycnonotus zeylanicus</i>	
Muscicapidae Old World flycatchers		
		<i>Bebrornis rodericanus</i> (Mauritius)
	<i>Cyornis ruckii</i>	
<i>Dasyornis broadbenti litoralis</i> (possibly extinct)		
<i>Dasyornis longirostris</i>		
	<i>Garrulax canorus</i>	
	<i>Leiothrix argentauris</i>	
	<i>Leiothrix lutea</i>	
	<i>Liocichla omeiensis</i>	
<i>Picathartes gymnocephalus</i>		
<i>Picathartes oreas</i>		
		<i>Terpsiphone bourbonensis</i> (Mauritius)
Zosteropidae White-eye		

<i>Zosterops albogularis</i>		
Meliphagidae Honeyeater		
<i>Lichenostomus melanops cassidix</i>		
Emberizidae Cardinals, tanagers		
	<i>Gubernatrix cristata</i>	
	<i>Paroaria capitata</i>	
	<i>Paroaria coronata</i>	
	<i>Tangara fastuosa</i>	
Icteridae Blackbird		
<i>Agelaius flavus</i>		
Fringillidae Finches		
<i>Carduelis cucullata</i>		
	<i>Carduelis yarrellii</i>	
		<i>Serinus canicapillus</i> (Ghana)
		<i>Serinus leucopygius</i> (Ghana)
		<i>Serinus mozambicus</i> (Ghana)
Estrildidae Mannikins, waxbills		
		<i>Amadina fasciata</i> (Ghana)
	<i>Amandava formosa</i>	
		<i>Amandava subflava</i> (Ghana)
		<i>Estrilda astrild</i> (Ghana)
		<i>Estrilda caerulescens</i> (Ghana)
		<i>Estrilda melpoda</i> (Ghana)
		<i>Estrilda troglodytes</i> (Ghana)
		<i>Lagonosticta rara</i> (Ghana)
		<i>Lagonosticta rubricata</i> (Ghana)
		<i>Lagonosticta rufopicta</i> (Ghana)
		<i>Lagonosticta senegala</i> (Ghana)
		<i>Lagonosticta vinacea</i> (Ghana)

		<i>Lonchura bicolor</i> (Ghana)
		<i>Lonchura cantans</i> (Ghana)
		<i>Lonchura cucullata</i> (Ghana)
		<i>Lonchura fringilloides</i> (Ghana)
		<i>Mandingoa nitidula</i> (Ghana)
		<i>Nesocharis capistrata</i> (Ghana)
		<i>Nigrita bicolor</i> (Ghana)
		<i>Nigrita canicapilla</i> (Ghana)
		<i>Nigrita fusconota</i> (Ghana)
		<i>Nigrita luteifrons</i> (Ghana)
		<i>Ortygospiza atricollis</i> (Ghana)
	<i>Padda oryzivora</i>	
		<i>Parmoptila rubrifrons</i> (Ghana)
		<i>Pholidornis rushiae</i> (Ghana)
	<i>Poephila cincta cincta</i>	
		<i>Pyrenestes ostrinus</i> (Ghana)
		<i>Pytilia hypogrammica</i> (Ghana)
		<i>Pytilia phoenicoptera</i> (Ghana)
		<i>Spermophaga haematina</i> (Ghana)
		<i>Uraeginthus bengalus</i> (Ghana)
Ploceidae Weavers, whydahs		
		<i>Amblyospiza albifrons</i> (Ghana)
		<i>Anaplectes rubriceps</i> (Ghana)
		<i>Anomalospiza imberbis</i> (Ghana)
		<i>Bubalornis albirostris</i> (Ghana)

		<i>Euplectes afer</i> (Ghana)
		<i>Euplectes ardens</i> (Ghana)
		<i>Euplectes franciscanus</i> (Ghana)
		<i>Euplectes hordeaceus</i> (Ghana)
		<i>Euplectes macrourus</i> (Ghana)
		<i>Malimbus cassini</i> (Ghana)
		<i>Malimbus malimbicus</i> (Ghana)
		<i>Malimbus nitens</i> (Ghana)
		<i>Malimbus rubricollis</i> (Ghana)
		<i>Malimbus scutatus</i> (Ghana)
		<i>Pachyphantes superciliosus</i> (Ghana)
		<i>Passer griseus</i> (Ghana)
		<i>Petronia dentata</i> (Ghana)
		<i>Plocepasser superciliosus</i> (Ghana)
		<i>Ploceus albinucha</i> (Ghana)
		<i>Ploceus aurantius</i> (Ghana)
		<i>Ploceus cucullatus</i> (Ghana)
		<i>Ploceus heuglini</i> (Ghana)
		<i>Ploceus luteolus</i> (Ghana)
		<i>Ploceus melanocephalus</i> (Ghana)
		<i>Ploceus nigerrimus</i> (Ghana)
		<i>Ploceus nigricollis</i> (Ghana)
		<i>Ploceus pelzelni</i> (Ghana)
		<i>Ploceus preussi</i>

		(Ghana)
		<i>Ploceus tricolor</i> (Ghana)
		<i>Ploceus vitellinus</i> (Ghana)
		<i>Quelea erythrops</i> (Ghana)
		<i>Sporopipes frontalis</i> (Ghana)
		<i>Vidua chalybeata</i> (Ghana)
		<i>Vidua interjecta</i> (Ghana)
		<i>Vidua larvaticola</i> (Ghana)
		<i>Vidua macroura</i> (Ghana)
		<i>Vidua orientalis</i> (Ghana)
		<i>Vidua raricola</i> (Ghana)
		<i>Vidua togoensis</i> (Ghana)
		<i>Vidua wilsoni</i> (Ghana)
Sturnidae Mynahs (Starlings)		
	<i>Gracula religiosa</i>	
<i>Leucopsar rothschildi</i>		
Paradisaeidae Birds of paradise		
	<i>Paradisaeidae spp.</i>	
CLASS REPTILIA (REPTILES)		
TESTUDINES		
Chelydridae Snapping turtles		
		<i>Macrolemys temminckii</i> (United States of America)
Dermatemydidae Central American river turtle		
	<i>Dermatemys mawii</i>	
Platysternidae Big-headed turtle		
	<i>Platysternon megacephalum</i>	
Emydidae Box turtles, freshwater turtles		
	<i>Annamemys annamensis</i>	
<i>Batagur baska</i>		
	<i>Callagur borneoensis</i>	
		<i>Chinemys megaloccephala</i> (China)

		<i>Chinemys nigricans</i> (China)
		<i>Chinemys reevesii</i> (China)
	<i>Clemmys insculpta</i>	
<i>Clemmys muhlenbergi</i>		
	<i>Cuora</i> spp.	
<i>Geoclemys hamiltonii</i>		
		<i>Geoemyda spengleri</i> (China)
		<i>Graptemys</i> spp. (United States of America)
	<i>Heosemys depressa</i>	
	<i>Heosemys grandis</i>	
	<i>Heosemys leytensis</i>	
	<i>Heosemys spinosa</i>	
	<i>Hieremys annandalii</i>	
	<i>Kachuga</i> spp. (Except the species included in Appendix I)	
<i>Kachuga tecta</i>		
	<i>Leucocephalon yuwonoi</i>	
	<i>Malayemys subtrijuga</i>	
		<i>Mauremys iversoni</i> (China)
	<i>Mauremys mutica</i>	
		<i>Mauremys pritchardi</i> (China)
<i>Melanochelys tricarinata</i>		
<i>Morenia ocellata</i>		
	<i>Notochelys platynota</i>	
		<i>Ocadia glyphistoma</i> (China)
		<i>Ocadia philippeni</i> (China)
		<i>Ocadia sinensis</i> (China)
	<i>Orlitia borneensis</i>	
	<i>Pyxidea mouhotii</i>	
		<i>Sacalia bealei</i> (China)
		<i>Sacalia pseudocellata</i> (China)
		<i>Sacalia quadriocellata</i>

		(China)
	<i>Siebenrockiella crassicollis</i>	
	<i>Terrapene</i> spp. (Except the species included in Appendix I)	
<i>Terrapene coahuila</i>		
Testudinidae Tortoises		
	Testudinidae spp. (Except the species included in Appendix I. A zero annual export quota has been established for <i>Geochelone sulcata</i> for specimens removed from the wild and traded for primarily commercial purposes)	
<i>Geochelone nigra</i>		
<i>Geochelone radiata</i>		
<i>Geochelone yniphora</i>		
<i>Gopherus flavomarginatus</i>		
<i>Psammobates geometricus</i>		
<i>Pyxis arachnoides</i>		
<i>Pyxis planicauda</i>		
<i>Testudo kleinmanni</i>		
<i>Testudo wernerii</i>		
Cheloniidae Marine turtles		
Cheloniidae spp.		
Dermochelyidae Leatherback turtle		
<i>Dermochelys coriacea</i>		
Carettochelyidae Pig-nosed turtles		
	<i>Carettochelys insculpta</i>	
Trionychidae Softshell turtles, terrapins		
	<i>Amyda cartilaginea</i>	
<i>Apalone ater</i>		
<i>Aspideretes gangeticus</i>		
<i>Aspideretes hurum</i>		
<i>Aspideretes nigricans</i>		
	<i>Chitra</i> spp.	
	<i>Lissemys punctata</i>	
		<i>Palea steindachneri</i>

		(China)
	<i>Pelochelys</i> spp.	
		<i>Pelodiscus axenaria</i> (China) <i>Pelodiscus maackii</i> (China) <i>Pelodiscus parviformis</i> (China) <i>Rafetus swinhoei</i> (China) <i>Trionyx triunguis</i> (Ghana)
Pelomedusidae Afro-American side-necked turtles		
	<i>Erymnochelys madagascariensis</i>	
		<i>Pelomedusa subrufa</i> (Ghana)
	<i>Peltocephalus dumeriliana</i>	
		<i>Pelusios adansonii</i> (Ghana)
		<i>Pelusios castaneus</i> (Ghana)
		<i>Pelusios gabonensis</i> (Ghana)
		<i>Pelusios niger</i> (Ghana)
	<i>Podocnemis</i> spp.	
Chelidae Austro-American side-necked turtles		
	<i>Chelodina mccordi</i>	
<i>Pseudemydura umbrina</i>		
CROCODYLIA Alligators, caimans, crocodiles		
	CROCODYLIA spp. (Except the species included in Appendix I)	
Alligatoridae Alligators, caimans		
<i>Alligator sinensis</i>		
<i>Caiman crocodilus apaporiensis</i>		
<i>Caiman latirostris</i> (Except the population of Argentina, which is included in Appendix II)		
<i>Melanosuchus niger</i> (Except the population of Ecuador, which is included in Appendix II, and is subject to a zero annual		

export quota until an annual export quota has been approved by the CITES Secretariat and the IUCN/SSC Crocodile Specialist Group)		
Crocodylidae Crocodiles		
<i>Crocodylus acutus</i> (Except the population of Cuba, which is included in Appendix II)		
<i>Crocodylus cataphractus</i>		
<i>Crocodylus intermedius</i>		
<i>Crocodylus mindorensis</i>		
<i>Crocodylus moreletii</i>		
<i>Crocodylus niloticus</i> [Except the populations of Botswana, Ethiopia, Kenya, Madagascar, Malawi, Mozambique, Namibia, South Africa, Uganda, the United Republic of Tanzania (subject to an annual export quota of no more than 1,600 wild specimens including hunting trophies, in addition to ranched specimens), Zambia and Zimbabwe, which are included in Appendix II]		
<i>Crocodylus palustris</i>		
<i>Crocodylus porosus</i> (Except the populations of Australia, Indonesia and Papua New Guinea, which are included in Appendix II)		
<i>Crocodylus rhombifer</i>		
<i>Crocodylus siamensis</i>		
<i>Osteolaemus tetraspis</i>		
<i>Tomistoma schlegelii</i>		
Gavialidae Gavial		
<i>Gavialis gangeticus</i>		
RHYNCHOCEPHALIA		
Sphenodontidae Tuatara		
<i>Sphenodon spp.</i>		

SAURIA		
Gekkonidae Geckos		
	<i>Cyrtodactylus serpensinsula</i>	
		<i>Hoplodactylus</i> spp. (New Zealand)
		<i>Naultinus</i> spp. (New Zealand)
	<i>Phelsuma</i> spp.	
	<i>Uroplatus</i> spp.	
Agamidae Agamas, mastigures		
	<i>Uromastyx</i> spp.	
Chamaeleonidae Chameleons		
	<i>Bradypodion</i> spp.	
	<i>Brookesia</i> spp. (Except the species included in Appendix I)	
<i>Brookesia perarmata</i>		
	<i>Calumma</i> spp.	
	<i>Chamaeleo</i> spp.	
	<i>Furcifer</i> spp.	
Iguanidae Iguanas		
	<i>Amblyrhynchus cristatus</i>	
<i>Brachylophus</i> spp.		
	<i>Conolophus</i> spp.	
<i>Cyclura</i> spp.		
	<i>Iguana</i> spp.	
	<i>Phrynosoma coronatum</i>	
<i>Sauromalus varius</i>		
Lacertidae Lizards		
<i>Gallotia simonyi</i>		
	<i>Podarcis lilfordi</i>	
	<i>Podarcis pityusensis</i>	
Cordylidae Spiny-tailed lizards		
	<i>Cordylus</i> spp.	
Teiidae Caiman lizards, tegu lizards		
	<i>Crocodylurus amazonicus</i>	
	<i>Dracaena</i> spp.	
	<i>Tupinambis</i> spp.	

Scincidae Skink		
	<i>Corucia zebrata</i>	
Xenosauridae Chinese crocodile lizard		
	<i>Shinisaurus crocodilurus</i>	
Helodermatidae Beaded lizard, gila monster		
	<i>Heloderma spp.</i>	
Varanidae Monitor lizards		
	<i>Varanus spp.</i> (Except the species included in Appendix I)	
	<i>Varanus bengalensis</i>	
	<i>Varanus flavescens</i>	
	<i>Varanus griseus</i>	
	<i>Varanus komodoensis</i>	
	<i>Varanus nebulosus</i>	
SERPENTES Snakes		
Loxocemidae Mexican dwarf boa		
	<i>Loxocemidae spp.</i>	
Pythonidae Pythons		
	<i>Pythonidae spp.</i> (Except the subspecies included in Appendix I)	
	<i>Python molurus molurus</i>	
Boidae Boas		
	<i>Boidae spp.</i> (Except the species included in Appendix I)	
	<i>Acrantophis spp.</i>	
	<i>Boa constrictor occidentalis</i>	
	<i>Epicrates inornatus</i>	
	<i>Epicrates monensis</i>	
	<i>Epicrates subflavus</i>	
	<i>Sanzinia madagascariensis</i>	
Bolyeriidae Round Island boas		
	<i>Bolyeriidae spp.</i> (Except the species included in Appendix I)	
	<i>Bolyeria multocarinata</i>	
	<i>Casarea dussumieri</i>	
Tropidophiidae Wood boas		

	Tropidophiidae spp.	
Colubridae Typical snakes, water snakes, whipsnakes		
		<i>Atretium schistosum</i> (India)
		<i>Cerberus rhynchops</i> (India)
	<i>Clelia clelia</i>	
	<i>Cyclagras gigas</i>	
	<i>Elachistodon westermanni</i>	
	<i>Ptyas mucosus</i>	
		<i>Xenochrophis piscator</i> (India)
Elapidae Cobras, coral snakes		
	<i>Hoplocephalus bungaroides</i>	
		<i>Micrurus diastema</i> (Honduras)
		<i>Micrurus nigrocinctus</i> (Honduras)
	<i>Naja atra</i>	
	<i>Naja kaouthia</i>	
	<i>Naja mandalayensis</i>	
	<i>Naja naja</i>	
	<i>Naja oxiana</i>	
	<i>Naja philippinensis</i>	
	<i>Naja sagittifera</i>	
	<i>Naja samarensis</i>	
	<i>Naja siamensis</i>	
	<i>Naja sputatrix</i>	
	<i>Naja sumatrana</i>	
	<i>Ophiophagus hannah</i>	
Viperidae Vipers		
		<i>Crotalus durissus</i> (Honduras)
		<i>Daboia russelii</i> (India)
	<i>Vipera ursinii</i> (Only the population of Europe, except the area which formerly constituted the Union of Soviet Socialist Republics; these latter populations are not included in the	

Appendices)		
	<i>Vipera wagneri</i>	
CLASS AMPHIBIA (AMPHIBIANS)		
ANURA		
Bufonidae Toads		
<i>Altiphrynoides spp.</i>		
<i>Atelopus zeteki</i>		
<i>Bufo periglenes</i>		
<i>Bufo superciliaris</i>		
<i>Nectophrynoides spp.</i>		
<i>Nimbaphrynoides spp.</i>		
<i>Spinophrynoides spp.</i>		
Dendrobatidae Poison frogs		
	<i>Dendrobates spp.</i>	
	<i>Epipedobates spp.</i>	
	<i>Minyobates spp.</i>	
	<i>Phyllobates spp.</i>	
Mantellidae Mantellas		
	<i>Mantella spp.</i>	
Microhylidae Red rain frog, tomato frog		
<i>Dyscophus antongilii</i>		
	<i>Scaphiophryne gottlebei</i>	
Myobatrachidae Gastric-brooding frogs		
	<i>Rheobatrachus spp.</i>	
Ranidae Frogs		
	<i>Euphlyctis hexadactylus</i>	
	<i>Hoplobatrachus tigerinus</i>	
CAUDATA		
Ambystomidae Axolotls		
	<i>Ambystoma dumerilii</i>	
	<i>Ambystoma mexicanum</i>	
Cryptobranchidae Giant salamanders		
<i>Andrias spp.</i>		
CLASS ELASMOBRANCHII (SHARKS)		
ORECTOLOBIFORMES		
Rhincodontidae Whale shark		

	<i>Rhincodon typus</i>	
LAMNIFORMES		
Lamnidae Great white shark		
	<i>Carcharodon carcharias</i>	
Cetorhinidae Basking shark		
	<i>Cetorhinus maximus</i>	
CLASS ACTINOPTERYGII (FISH)		
ACIPENSERIFORMES Paddlefish, sturgeons		
	ACIPENSERIFORMES spp. (Except the species included in Appendix I)	
Acipenseridae Sturgeons		
	<i>Acipenser brevirostrum</i>	
	<i>Acipenser sturio</i>	
OSTEOGLOSSIFORMES		
Osteoglossidae Arapaima, bonytongue		
	<i>Arapaima gigas</i>	
	<i>Scleropages formosus</i>	
CYPRINIFORMES		
Cyprinidae Blind carps, plaeesok		
	<i>Caecobarbus geertsii</i>	
	<i>Probarbus jullieni</i>	
Catostomidae Cui-ui		
	<i>Chasmistes cujus</i>	
SILURIFORMES		
Pangasiidae Pangasid catfish		
	<i>Pangasianodon gigas</i>	
SYNGNATHIFORMES		
Syngnathidae Pipefishes, seahorses		
	<i>Hippocampus spp.</i>	
PERCIFORMES		
Labridae Wrasses		
	<i>Cheilinus undulatus</i>	
Sciaenidae Totoaba		
	<i>Totoaba macdonaldi</i>	
CLASS SARCOPTERYGII (LUNGFISHES)		
COELACANTHIFORMES		
Latimeriidae Coelacanth		
	<i>Latimeria spp.</i>	

CERATODONTIFORMES		
Ceratodontidae Australian lungfish		
	<i>Neoceratodus forsteri</i>	
PHYLUM ECHINODERMATA		
CLASS HOLOTHUROIDEA (SEA CUCUMBERS)		
ASPIDOCHIROTIDA		
Stichopodidae Sea cucumbers		
		<i>Isostichopus fuscus</i> (Ecuador)
PHYLUM ARTHROPODA		
CLASS ARACHNIDA (SPIDERS)		
SCORPIONES		
Scorpionidae Scorpions		
	<i>Pandinus dictator</i>	
	<i>Pandinus gambiensis</i>	
	<i>Pandinus imperator</i>	
ARANEAE		
Theraphosidae Red-kneed tarantulas, tarantulas		
	<i>Aphonopelma albiceps</i>	
	<i>Aphonopelma pallidum</i>	
	<i>Brachypelma spp.</i>	
CLASS INSECTA (INSECTS)		
COLEOPTERA		
Lucanidae Cape stag beetles		
		<i>Colophon spp.</i> (South Africa)
LEPIDOPTERA		
Papilionidae Birdwing butterflies, swallowtail butterflies		
	<i>Atrophaneura jophon</i>	
	<i>Atrophaneura pandiyana</i>	
	<i>Bhutanitis spp.</i>	
	<i>Ornithoptera spp.</i> (Except the species included in Appendix I)	
<i>Ornithoptera alexandrae</i>		
<i>Papilio chikae</i>		
<i>Papilio homerus</i>		
<i>Papilio hospiton</i>		

	<i>Parnassius apollo</i>	
	<i>Teinopalpus spp.</i>	
	<i>Trogonoptera spp.</i>	
	<i>Troides spp.</i>	
PHYLUM ANNELIDA		
CLASS HIRUDINOIDEA (LEECHES)		
ARHYNCHOBDELLIDA		
Hirudinidae Medicinal leech		
	<i>Hirudo medicinalis</i>	
PHYLUM MOLLUSCA		
CLASS BIVALVIA (CLAMS, MUSSELS)		
VENERIDA		
Tridacnidae Giant clams		
	<i>Tridacnidae spp.</i>	
UNIONIDA		
Unionidae Freshwater mussels, pearly mussels		
<i>Conradilla caelata</i>		
	<i>Cyprogenia aberti</i>	
<i>Dromus dromas</i>		
<i>Epioblasma curtisi</i>		
<i>Epioblasma florentina</i>		
<i>Epioblasma sampsoni</i>		
<i>Epioblasma sulcata perobliqua</i>		
<i>Epioblasma torulosa gubernaculum</i>		
	<i>Epioblasma torulosa rangiana</i>	
<i>Epioblasma torulosa torulosa</i>		
<i>Epioblasma turgidula</i>		
<i>Epioblasma walkeri</i>		
<i>Fusconaia cuneolus</i>		
<i>Fusconaia edgariana</i>		
<i>Lampsilis higginsii</i>		
<i>Lampsilis orbiculata orbiculata</i>		
<i>Lampsilis satur</i>		
<i>Lampsilis virescens</i>		

<i>Plethobasus cicatricosus</i>		
<i>Plethobasus cooperianus</i>		
	<i>Pleurobema clava</i>	
<i>Pleurobema plenum</i>		
<i>Potamilus capax</i>		
<i>Quadrula intermedia</i>		
<i>Quadrula sparsa</i>		
<i>Toxolasma cylindrella</i>		
<i>Unio nickliniana</i>		
<i>Unio tampicoensis tecomatensis</i>		
<i>Villosa trabalis</i>		
MYTILOIDA		
Mytilidae Marine mussels		
	<i>Lithophaga lithophaga</i>	
CLASS GASTROPODA (SNAILS AND CONCHES)		
STYLOMMATOPHORA		
Achatinellidae Agate snails, oahu tree snails		
<i>Achatinella spp.</i>		
Camaenidae Green tree snail		
	<i>Papustyla pulcherrima</i>	
MESOGASTROPODA		
Strombidae Queen conch		
	<i>Strombus gigas</i>	
PHYLUM CNIDARIA		
CLASS ANTHOZOA (CORALS, SEA ANEMONES)		
HELIOPORACEA Blue corals		
	Helioporidae spp. (Includes only the species <i>Heliopora coerulea</i> . Fossils are not subject to the provisions of the Convention)	
STOLONIFERA		
Tubiporidae Organ-pipe corals		
	Tubiporidae spp. (Fossils are not subject to the provisions of the Convention)	

ANTIPATHARIA Black corals		
	ANTIPATHARIA spp.	
SCLERACTINIA Stony corals		
	SCLERACTINIA spp. (Fossils are not subject to the provisions of the Convention)	
CLASS HYDROZOA (SEA FERNS, FIRE CORALS, STINGING MEDUSAE)		
MILLEPORINA		
Milleporidae Fire corals		
	Milleporidae spp. (Fossils are not subject to the provisions of the Convention)	
STYLASTERINA		
Stylasteridae Lace corals		
	Stylasteridae spp. (Fossils are not subject to the provisions of the Convention)	
F L O R A (PLANTS)		
AGAVACEAE Agaves		
	<i>Agave arizonica</i>	
	<i>Agave parviflora</i>	
	<i>Agave victoriae-reginae</i> #1	
	<i>Nolina interrata</i>	
AMARYLLIDACEAE Snowdrops, sternbergias		
	<i>Galanthus spp.</i> #1	
	<i>Sternbergia spp.</i> #1	
APOCYNACEAE Elephant trunks, hoodias		
	<i>Hoodia spp.</i> #9	
	<i>Pachypodium spp.</i> #1 (Except the species included in Appendix I)	
	<i>Pachypodium ambongense</i>	
	<i>Pachypodium baronii</i>	
	<i>Pachypodium decaryi</i>	
	<i>Rauvolfia serpentina</i> #2	
ARALIACEAE Ginseng		

	<i>Panax ginseng</i> #3 (Only the population of the Russian Federation; no other population is included in the Appendices)	
	<i>Panax quinquefolius</i> #3	
ARAUCARIACEAE Monkey-puzzle tree		
<i>Araucaria araucana</i>		
BERBERIDACEAE May-apple		
	<i>Podophyllum hexandrum</i> #2	
BROMELIACEAE Air plants, bromelias		
	<i>Tillandsia harrisii</i> #1	
	<i>Tillandsia kammii</i> #1	
	<i>Tillandsia kautskyi</i> #1	
	<i>Tillandsia mauryana</i> #1	
	<i>Tillandsia sprengeliana</i> #1	
	<i>Tillandsia sucrei</i> #1	
	<i>Tillandsia xerographica</i> #1	
CACTACEAE Cacti		
	CACTACEAE spp. ^z #4 (Except the species included in Appendix I)	
<i>Ariocarpus</i> spp.		
<i>Astrophytum asterias</i>		
<i>Aztekium ritteri</i>		
<i>Coryphantha werdermannii</i>		
<i>Discocactus</i> spp.		
<i>Echinocereus ferreirianus</i> ssp. <i>lindsayi</i>		
<i>Echinocereus schmollii</i>		
<i>Escobaria minima</i>		
<i>Escobaria sneedii</i>		
<i>Mammillaria pectinifera</i>		
<i>Mammillaria solisioides</i>		
<i>Melocactus conoideus</i>		
<i>Melocactus deinacanthus</i>		
<i>Melocactus glaucescens</i>		

<i>Melocactus paucispinus</i>		
<i>Obregonia denegrii</i>		
<i>Pachycereus militaris</i>		
<i>Pediocactus bradyi</i>		
<i>Pediocactus knowltonii</i>		
<i>Pediocactus paradinei</i>		
<i>Pediocactus peeblesianus</i>		
<i>Pediocactus sileri</i>		
<i>Pelecyphora</i> spp.		
<i>Sclerocactus brevihamatus</i> <i>ssp. tobuschii</i>		
<i>Sclerocactus erectocentrus</i>		
<i>Sclerocactus glaucus</i>		
<i>Sclerocactus mariposensis</i>		
<i>Sclerocactus mesae-verdae</i>		
<i>Sclerocactus nyensis</i>		
<i>Sclerocactus papyracanthus</i>		
<i>Sclerocactus pubispinus</i>		
<i>Sclerocactus wrightiae</i>		
<i>Strombocactus</i> spp.		
<i>Turbinicarpus</i> spp.		
<i>Uebelmannia</i> spp.		
CARYOCARACEAE Ajo		
	<i>Caryocar costaricense</i> #1	
COMPOSITAE (Asteraceae) Kuth		
<i>Saussurea costus</i>		
CRASSULACEAE Dudleyas		
	<i>Dudleya stolonifera</i>	
	<i>Dudleya traskiae</i>	
CUPRESSACEAE Alerce, cypresses		
<i>Fitzroya cupressoides</i>		
<i>Pilgerodendron uviferum</i>		
CYATHEACEAE Tree-ferns		
	<i>Cyathea</i> spp. #1	
CYCADACEAE Cycads		

	CYCADACEAE spp. #1	
<i>Cycas beddomei</i>		
DIAPENSIACEAE Ocone-bells		
	<i>Shortia galacifolia</i> #1	
DICKSONIACEAE Tree-ferns		
	<i>Cibotium barometz</i> #1	
	<i>Dicksonia</i> spp. #1 (Only the populations of the Americas; no other population is included in the Appendices)	
DIDIEREACEAE Alluaudias, didiereas		
	DIDIEREACEAE spp. #1	
DIOSCOREACEAE Elephant's foot, kniss		
	<i>Dioscorea deltoidea</i> #1	
DROSERACEAE Venus' flytrap		
	<i>Dionaea muscipula</i> #1	
EUPHORBIACEAE Spurges		
	<i>Euphorbia</i> spp. #1 (Succulent species only except the species included in Appendix I. Artificially propagated specimens of cultivars of <i>Euphorbia trigona</i> , artificially propagated specimens of crested, fan-shaped or colour mutants of <i>Euphorbia lactea</i> , when grafted on artificially propagated root stock of <i>Euphorbia neriiifolia</i> , and artificially propagated specimens of cultivars of <i>Euphorbia 'Mili'</i> when they are traded in shipments of 100 or more plants and readily recognizable as artificially propagated specimens, are not subject to the provisions of the Convention)	
<i>Euphorbia ambvombensis</i>		
<i>Euphorbia capsaintemariensis</i>		
<i>Euphorbia cremersii</i>		

(Includes the <i>forma viridifolia</i> and the var. <i>rakotozafy</i>)		
<i>Euphorbia cylindrifolia</i> (Includes the spp. <i>tuberifera</i>)		
<i>Euphorbia decaryi</i> (Includes the vars. <i>ampanihyensis</i> , <i>robinsonii</i> and <i>spirosticha</i>)		
<i>Euphorbia francoisii</i>		
<i>Euphorbia moratii</i> (Includes the vars. <i>antsingiensis</i> , <i>bemarahensis</i> and <i>multiflora</i>)		
<i>Euphorbia parvicyathophora</i>		
<i>Euphorbia quartziticola</i>		
<i>Euphorbia tulearensis</i>		
FOUQUIERIACEAE Ocotillos		
	<i>Fouquieria columnaris</i> #1	
<i>Fouquieria fasciculata</i>		
<i>Fouquieria purpusii</i>		
GNETACEAE Gnetums		
		<i>Gnetum montanum</i> #1 (Nepal)
JUGLANDACEAE Gavilan		
	<i>Oreomunnea pterocarpa</i> #1	
LEGUMINOSAE (Fabaceae) Afrormosia, cristobal, rosewood, sandalwood		
<i>Dalbergia nigra</i>		
		<i>Dipteryx panamensis</i> (Costa Rica)
	<i>Pericopsis elata</i> #5	
	<i>Platymiscium pleiostachyum</i> #1	
	<i>Pterocarpus santalinus</i> #7	
LILIACEAE Aloes		
	<i>Aloe</i> spp. #1 (Except the species included in Appendix I. Also excludes <i>Aloe vera</i> , also referenced as <i>Aloe</i>)	

	<i>barbadensis</i> which is not included in the Appendices)	
<i>Aloe albida</i>		
<i>Aloe albiflora</i>		
<i>Aloe alfredii</i>		
<i>Aloe bakeri</i>		
<i>Aloe bellatula</i>		
<i>Aloe calcairophila</i>		
<i>Aloe compressa</i> (Includes the vars. <i>rugosquamosa</i> , <i>schistophila</i> and <i>paucituberculata</i>)		
<i>Aloe delphinensis</i>		
<i>Aloe descoingsii</i>		
<i>Aloe fragilis</i>		
<i>Aloe haworthioides</i> (Includes the var. <i>aurantiaca</i>)		
<i>Aloe helenae</i>		
<i>Aloe laeta</i> (Includes the var. <i>maniaensis</i>)		
<i>Aloe paralleifolia</i>		
<i>Aloe parvula</i>		
<i>Aloe pillansii</i>		
<i>Aloe polyphylla</i>		
<i>Aloe rauhii</i>		
<i>Aloe suzannae</i>		
<i>Aloe versicolor</i>		
<i>Aloe vossii</i>		
MAGNOLIACEAE Magnolia		
		<i>Magnolia liliifera</i> var. <i>obovata</i> #1 (Nepal)
MELIACEAE Mahoganies, Spanish cedar		
		<i>Cedrela odorata</i> #5 [Population of Colombia (Colombia) Population of Peru (Peru)]
	<i>Swietenia humilis</i> #1	
	<i>Swietenia macrophylla</i> #6 (Populations of the Neotropics)	

	<i>Swietenia mahagoni</i> #5	
NEPENTHACEAE Pitcher-plants (Old World)		
	<i>Nepenthes</i> spp. #1	
	<i>Nepenthes khasiana</i>	
	<i>Nepenthes rajah</i>	
ORCHIDACEAE Orchids		
	ORCHIDACEAE spp. ⁸ #8 (Except the species included in Appendix I)	
(For all of the following Appendix-I species, seedling or tissue cultures obtained in vitro, in solid or liquid media, transported in sterile containers are not subject to the provisions of the Convention)		
	<i>Aerangis ellisii</i>	
	<i>Dendrobium cruentum</i>	
	<i>Laelia jongheana</i>	
	<i>Laelia lobata</i>	
	<i>Paphiopedilum</i> spp.	
	<i>Peristeria elata</i>	
	<i>Phragmipedium</i> spp.	
	<i>Renanthera imschootiana</i>	
OROBANCHACEAE Broomrape		
	<i>Cistanche deserticola</i> #1	
PALMAE (Arecaceae) Palms		
	<i>Beccariophoenix madagascariensis</i>	
	<i>Chrysalidocarpus decipiens</i>	
	<i>Lemurophoenix halleuxii</i>	
	<i>Marojejya darianii</i>	
	<i>Neodypsis decaryi</i> #1	
	<i>Ravenea louvelii</i>	
	<i>Ravenea rivularis</i>	
	<i>Satranala decussilvae</i>	
	<i>Voanioala gerardii</i>	
PAPAVERACEAE Poppy		

		<i>Meconopsis regia</i> #1 (Nepal)
PINACEAE Guatemala fir		
		<i>Abies guatemalensis</i>
PODOCARPACEAE Podocarps		
		<i>Podocarpus neriifolius</i> #1 (Nepal)
		<i>Podocarpus parlatorei</i>
PORTULACACEAE Lewisias, portulacas, purslanes		
		<i>Anacampseros</i> spp. #1
		<i>Avonia</i> spp. #1
		<i>Lewisia serrata</i> #1
PRIMULACEAE Cyclamens		
		<i>Cyclamen</i> spp. ⁹ #1
PROTEACEAE Proteas		
		<i>Orothamnus zeyheri</i> #1
		<i>Protea odorata</i> #1
RANUNCULACEAE Golden seals, yellow adonis, yellow root		
		<i>Adonis vernalis</i> #2
		<i>Hydrastis canadensis</i> #3
ROSACEAE African cherry, stinkwood		
		<i>Prunus africana</i> #1
RUBIACEAE Ayuque		
		<i>Balmea stormiae</i>
SARRACENIACEAE Pitcher-plants (New World)		
		<i>Sarracenia</i> spp. #1 (Except the species included in Appendix I)
		<i>Sarracenia oreophila</i>
		<i>Sarracenia rubra</i> <i>ssp. alabamensis</i>
		<i>Sarracenia rubra</i> <i>ssp.</i> <i>jonesii</i>
SCROPHULARIACEAE Kutki		
		<i>Picrorhiza kurrooa</i> #3 (Excludes <i>Picrorhiza</i> <i>scrophulariiflora</i>)
STANGERIACEAE Stangerias		
		<i>Bowenia</i> spp. #1
		<i>Stangeria eriopus</i>
TAXACEAE Himalayan yew		

	<i>Taxus chinensis</i> and intraspecific taxa of this species ¹⁰ #10 <i>Taxus cuspidata</i> and intraspecific taxa of this species ¹⁰ #10 <i>Taxus fuana</i> and intraspecific taxa of this species ¹⁰ #10 <i>Taxus sumatrana</i> and intraspecific taxa of this species ¹⁰ #10 <i>Taxus wallichiana</i> #10	
TROCHODENDRACEAE (Tetracentraceae) Tetracentron		
		<i>Tetracentron sinense</i> #1 (Nepal)
THYMELAEACEAE (Aquilariaceae) Agarwood, ramin		
	<i>Aquilaria</i> spp. #1 <i>Gonystylus</i> spp. #1 <i>Gyrinops</i> spp. #1	
VALERIANACEAE Himalayan spikenard		
	<i>Nardostachys grandiflora</i> #3	
WELWITSCHIACEAE Welwitschia		
	<i>Welwitschia mirabilis</i> #1	
ZAMIACEAE Cycads		
	ZAMIACEAE spp. #1 (Except the species included in Appendix I)	
	<i>Ceratozamia</i> spp.	
	<i>Chigua</i> spp.	
	<i>Encephalartos</i> spp.	
	<i>Microcycas calocoma</i>	
ZINGIBERACEAE Ginger lily		
	<i>Hedychium philippinense</i> #1	
ZYGOPHYLLACEAE Lignum-vitae		
	<i>Guaiacum</i> spp. #2	

1 Populations of Botswana, Namibia and South Africa (listed in Appendix II):

For the exclusive purpose of allowing:

- 1) trade in hunting trophies for non-commercial purposes;

- 2) trade in live animals for *in situ* conservation programmes;
- 3) trade in hides;
- 4) trade in leather goods for non-commercial purposes for Botswana; for commercial or non-commercial purposes for Namibia and South Africa;
- 5) trade in hair for commercial or non-commercial purposes for Namibia;
- 6) trade in individually marked and certified ekipas incorporated in finished jewellery for non-commercial purposes for Namibia; and
- 7) trade in registered raw ivory (for Botswana and Namibia, whole tusks and pieces; for South Africa, whole tusks and cut pieces of ivory that are both 20 cm or more in length and 1 kg or more in weight) subject to the following:

- i) only registered government-owned stocks, originating in the State (excluding seized ivory and ivory of unknown origin) and, in the case of South Africa, only ivory originating from the Kruger National Park;
- ii) only to trading partners that have been verified by the Secretariat, in consultation with the Standing Committee, to have sufficient national legislation and domestic trade controls to ensure that the imported ivory will not be re-exported and will be managed in accordance with all requirements of Resolution Conf. 10.10 (Rev. CoP12) concerning domestic manufacturing and trade;
- iii) not before the Secretariat has verified the prospective importing countries, and the MIKE programme has reported to the Secretariat on the baseline information (e.g. elephant population numbers, incidence of illegal killing);
- iv) a maximum of 20,000 kg (Botswana), 10,000 kg (Namibia) and 30,000 kg (South Africa) of ivory may be traded, and despatched in a single shipment under strict supervision of the Secretariat;
- v) the proceeds of the trade are used exclusively for elephant conservation and community conservation and development programmes within or adjacent to the elephant range; and
- vi) only after the Standing Committee has agreed that the above conditions have been met.

On a proposal from the Secretariat, the Standing Committee can decide to cause this trade to cease partially or completely in the event of non-compliance by exporting or importing countries, or in the case of proven detrimental impacts of the trade on other elephant populations.

All other specimens shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly.

2 Population of Zimbabwe (listed in Appendix II):

For the exclusive purpose of allowing:

- 1) export of hunting trophies for non-commercial purposes;
- 2) export of live animals to appropriate and acceptable destinations;
- 3) export of hides; and
- 4) export of leather goods and ivory carvings for non-commercial purposes.

All other specimens shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly. To ensure that where a) destinations for live animals are to be appropriate and acceptable and/or b) the purpose of the import is to be non-commercial, export permits and re-export certificates may be issued only after the issuing Management Authority has received, from the Management Authority of the State of import, a certification to the effect that: in case a), in analogy to Article III, paragraph 3 (b) of the Convention, the holding facility has been reviewed by the competent Scientific Authority, and the proposed recipient has been found to be suitably equipped to house and care for the animals; and/or in case b), in analogy to Article III, paragraph 3 (c), the Management Authority is satisfied that the specimens will not be used for primarily commercial purposes.

3 Population of Argentina (listed in Appendix II):

For the exclusive purpose of allowing international trade in wool sheared from live vicuñas, in cloth, and in derived manufactured products and other handicraft artefacts. The reverse side of the cloth must bear the logotype adopted by the range States of the species, which are signatories to the *Convenio para la Conservación y Manejo de la Vicuña*, and the selvages the words 'VICUÑA-ARGENTINA'. Other products must bear a label including the logotype and the designation 'VICUÑA-ARGENTINA-ARTESANÍA'.

All other specimens shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly.

4 Population of Bolivia (listed in Appendix II):

For the exclusive purpose of allowing international trade in: a) wool and products derived therefrom sheared from live animals of the populations of the Conservation Units of Mauri-Desaguadero, Ulla Ulla and Lípez-Chichas; and b) products made from wool sheared from live animals of the rest of the population of Bolivia. The reverse side of the cloth must bear the logotype adopted by the range States of the species, which are signatories to the *Convenio para la Conservación y Manejo de la Vicuña*, and the selvages the words 'VICUÑA-BOLIVIA'. Other products must bear a label including the logotype and the designation 'VICUÑA-BOLIVIA'.

ARTESANÍA'.

All other specimens shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly.

5 Population of Chile (listed in Appendix II):

For the exclusive purpose of allowing international trade in wool sheared from live vicuñas, and in cloth and items made thereof, including luxury handicrafts and knitted articles. The reverse side of the cloth must bear the logotype adopted by the range States of the species, which are signatories to the *Convenio para la Conservación y Manejo de la Vicuña*, and the selvages the words 'VICUÑA-CHILE'. Other products must bear a label including the logotype and the designation 'VICUÑA-CHILE-ARTESANÍA'.

All other specimens shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly.

6 Population of Peru (listed in Appendix II):

For the exclusive purpose of allowing international trade in wool sheared from live vicuñas and in the stock extant at the time of the ninth meeting of the Conference of the Parties (November 1994) of 3249 kg of wool, and in cloth and items made thereof, including luxury handicrafts and knitted articles. The reverse side of the cloth must bear the logotype adopted by the range States of the species, which are signatories to the *Convenio para la Conservación y Manejo de la Vicuña*, and the selvages the words 'VICUÑA-PERÚ'. Other products must bear a label including the logotype and the designation 'VICUÑA-PERÚ-ARTESANÍA'.

All other specimens shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly.

7 Artificially propagated specimens of the following hybrids and/or cultivars are not subject to the provisions of the Convention:

- *Hatiora x graeseri*
- *Schlumbergera x buckleyi*
- *Schlumbergera russelliana x Schlumbergera truncata*
- *Schlumbergera orssichiana x Schlumbergera truncata*
- *Schlumbergera opuntioides x Schlumbergera truncata*
- *Schlumbergera truncata* (cultivars)
- Cactaceae spp. colour mutants lacking chlorophyll, grafted on the following grafting stocks: *Harrisia* 'Jusbertii', *Hylocereus trigonus* or *Hylocereus undatus*
- *Opuntia microdasys* (cultivars).

8 Artificially propagated specimens of hybrids of the genera *Cymbidium*, *Dendrobium*, *Phalaenopsis* and *Vanda* are not subject to the provisions of the Convention when:

- 1) the specimens are traded in shipments consisting of individual containers (i.e. cartons, boxes or crates) each containing 20 or more plants of the same hybrid;
- 2) the plants within each container can be readily recognized as artificially propagated specimens by exhibiting a high degree of uniformity and healthiness; and
- 3) the shipments are accompanied by documentation, such as an invoice, which clearly states the number of plants of each hybrid.

Artificially propagated specimens of the following hybrids:

- *Cymbidium*: Interspecific hybrids within the genus and intergeneric hybrids
- *Dendrobium*: Interspecific hybrids within the genus known in horticulture as "nobile-types" and "phalaenopsis-types"
- *Phalaenopsis*: Interspecific hybrids within the genus and intergeneric hybrids
- *Vanda*: Interspecific hybrids within the genus and intergeneric hybrids

are not subject to the provisions of the Convention when:

- 1) they are traded in flowering state, i.e. with at least one open flower per specimen, with reflexed petals;
- 2) they are professionally processed for commercial retail sale, e.g. labelled with printed labels and packaged with printed packages;
- 3) they can be readily recognized as artificially propagated specimens by exhibiting a high degree of cleanliness, undamaged inflorescences, intact root systems and a general absence of damage or injury that could be attributable to plants originating in the wild;
- 4) the plants do not exhibit characteristics of wild origin, such as damage by insects or other animals, fungi or algae adhering to leaves, or mechanical damage to inflorescences, roots, leaves or other parts resulting from collection; and
- 5) the labels or packages indicate the trade name of the specimen, the country of artificial propagation or, in the case of international trade during the production process, the country where the specimen was labelled and

packaged; and the labels or packages show a photograph of the flower, or demonstrate by other means the appropriate use of labels and packages in an easily verifiable way.

Plants not clearly qualifying for the exemption must be accompanied by appropriate CITES documents.

- [9](#) Artificially propagated specimens of cultivars of *Cyclamen persicum* are not subject to the provisions of the Convention. However, the exemption does not apply to such specimens traded as dormant tubers.
- [10](#) Whole artificially propagated plants in pots or other small containers, each consignment being accompanied by a label or document stating the name of the taxon or taxa and the text 'artificially propagated', are not subject to the provisions of the Convention.

Teen Animal Cruelty:

Legal Issues and Practical Solutions

By Maureen A. Gest, Esq.

The Committee on Animals and the Law recently offered a successful multidisciplinary program entitled “Teen Animal Cruelty: Legal Issues and Practical Solutions”. This program was held at the Benjamin N. Cardozo Law School, Yeshiva University, in New York City, on September 15, 2008, which featured presentations by several national experts in animal law, animal cruelty, and juvenile justice:

Dana Campbell, Esq., of the Campbell Law Firm, an attorney for the Criminal Justice Program of the Animal Legal Defense Fund (ALDF), a national nonprofit organization comprised of attorneys dedicated to enforcing and enhancing laws affecting the welfare of animals; an adjunct professor of Animal Law at Cornell Law School; an experienced lecturer and trainer on assorted animal law topics; the author of the *Legal Advocates’ Manual for Animal Abuse Criminal Cases*; a former deputy district attorney both in Oregon and in Hawaii, where she successfully tried hundreds of cases, specializing in animal cruelty and neglect, domestic violence, and child sex-assault cases; and a founding member of the Maui County, Hawaii Domestic Violence Task Force;

John DeWitt Gregory, Siben and Siben Distinguished Professor of Family Law at Hofstra University School of Law and a nationally recognized authority in the field of family and matrimonial law; an elected member of the American Law Institute; an Adviser for the Institute’s Principles of the Law of Family Dissolution: Analysis and Recommendations; a member of the Board of Editors of the Family Law Quarterly; a Fellow of the American Bar Foundation; a former Chair of the Matrimonial Law Committee of the Association of the Bar of the City of New York; and Vice Chair of the National Center for Law and Economic Justice, a national welfare advocacy organization;

Maya Gupta, PhD., a science advisor to the Animals and Society Institute; a psychotherapist with expertise in “AniCare”, a treatment model for animal abusers developed by the Institute, President of Ahimsa House in Atlanta, Georgia, a nonprofit safe house that provides shelter and aid to animals caught in the cycle of domestic violence; author of several publications on animal abuse and interpersonal violence; an affiliate to the National District Attorneys Association's Advisory Group on Animal Cruelty and Fighting; the National Network to End Domestic Violence's Working Group

on Efforts to Address the Link Between Domestic Violence, Child Abuse, and Animal Abuse; and the National Link Coalition Steering Committee;

Randall Lockwood, Ph.D., Senior Vice President for Anti-Cruelty Field Services, the American Society for the Prevention of Cruelty to Animals (ASPCA); former assistant professor of psychology at the State University of New York, and Washington University; former vice president for research and educational outreach for the Humane Society of the United States; co-editor of *Cruelty to Animals and Interpersonal Violence* (1998), author of *Animal Cruelty Prosecution: Opportunities for Early response to Crime and Interpersonal Violence* (2006); and co-author of *Forensic Investigation of Animal Cruelty: A Guide for Veterinary and Law Enforcement Professionals* (2006);

Carol L. Moran, Deputy District Attorney at the Kings County District Attorney's Office in Brooklyn, New York; an experienced trial attorney and trial supervisor who handled her first animal cruelty case in 1983; Director of Training for ten years; Chair of the District Attorney's metropolitan area task force dedicated to improving the investigation and prosecution of animal cruelty and fighting cases; head of the District Attorney's animal crimes unit; and an experienced trainer for attorneys, law enforcement and the public on case prosecution and the link between animal cruelty and human violence; and a participant (with her dog) in humane education programs in New York City elementary schools;

Siobhan Grady, Assistant Corporation Counsel in the Bronx County Family Court Division of the Law Department of the City of New York, who prosecutes juvenile delinquency cases as well as high-profile arson and firearms cases; serves on a New York City panel created to improve investigations and prosecutions by enhancing communication and cooperation between the Law Department and the New York Police Department; chairs a subcommittee of a Law Department panel that conducts presentations in Bronx schools on firearms awareness and crime prevention; and has served in the nationwide anti-crime initiative known as National Precinct Night Out, helping police precincts provide information to residents about steps they can take to keep crime under control in their neighborhoods.

Dr. Lockwood opened the program and offered an overview of the link between animal cruelty and violence towards humans. He noted that “studies that look backward at the histories of incarcerated serious and violent offenders often reveal a high incidence of animal cruelty offenses in childhood and adolescence,” and, additionally, “studies that follow the offense record of those with a history of animal abuse tend to show a high rate of future offenses against people and property.” He explained that it is important to recognize and treat animal cruelty whenever it manifests in early childhood, noting that “[a] 10-year study of at-risk children showed that

those who were classified at age 6-12 as cruel to animals were more than twice as likely as others in the study to be subsequently referred to juvenile authorities for a violent offense. Of those reported to be both cruel to animals and fire setters, 83% had later involvement in violent offenses.”

Dr. Lockwood surveyed the extensive body of literature that has documented the link between animal cruelty and violence towards human beings, particularly domestic violence, child abuse and elder abuse, and discussed how recognition of animal cruelty can enable law enforcement to discover and protect human victims from abuse. He discussed definitions of animal cruelty, including simple neglect, gross, willful, cruel or malicious neglect, and intentional abuse and torture, and surveyed the various state laws that govern the varieties of animal cruelty. He noted that in many states, no programs or services exist to provide treatment to teens convicted of animal cruelty.

Ms. Moran followed with a presentation that included a discussion of the New York State anti-cruelty laws and the various other laws under which animal abuse, cruelty, and neglect can be prosecuted. She explained that New York’s felony animal cruelty law (New York State Agriculture and Markets Law, Article 26, Section 353-a) provides significant deterrents and penalties for aggravated animal cruelty, although it applies only in the limited circumstances where the perpetrator: for no justifiable purpose, intentionally kills or causes serious physical injury to a companion animal, and where the perpetrator intends to cause extreme physical pain to the animal or acts in an especially depraved or sadistic manner. In contrast, she explained, New York’s misdemeanor animal cruelty law, (New York Agriculture and Markets Law, Article 26, Section 353), is very broad and can be used to prosecute a variety of acts that harm or are cruel to animals, including any instances where the defendant overdrives, tortures or injures any

animal, fails to provide proper sustenance or deprives an animal of necessary nourishment, or neglects an animal in some other way.

Ms. Moran offered concrete examples of the "link" between animal cruelty and violence towards humans, based upon Brooklyn cases involving teen or child animal abusers who later became violent criminals. She noted that in some cases those defendants were prosecuted and may have received effective treatment in addition to criminal penalties. In other cases, she explained, the community or law enforcement did not recognize or effectively treat the juvenile animal abuser who eventually developed into an adult violent criminal. Ms. Moran reflected that sentencing and treatment options for teen animal abusers are limited in New York and pointed to the need for development of effective sentencing and treatment programs.

Ms. Campbell followed with an overview of the variety of state and federal laws related to teen animal cruelty, noting that several states have included provisions for discretionary or mandatory psychological assessment of juvenile animal abusers in their statutes. She noted that the FBI considers animal cruelty a crime that may be a predictor of future violent crime. Several serial killers both in the United States and internationally had extensive histories of animal cruelty.

Ms. Campbell further explained that there are significant problems involved in tracking teen animal cruelty defendants, primarily because their criminal records have been sealed by various state laws that protect youthful offenders. She explained that the lack of tracking may be a barrier to attempts to prevent future violence by these defendants, including violence against both humans and animals. She discussed recent national and state initiatives to improve tracking, including United States Senate Bill 2439 to require the National Incident Based Reporting System, the Uniform Crime Reporting Program, and the Law Enforcement National

Data Exchange Program to list cruelty to animals as a separate offense category; United States House Bill 6597 to require the collection of data on animal cruelty crimes; and New York State Assembly Bill 4851, which, among other things, would require the unsealing of the youthful offender records of juveniles convicted of animal cruelty.

Ms. O'Grady followed with a presentation that explained how juvenile crimes are handled generally by the New York City Police Department, by the New York City Law Department's Family Court Bureau, and by the New York State Family Court. She explained that many juvenile animal cruelty cases may never be presented to a judge, either because, based on the circumstances of the incident or the age of the juvenile, a police officer determined not to make an arrest of the juvenile, or the case was diverted to the New York City Department of Probation prior to arraignment for efforts at "adjustment", which might include school monitoring, supervision by a probation officer, or community service.

Ms. O'Grady explained that in situations where cases of juvenile animal abuse had been adjudicated in the Family Court, several of the defendants were placed in juvenile correctional facilities because they were deemed unable to reside in the community without presenting an unacceptable risk to others. She also discussed the difficulties of tracking teen animal abusers through the New York City juvenile justice system in part because many of their cases were never presented to a judge or because their criminal records had been sealed.

Dr. Gupta followed with an overview of factors that may contribute to juvenile animal cruelty, including behavior disorders and attachment difficulties, post-traumatic stress disorder, developmental disabilities, and brain injuries. She explained that therapists should ask all children who enter counseling or therapy as to whether they have committed or witnessed acts of animal cruelty. In addition, she discussed potentially effective treatments for juvenile animal

abuse, focusing specifically on the AniCare psychological treatment model for children up to age 16 and for adults who have abused animals. Dr. Gupta explained that AniCare is predicated on the idea that individual differences in cognition, behaviors, attachment styles, severity of abuse, motivations and patterns of abuse require careful assessment and treatment tailored for the individual patient. She noted that AniCare focuses on development empathy in children who have abused animals and in developing their self-management. In older teens or adults, AniCare further attempts to develop individual accountability. Dr. Gupta explained that AniCare has been introduced into sentencing of defendants convicted of animal cruelty in several states and that a national network of therapists trained in AniCare exists. In addition, the Animals and Society Institute offers training and consultation in AniCare for therapists already involved in treating individuals convicted of animal cruelty.

Dr. Gupta noted that, based upon recent incorporation of AniCare into sentencing, it appears to be an effective treatment model but noted further that more research and empirical testing of AniCare needs to be done to verify its effectiveness. She noted that other challenges involved in providing psychological treatment to those accused of animal cruelty are that some mental health practitioners do not take animal cruelty seriously and that it is often difficult to disseminate knowledge about treatment for animal abuse to judges, prosecutors, and others concerned with the issue.

Professor Gregory wrapped up the evening with a critical commentary, opining that the teens who usually wind up being prosecuted in Family Court are often children of poor people and that judicial proceedings are not the most effective arena in which to resolve social and community problems such as teen animal cruelty. He expressed skepticism of court-ordered penalties or treatment as deterrents or tools of rehabilitation and commented that, based upon its

history; psychology in the service of the state can be a dangerous thing. He noted that in the past the creation of Family Court programs has not always provided the benefit the programs were intended to provide but has, rather, simply established another bureaucracy that fights to hold onto to its power. He also queried as to whether there is any more reason to unseal the criminal records of juvenile animal abusers than the records of other juveniles convicted of other crimes such as juvenile rapists or juveniles convicted of sodomy.

Overall, the speakers offered varying perspectives on teen animal cruelty based upon their different backgrounds and experiences. They indicated where more research is needed and where there are gaps in our knowledge. They identified some strategies that might help reduce teen animal cruelty in the future and they indicated problems with how these cases are currently handled by legal processes. They noted that while current processes, sentencing, and treatment may not be perfect, courts and the community must address animal cruelty as effectively as possible both for the sake of animals and because of the overwhelming relationship of animal cruelty to human violence.

Humane Law Enforcement Involves Educating and Working With People

By James F. Gesualdi, Esq.¹

A March 23, 2008 Associated Press story by Linda Lombardi, “Being animal cops also a people job” underscored the importance of dealing with people in order to help animals (and even people) in the field of animal law. Some of the interesting insights include the following excerpts:

... it’s not all about animals – or law enforcement, either.

Humane law enforcement officers agree on the most important thing to know about their job: “The majority of time is spent dealing with people, not with animals,” says Adam Parascandola, the director of Oakland Animal Services in Oakland, Calif.

Scott Giacoppo, chief of field services for the Washington Humane Society of Washington, D.C., estimates that humane law enforcement officers spend 85 to 90 percent of their time on education and only 10 percent on prosecution.

“We go out to every situation with the idea of making it better for the animal,” he says.

* * *

Giacoppo stresses, however, that you do need an interest in law enforcement. You must respect the law even when it differs from your own point of view.

* * *

... people skills are always a priority. Parascandola says that experience with handling difficult customers is a big plus. “You have to be willing to go out there and face people who are yelling at you,” says Parascandola.

See

http://www.boston.com/jobs/news/articles/2008/03/23/being_animal_cops_also_a_people_job/?mode=PF

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These anecdotal humane law enforcement reports from experts in the field illustrate several points worthy of consideration. First, while new animal laws or changes in existing laws might help promote animal welfare, over-reliance on the law alone may be short-sighted. Second, and simply put, whatever the law may do to protect animals, animal welfare will remain a matter for dedicated people (whether in humane law enforcement or other animal care related positions), with skill sets including the ability to work with people. Third, these interpersonal skills, including perhaps compassion towards people as well as animals, will also increase the efficacy of educational outreach to prevent continued animal abuse or cruelty.

Understanding and better appreciating the role of people in crafting, implementing, counseling and enforcing Animal Law might just be worth a little more attention.

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² The information presented herein should not be construed to be formal legal advice. The opinions expressed herein are solely that of the author.

LITIGATION UPDATE

Submitted by Alyssa Leah Vickers, Esq.

Dangerous Dogs

Seiger v. Dercole, 50 A.D.3d 1524, 856 N.Y.S.2d 771, 2008 N.Y. Slip Op. 03780 (N.Y. App. Div. 4 Dept., April 25, 2008)

Plaintiff and her dog were both attacked by a dog owned by defendant Dercole ~~about one~~ south of the premises that Dercole leased from the other defendant, Max Properties, Ltd. (“Max”). Plaintiff brought a personal injury action against both defendants. The Supreme Court, Monroe County, granted Max’s motion for summary judgment dismissing the amended complaint. The Appellate Division affirmed that dismissal, holding that because the incident did not occur on property Max owned Max did not owe any duty of care to plaintiff.

Muller v. Boyd, 855 N.Y.S.2d 651, 2008 N.Y. Slip Op. 03430 (N.Y. App. Div. 2 Dept., April 15, 2008)

After the plaintiff was bitten in her home by defendant’s dog when she attempted to pet him, she brought an action to recover damages for personal injuries. At trial, defendant “acknowledged that he had purchased the dog for the protection of his then-fiancée,” that the dog had “undergone ‘dog guard’ training, in which it had been trained to ‘go after’ strangers,” that the dog had previously bitten a child attending a family gathering, and that the child of a contractor working at defendant’s house had to be taken to the hospital after an encounter with the dog. In addition, there was uncontested testimony that defendant had placed a “Beware of Dog” sign on his property and that, on two occasions, the dog had snapped at plaintiff’s boyfriend two or three times in succession. The jury found that defendant’s dog did not have vicious propensities and ruled in favor of the defendant. The plaintiff immediately brought a motion to set aside the verdict as against the weight of the evidence and for a new trial. Supreme Court, Orange County, denied plaintiff’s motion. Plaintiff appealed and the Appellate Division for the Second Department reversed, granting plaintiff’s motion and reinstating the complaint because the jury verdict “was not based on a fair interpretation of the evidence.”

Jacobsen v. Schwarz, 50 A.D. 3d 964, 857 N.Y.S.2d 199, 2008 N.Y. Slip Op. 03592 (N.Y. App. Div. 2 Dept., April 22, 2008)

Plaintiff brought an action to recover damages for personal injuries suffered when defendant’s dog bit her. At the time she was bitten, plaintiff was working on a computer in defendant’s home. Defendant was playing “tug of war” with her dog and a ball nearby. Plaintiff asserts that when she placed her hand down along the side of the chair, defendant’s dog bit her. Defendant moved for summary judgment on the basis that there was no evidence that defendant knew or should have known of the dog’s vicious

propensities. The Supreme Court, Suffolk County, granted defendant's motion. The Second Department reversed, concluding that there existed a question of fact regarding whether defendant knew or should have known of such propensities. The court noted that proof of a vicious propensity may "consist of evidence that the animal had been known to 'growl, snap or bare its teeth.'" Both defendant and her son had testified that defendant warned that the dog was "possessive about her ball and not to touch it." Plaintiff testified that the dog would growl when she carried the ball and when she played "tug of war" with defendant. In addition, plaintiff's sons submitted affidavits stating that on a prior occasion they observed the dog growling and baring her teeth when they came near her. The Appellate Division found that this testimony and affidavits raised a triable issue of fact as to whether defendant knew or should have known of the dog's vicious propensities.

Bernstein v. Penny Whistle Toys, Inc., 10 N.Y.3d 787, 856 N.Y.S.2d 532, 2008 N.Y. Slip Op. 02463
(N.Y., March 18, 2008)

Plaintiff brought a personal injury action for injuries sustained by her eight-year old child when he was bitten by defendant's dog while inside defendant's toy store. The Supreme Court dismissed the complaint because plaintiffs provided no evidence that the dog in question exhibited a vicious propensity before the incident in question. Plaintiff appealed and a majority of the Appellate Division, First Department, affirmed the Supreme Court's decision. The majority held that when a domestic animal causes harm, the owner's liability is determined solely by the rule articulated in *Collier v. Zambito*, which requires a finding that the owner knew or should have know of the animal's vicious propensities before strict liability may be imposed. The dissent argued that despite the absence of any evidence of vicious propensities, the owner of the dog could be held liable because he was also the owner of the premises where the child was bitten and therefore owed the child a separate duty. Plaintiff appealed to the Court of Appeals which also affirmed, holding that absent any evidence that the dog's owner had knowledge of the dog's vicious propensities the owner was not liable for the child's injuries. The Court cited *Bard v. Jahnke*, 6 N.Y.3d 592 (2006) for the holding that "when harm is caused by a domestic animal, its owner's liability is determined solely by application of the rule articulated in *Collier*."

Christensen v. Lundsten, 863 N.Y.S.2d 886, 2008 N.Y. Slip Op. 28320
(District Court, Suffolk County)

The Court held a trial on petitioner's dangerous dog petition and rendered an oral decision on May 14, 2008 finding that respondents' dog met the statutory definition of a dangerous dog, imposing a civil penalty on respondents, and determining that respondents are strictly liable to petitioner for his daughter's un-reimbursed medical expenses. This opinion sought to clarify the Court's oral decision. The Court held that recent amendments to the New York Agricultural and Markets Law concerning dangerous dogs imposed a civil penalty for negligent ownership of a dog, but that because petitioner had not explicitly pled the elements of negligence, the Court would not

rule on this issue. The Court also held that amendments to that statute reintroduced strict liability based solely on a finding of “dangerous dog ownership” and “injury,” and concluded that petitioners had demonstrated both in this case. Finally, the Court held that the amended statute afforded the Court jurisdiction over serious injury dog bite cases even though such cases had traditionally been heard by the Supreme Court.

Dangerous Cat

Cohen v. Duane Reade, Inc., 2001 WL 1591022 (Unknown State Court, NY)

A woman, accompanied by her dog, was attacked by a cat in the defendant store. Plaintiff suffered scalp lacerations, cervical and shoulder strains, an arm injury, and facial abrasions resulting in scarring and requiring plastic surgery. Plaintiff contended that she had been holding her dog in her arms at the time of the attack and that defendant failed to properly restrain the animal and ensure the safety of the store’s customers. Defendant denied liability, asserting that plaintiff’s dog had chased the cat prior to the incident and that the cat had been in the store for three years without incident and did not display any aggressive behavior. The case settled for \$75,000.

Negligence

Jetter v. Hall, 857 N.Y.S.2d 895, 2008 N.Y. Slip Op. 28175
(Supreme Court, Monroe County, May 1, 2008)

Plaintiff brought an action for injuries suffered during a collision with a dog allegedly owned by defendants Katherine Hall and Charles Hall and entrusted to the care of defendant Ramona Santorelli at the time of the incident. At that time, plaintiff was wading in the shallow end of a pond with her arms holding her up prone, like a “seal.” Duke, the dog, was standing within one foot of plaintiff. According to plaintiff, she observed defendant Santorelli with a stick and warned her at least three times not to throw it. Santorelli threw the stick into the water, causing Duke to swing around into plaintiff’s direction, colliding with plaintiff and causing severe facial and eye injuries including several fractures. Santorelli denied seeing the plaintiff near the dog or hearing the warning, but testified that after throwing the stick she realized a collision would occur. The parties and two witnesses testified that Duke was a mild mannered, well-trained German Shepard. Santorelli moved for summary judgment, asserting that the facts did not support a cause of action based on negligence or strict liability. The Supreme Court agreed that undisputed proof established that the dog did not exhibit dangerous propensities and absent such propensities, plaintiff could not make out a claim based on strict liability. However, the Court denied defendant’s motion for summary judgment on the negligence claim. Plaintiff had alleged that Santorelli was negligent in her handling of the dog and such a claim was “one of ordinary negligence even though the instrumentality of the negligent act is a dog.” The Court did dismiss the action against Katherine Hall, who provided undisputed evidence that she was not the owner of the dog.

[Endangered Species](#)

Save the Pine Bush, Inc. v. Planning Board of the Town of Clifton Park, 50 A.D. 3d 1296, 856 N.Y.S.2d 687, 2008 N.Y. Slip Op. 03283 (N.Y. App. Div. 3 Dept., April 11, 2008)

A development company submitted a plan to the Planning Board of Clifton Park seeking to build on undeveloped property. A portion of that property had been identified as a potential habitat for an endangered species known as the Karner Blue Butterfly. The Planning Board issued a negative declaration as to the impact the development would have on the surrounding environment and approved the project. Save the Pine Bush, Inc. and several of its individual members commenced an Article 78 proceeding seeking to set aside the Board's decision. The Supreme Court granted respondents' motion to dismiss. The Appellate Division affirmed that dismissal, finding that petitioners lacked standing. The Court noted that to establish standing, the Save the Pine Bush, Inc. was required to show that at least one of its members "would suffer direct harm, injury that is in some way different from that of the public at large" and that the injury falls within the "zone of interests" promoted or protected by the State Environmental Quality Review Act. Petitioner had failed to establish standing because its argument that members enjoy observing the Karner Blue Butterfly as part of their recreational activities did not distinguish those members' interests from the interests of the public at large. Moreover, petitioner failed to provide evidence that any of its members reside in close proximity to the property at issue and accordingly none of the members had a unique interest so as to confer standing. Leave to appeal to the Court of Appeals was denied.

[Migratory Birds](#)

Fund for Animals v. Kempthorne, 538 F.3d 124 (2d Cir. Aug. 14, 2008)

Plaintiff challenged Fish and Wildlife Services' ("FWS") adoption of Public Resource Depredation Order authorizing State fish and wildlife agencies, Federally recognized Tribes, and State Directors of the Wildlife Services program to "take" (kill or capture) double-crested cormorants to "prevent depredations on the public resources of fish...wildlife, plants, and their habitats." Double-crested cormorants ("cormorants") are not protected by the Endangered Species Act but are covered by international treaties to which the United States is a party and that have been implemented by the Migratory Bird Treaty Act. The Second Circuit affirmed the district court's grant of summary judgment in favor of defendants. The Court concluded that the Depredation Order did not violate the Migratory Bird Treaty Act. Although the Depredation Order allows local agencies to determine what constitutes a depredation, the Order did not constitute an improper delegation of authority to local agencies because the Order restricts the species, locations, and means by which takings may occur. The Depredation Order also did not conflict with an international treaty requiring the establishment of "closed seasons" during which certain species cannot be taken because the treaty was ambiguous as to whether this

requirement would apply to the cormorants and the Court therefore deferred to the FWS' reasonable interpretation that the requirement did not apply. Finally, the Court held that the agency's adoption of the Order was not arbitrary and capricious and that the Order complied with the National Environmental Policy Act even if the related Environmental Impact Statement failed to contain any site-specific analysis of Order's environmental impact.

Criminal Law

People v. Estrella, 851 N.Y.S.2d 793, 2008 N.Y. Slip Op. 01239 (N.Y. App. Div. 4 Dept., Feb. 8, 2008)

A police officer stopped defendant's vehicle, which appeared to have a heavily tinted rear window. Holding that the stop was lawful, the Appellate Division also concluded that the officers' use of a narcotics-detection dog to sniff the exterior of the vehicle during the stop did not violate defendant's constitutional right to be protected from unlawful search and seizure. In addition, the Court held that the police properly obtained a search warrant of the vehicle after receiving a positive indication from the dog that drugs were present. Defendant was not entitled to hearing to determine whether the affidavit submitted in support of that search warrant was deliberately falsified, even though the affiant improperly stated that the dog was a certified narcotics-detection dog when in fact the dog's certification had recently expired and the dog was not recertified until after the search. The dissent held that the officer did not have probable cause to believe the defendant had committed a traffic infraction because defendant's tinted window was in compliance with the applicable law (of Georgia). The Court of Appeals affirmed the Appellate Division's holding that the officer reasonably believed the window was over-tinted in violation of New York State law and agreed that the courts below did not err in declining to suppress the drugs recovered from the vehicle. The United States Supreme Court denied certiorari.

Environmental Law

Peconic Baykeeper, Inc. v. Suffolk County, ___ F. Sup.2d, ___, 2008 WL 4916389 (E.D.N.Y. Nov. 17, 2008)

An environmental group and two individual plaintiffs brought a citizens' suit under the Clean Water Act ("CWA") alleging that the defendant, County violated the CWA in three ways: (1) by failing to obtain a permit to spray certain insecticides considered pollutants, into waters; (2) by failing to obtain a permit to discharge pesticides and other dredge spoil from mosquito control ditches into adjacent surface waters; and (3) by failing to obtain a permit to maintain a mosquito grid ditch system. Among the plaintiffs' factual assertions were that the pesticides damaged the marine life in the surrounding waters. After a bench trial, the Court found for defendants on all three counts. The Court held that because the insecticides used were in compliance with the Federal Insecticide Fungicide and Rodenticide Act and therefore were not "pollutants" under the CWA so the County was not required to obtain a permit to spray or discharge them. The Court

also held that the trucks and helicopters used to spray the insecticides were not “point sources” under the CWA. And finally the Court found that the county’s maintenance of a mosquito grid ditch system did not require a permit because it fell within a statutory exemption in the CWA.

Save the Pine Bush, Inc. v. Common Council of the City of Albany, 865 N.Y.S.2d 365, 2008 N.Y. Slip Op. 07703

(N.Y. App. Div. 3 Dept., Oct 9, 2008)

A development corporation applied for a permit to rezone property located in Albany County near the habitat of the endangered Karner Blue Butterfly (“Butterfly”) in what is known as the Albany Pine Bush. The Common Council of the City of Albany (the “agency”) did an environmental review and approved the application to rezone. Save the Pine Bush, Inc. (the “plaintiff”) challenged the Agency’s actions alleging the Agency had violated the State Environmental Quality Review Act (SEQRA) when it reviewed the impact on the Butterfly as well as the impact on other rare plant and animal species. The agency denied the allegations and alleged that the plaintiff did not have standing. The Court found the plaintiff had standing to based on its’ devotion to the protection of the Butterfly and its habitat. Plaintiff demonstrated that they regularly used the preserve adjacent to the Butterfly’s current habitat and was pivotal in the creation of the preserve and the on going effort to expand the Butterfly’s habitat into that preserve. Although the Supreme Court found the agency did not violate the SEQRA in analyzing whether the development would have an impact on the Butterfly it did violate SERQA by failing to take a “hard look” at whether the proposed development would have an impact on other rare plant and animal species. When the Agency appealed a majority of the Appellate Division affirmed on all grounds, the dissent argued that the plaintiff lacked standing. It is significant to point out that the majority distinguished this case from Save the Pine Bush, Inc. v. Planning Board of the Town of Clifton Park which also involved the issue of Plaintiff’s standing.

New York v. Gutierrez, 2008 WL 5000493

(E.D.N.Y. Nov. 20, 2008)

New York State brought suit against defendants, the Mid-Atlantic Fishery Management Counsel’s (“MAFMC”) and several federal agencies and officials, alleging that MAFMC’s use of certain data in establishing fishery management plans for the summer flounder violated federal law because the data used was not the “best scientific information available.” Applicants – two trade organizations and a non-profit organization for anglers – moved to intervene in this action to join the Atlantic State Marine Fisheries Commission (“ASMFC”) as a defendant. The Applicants argued that while the MAFMC is responsible for preparation of a fishery management plan for federal waters (those between three miles and two-hundred miles offshore), the ASMFC is responsible for preparation of a fishery management plan for state waters. In determining whether to grant applicants’ motion to intervene, the Court considered whether the applicants were already adequately represented by plaintiffs. The Court noted that applicants’ interests were largely aligned with those of the plaintiffs since both sought to overturn the state-by-state approach to measuring the flounder population.

Nonetheless, the Court concluded that plaintiffs' failure to name the ASMFC as a defendant was nonfeasance sufficient to demonstrate that plaintiffs did not adequately represent applicants. In so holding, the Court concluded that the ASMFC should be a considered a quasi-federal agency and accordingly, applicants and plaintiffs have a private right of action against the ASMFC. The court therefore granted the motion to intervene and joined the ASMFC as a defendant.

Horse Racing

Gill v. New York State Racing and Wagering Board, 50 A.D.3d 494, 858 N.Y.S.2d 15, 2008 N.Y. Slip Op. 03508
(N.Y. App. Div. 1 Dept., April 22, 2008)

Plaintiffs owned and trained two race horses which both tested positive for the drug Fluphenazine after races in violation of rule that the New York State Racing Board had readopted on an "emergency" basis several times. Plaintiffs brought a combined Article 78 and declaratory judgment action seeking to invalidate the rule, enjoin the Board from enforcing the rule, and vacating the Board's determination disqualifying the horses and declaring their purses forfeited. The Appellate Division held that plaintiffs' causes of action challenging the enactment of the emergency rule were time-barred because they accrued when the rule was promulgated, which was more than four months prior to the commencement of the proceeding. Plaintiffs' cause of action alleging constitutional infirmities in the enforcement of the rule was timely because it was brought within four months of the date petitioners were informed that the horses tested positive.

ANIMAL LAW

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Federal

State & Local

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COMPANION ANIMALS

Abuse & Neglect

Attacks

Breeding & Puppy Mills

Competition & Exhibition

Custody Cases

“Dangerous” Dogs & Breed Specific Legislation

Domestic Violence & Restraining Orders

Emotional Distress & Inter-Species Bonds

Estate Planning

Exotic Pets

Fighting

Grooming

Health, Veterinary Care & Malpractice

Hoarding

Landlord-Tenant

Leashing

Licensing & Ownership

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Service Animals

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Spay & Neuter

Transportation & Hit and Runs

OTHER ANIMALS

Agriculture

Entertainment

Research

WILD ANIMALS

Abuse

Attacks

Conservation

Fishing

Hunting

Miscellaneous

Trading

Zoos & Parks

ANIMAL LAW

Generally

“A Peek Inside Pet Laws”

<http://www.examiner.com/x-10510-Houston-Pet-Laws-Examiner~y2009m5d25-A-Peek-Inside-Pet-Laws>

See also: C.A. Miscellaneous

“Animal cruelty investigators learn to use forensics to unearth clues”

<http://www.tampabay.com/features/humaninterest/article1013751.ece>

See also: A.L. State & Local (Gainesville, FL); C.A. Abuse & Neglect

“Animal law topic of recent seminar”

<http://www.nola.com/picayunes/t-p/wbpicayunes/index.ssf/base/news-17/1247376654104580.xml&coll=1>

See also: A.L. State & Local (New Orleans, LA)

“Barristers speak and squawk for the animals”

<http://www.thenewlawyer.com.au/article/Barristers-speak-and-squawk-for-the-animals/481458.aspx>

See also: A.L. International (Australia)

“Concerning Animals: A few good books can help with pets”

http://www.nj.com/homegarden/homestories/index.ssf/2009/05/concerning_animals_a_few_good.html

*books

“Dogs riding in open bed of pickup truck safety concerns”

<http://www.examiner.com/x-7744-Honolulu-Pets-Examiner~y2009m7d2-Dogs-riding-in-open-bed-of-pickup-truck-safety-concerns>

See also: C.A. Transportation

“Elm Mott man arrested in puppy mill case wins right to appeal ruling on cost of animals’ care”

<http://www.wacotrib.com/news/content/news/stories/2009/06/27/06272009wacdogappeal.html?cxtype=rss>

See also: A.L. State & Local (Waco, TX); C.A. Abuse & Neglect; Breeding & Puppy Mills

“Excellence of DePaul University’s Law and Part-Time MBA Programs Recognized in U.S. News’ ‘America’s Best Graduate Schools’”

<http://news.prnewswire.com/DisplayReleaseContent.aspx?ACCT=104&STORY=/www/story/04-24-2009/0005012406&EDATE=>

See also: A.L. State & Local (Chicago, IL)

“Farmers, activists at odds over animal treatment”

<http://www.chicagotribune.com/news/chi-ap-mi-farmanimals,0,4450787.story>

See also: A.L. State & Local (MI); O.A. Agriculture

“Grey Gardens’ and animal hoarders”

http://www.sfgate.com/cgi-bin/blogs/white/detail?entry_id=38768

See also: C.A. Abuse & Neglect; Hoarding

“Growing Ecological Awareness, Partner Programs, Drive Interest in Conservation Biology”

http://www.fordham.edu/campus_resources/enewsroom/inside_fordham/may_11_2009/news/growing_ecological_a_69801.asp

See also: A.L. State & Local (NY); W.A. Conservation

“Helmsley Pet Trust Helps Highlight Issues for Lawyers”

http://www.law.com/jsp/article.jsp?id=1202431060568&Helmsley_Pet_Trust_Helps_Highlight_Issues_for_Lawyers

See also: C.A. Estate Planning

“It’s nature’s law: When people arrive, animals vanish”

<http://www.miamiherald.com/news/politics/AP/story/1056077.html>

See also: W.A. Conservation; Hunting

“Julie I. Fershtman writes new book on Equine and Animal Law Litigation”

<http://www.equestrianmag.com/news/julie-fershtman-book-equine-animal-litigation-04-09.html>

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“Maine takes great pride in taking care of pets”

http://www.usatoday.com/life/columnist/pettalk/2009-05-26-maine-pets_N.htm

See also: A.L. State & Local (ME); C.A. Abuse & Neglect; Spay & Neuter

“New Research Exposes High Taxpayer Cost to Ban Pit Bulls”

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See also: C.A. “Dangerous” Dogs & Breed Specific Legislation

“Studying human and animal ethics”

<http://www.cumberlink.com/articles/2009/04/27/news/local/doc49f5b710a8611835238415.txt>

See also: C.A. Emotional Distress & Inter-Species Relationships; Health, Veterinary Care & Malpractice

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<http://desmoines.injuryboard.com/property-owners-liability-slip-and-fall/pit-bull-attack-demonstratesirrational-thinking-of-the-tort-reformer.aspx?googleid=264548>

See also: C.A. Attacks; “Dangerous” Dogs & Breed Specific Legislation

“Uniform Code of Military Justice may add animal cruelty as an offense”

<http://www.examiner.com/x-5984-Fayetteville-Pets-Examiner~y2009m6d26-Uniform-Code-of-Military-Justice-may-add-animal-cruelty-as-an-offense>

See also: A.L. Federal; C.A. Abuse & Neglect

Federal

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See also: W.A. Miscellaneous

“A Non-Ban on Whaling”

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See also: W.A. Conservation; Hunting

“Clean-air lawsuit against WA dairy dropped”

http://seattletimes.nwsources.com/html/localnews/2009311122_apwadairylawsuit.html

See also: A.L. State & Local (WA); O.A. Agriculture; W.A. Conservation

“Countries Unite to Reduce Animal Use in Product Toxicity Testing Worldwide”

<http://www.nih.gov/news/health/apr2009/niehs-27.htm>

See also: A.L. International; O.A. Research

“Court Blocks Alaska Offshore Drilling on Environmental Grounds”

<http://www.ens-newswire.com/ens/apr2009/2009-04-17-092.asp>

See also: A.L. State & Local (Point Hope, AK); W.A. Conservation

“Court to weigh free-speech issue of pit bull case”

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See also: C.A. Abuse & Neglect; Fighting

“Court to Weigh Legality of Animal Abuse Videos”

<http://www.washingtonpost.com/wp-dyn/content/article/2009/04/20/AR2009042003196.html?hpid=topnews>

See also: C.A. Abuse & Neglect; Fighting

“Cruelty, Not Cruel Videos, Should Be Made Illegal; Abuse of Animals Should Be Outlawed, but Films Showing It Deserve Protection”

<http://www.californiachronicle.com/articles/yb/128950804>

See also: C.A. Abuse & Neglect; Fighting

“CSI: Animal Kingdom”

<http://www.npr.org/templates/story/story.php?storyId=103710338>

See also: W.A. Trading

*book

“FDA ruling hits area animal agriculture”

http://www.bizlex.com/Articlesc-2009-04-28-86561.113117_FDA_ruling_hits_area_animal_agriculture.html

See also: O.A. Agriculture

“Feds Announce Seizure of Endangered Animal Skins”

<http://cbs4.com/local/Stuffed.animal.illegal.2.1008724.html>

See also: W.A. Conservation; Trading

“Interior Dept. Reinstates Independent Independent Reviews on Endangered Species”

<http://www.washingtonpost.com/wp-dyn/content/article/2009/04/28/AR2009042802183.html>

See also: W.A. Conservation

“Investigating Animal Crimes”

<http://www.time.com/time/health/article/0,8599,1891834,00.html>

See also: W.A. Trading

*book

“Judge dismisses seal case”

<http://www.lajollalight.com/news/258440-judge-dismisses-seal-case>

See also: A.L. State & Local (San Diego, CA); W.A. Conservation; Miscellaneous

“Judge rejects plea deal in obscene material case”

<http://www.thestarpress.com/article/20090428/NEWS06/90428025/1002/NEWS01>

See also: C.A. Abuse & Neglect

“Largest dog fighting raid in U.S. history”

<http://www.examiner.com/x-669-Pet-Rescue-Examiner~y2009m7d11-Largest-dog-fighting-raid-in-UShistory>

See also: C.A. Fighting

“Law bit wrong man in pit bull fight videos”

http://www.dailypress.com/news/dp-local_tamara_0422apr22,0,1456665.column

See also: C.A. Abuse & Neglect; Fighting

“Make my day, Flipper: Pesky dolphins under siege”

<http://www.google.com/hostednews/ap/article/ALeqM5hEzWFXchRBdNztA1VPR4evC1ZE8AD9929L8O0>

See also: A.L. State & Local (FL); W.A. Abuse; Conservation; Fishing

“Nonfiction review: ‘Animal Investigators’”

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See also: W.A. Trading

*book

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See also: C.A. Exotic Pets

“Only one state S.C. fighting fed speed limit to protect right whales”

<http://www.mcclatchydc.com/homepage/story/66549.html>

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