

ENDANGERED SPECIES AND INTERNATIONAL LAW

Jamie Schwartz

Attorney at Law, San Diego, California USA

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Contents

1. Introduction
 2. Causes of Wildlife Extinction
 3. The Stockholm and Rio Declarations
 - 3.1. The Stockholm Declaration
 - 3.2. The Rio Declaration
 4. CITES
 - 4.1. Elephants in Africa and CITES
 - 4.1.1. Elephant Management
 - 4.2. Rhinoceroses, Tigers and CITES
 5. Solutions
 6. Conclusion
- Glossary
Bibliography
Biographical Sketch

Summary

The load placed upon the government increases both as a product of human population growth and as a product of increasing per capita consumption of resources. As long as both continue to grow, the environmental load will increase geometrically. Among the most irreparable environmental consequences of human activities are species extinctions, which are occurring at an increasing rate and may soon reach a level unprecedented in Earth's existence.

Endangered species are protected by a complex network of national and international law. Two particularly important elements of this regime are the Convention on International Trade in Endangered Species (CITES) and its implementing statute in the United States, the Endangered Species Act (ESA). The active participation of developed countries such as the United States is essential to the protection of endangered species, as is the involvement and participation of developing countries in which many at-risk wildlife species are located. The most successful efforts to preserve endangered species take into account the perspectives and needs of countries of both categories. While much has been achieved in international law pertaining to the protection of endangered wildlife, there is still a long way to go.

1. Introduction

As the human population grows, so too does the load we put upon the environment. Our cities, roads, buildings, and material goods are all obtained at the expense of other components of the biosphere. The human population is growing rapidly and is expected to double by the middle of this century. Human activities are causing species extinction and the loss of biological diversity at an increasing rate. The current rate of extinction could eventually become higher than that in any of the great extinctions found in the fossil record.

Endangered species are protected by a complex network of national and international law. Two particularly important elements of this regime are the Convention on International Trade in Endangered Species (CITES) and the United States Endangered Species Act (ESA). The United States is potentially the world's largest market for endangered species and endangered species products. The participation of the United States in CITES and related treaties, including implementation of these treaties through the ESA and other legislation, greatly reduces the participation of US consumers in the endangered species trade. Consumer education about the destructiveness of the wildlife trade has also played an important part, resulting in voluntary non-participation in the market for endangered species and endangered species products by consumers throughout the world. In addition, the active participation of the United States is essential because of the large number of endangered species found within the US.

Presently, a total of 1,451 species are listed under the US Endangered Species Act. About 700 endangered species and about 200 threatened species that are listed under the ESA are found in the United States. Currently, more than 4,000 species are awaiting final evaluation to determine whether they should be added to the long list of endangered or threatened species. These figures are alarming because the various species of wildlife are of aesthetic, ecological, educational, historical, recreational, and scientific value to the entire world. The extinction of wildlife is a global problem which transcends national boundaries; therefore nations are brought together to find a solution.

2. Causes of Wildlife Extinction

Even though international awareness of the ecological and biological needs of wildlife and the importance of conserving habitats has increased, extinction rates continue to rise (*Brandon L. Jensen 1999*). There are many causes of extinction; different causes may be found in different degrees in different states. Two principal causes of extinction that exist on a large scale are habitat destruction and poaching.

When habitat is destroyed as a result of growing human population, development of land, building of roads and fences, and logging of forests, what is often left are small fragmented areas of habitat. Habitat destruction or fragmentation restricts the movement of wildlife from one area to another. If wildlife cannot freely travel within a large area of habitat, this severely affects breeding, feeding, and nesting behavior. For example, fences confine bison and other migratory animals to certain areas; this forces them to overgraze the land, leading to starvation. Fences also force animals to inbreed, causing a loss of genetic diversity within the species and ultimately resulting in less reproduction. Loss of habitat is thus one of the major causes of wildlife extinction.

The other principal cause of wildlife extinction is poaching, usually for purposes of trade. Poaching occurs most often in developing countries, while the markets for the animals and products thus obtained are largely in the developed countries. The bulk of the population of developing countries is poor, so in order to survive many turn to poaching endangered species for international trade since it is a very lucrative business, even though it is often illegal. The African elephant, for example, is found mostly in countries where its tusks represent several years' income to the average inhabitant. Poaching thus becomes a nearly irresistible temptation, and has caused elephant populations to decline.

Poaching of endangered animals sparked the creation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES"), to which the United States is a party. The United States has a special interest in staying informed about financial issues relating to the trade aspect of international wildlife because the U.S. is the world's largest importer of wildlife and wildlife products. Legal international wildlife trading results in sales of between five and seventeen billion US dollars per year worldwide. Two or three billion dollars per year result from illegal sales on the black market, making illegal wildlife trading the fourth largest illegal trade across the globe behind the drug and armaments trades and trafficking in human beings. Many international criminal cartels that engage in one or more of the first three also engage in trade in endangered wildlife; endangered species issues are thus linked to other international law enforcement issues.

Why does wildlife need to be protected on an international scale? There are five main reasons: First, all living organisms on the planet depend on each other for survival. Second, wildlife provides people with food, labor, clothing and protection. Third, many plants and animals are valued for medicinal purposes. Fourth, some animals provide scientists with insights into human physiology and behavior. Fifth, wildlife serves as an indicator of worldwide health and ecological stability.

Many environmentalists believe wildlife must be protected because all species are beautiful and irreplaceable, and have a right to life just as humans do. Some environmentalists go even further to argue that each individual within a species has a right to life just as each human being has a right to life. Humans and animals are all part of the ecosystem and it is not for humans to decide which individual or entire species shall survive. If humans could or would cease interfering with the existence of wildlife, the argument runs, nature will take its course and weed out the individual members of a species that are not fit for survival. Humans have much to learn from the different species of wildlife; rather than killing plants and animals we should cherish and study them in their natural environments.

People stand to gain more by protecting wildlife than from destroying it. If action is not taken to prevent the mass extinction occurring today, half or more of all species will cease to exist, resulting in an impoverished biosphere that will be unable to recover for at least 5 million years. At least thirty thousand species become extinct every year, ninety per cent of them in tropical rain forests. These numbers must dramatically decrease in order to avert an environmental catastrophe that could ultimately lead to the extinction of the entire human race. At many points in the cycle of life, humans depend

on wildlife for survival, whether by studying the behavior of chimpanzees to understand the origins of mankind, or discovering that a certain kind of plant found only in the Amazon rain forest contains the cure for cancer, or because somewhere along the food chain humans cannot exist without animals.

3. The Stockholm and Rio Declarations

International law has been used to protect wildlife for some time. For example, in 1940 one of the earliest multilateral agreements concerning wildlife preservation was promulgated: the Organization of American States Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere. Under the convention, those states that are parties are required to establish wildlife parks as nature reserves and to prohibit commercial profit-making in them. Despite this encouraging early beginning, however, the widespread use of international treaties to protect wildlife has for the most part been a more recent development.

3.1. The Stockholm Declaration

Principle 21 of the Stockholm Declaration of 1972 demonstrates the premise for most environmental agreements of the era. Principle 21 states that “states have the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction.” Principle 21 and other contemporary documents did not specifically examine illegal trade in wildlife, habitat destruction, or other modern ecological issues. Today, multilateral treaties recognize hundreds of environmental issues that affect wildlife on a global scale. Environmental law has evolved to include issues such as endangered species and habitat destruction. The need for international law to address these concerns led, twenty years after the Stockholm Declaration, to the Rio Conference.

3.2. The Rio Declaration

From June 3 to 14, 1992, more than 170 countries met in Rio de Janeiro for the United Nations Conference on Environment and Development. The Rio conference resulted in the formation of several documents dealing with environmental issues, including the Rio Declaration itself, Conventions on Climate Change and Biological Diversity, and a Statement of Principles on Forests. Although the Rio Declaration is an aspirational document, not a treaty, and thus not a definitive declaration of rights and responsibilities under international law, it is a step in the right direction because it focuses on sustainable development.

The Rio Declaration includes 27 principles. Principle two is almost identical to principle 21 of the Stockholm Declaration. Principle 2 states that “states have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of

other States or of areas beyond the limits of national jurisdiction.” Principle 2 is more concerned with protecting each state from pollution and other transboundary environmental harm than with protecting endangered species. The added words “and developmental,” not found in the Stockholm Declaration, also show a shift away from developed-world priorities and toward the priorities of the developing countries, which often place development above environmental protection for its own sake. However, Principle 2 has a positive effect on wildlife because if each State acts to prevent environmental damage to other states, wildlife has a better chance of surviving.

Principle 7 of the Rio Declaration states that “states shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth’s ecosystem.” While the Rio Declaration does not provide as much protection for wildlife as CITES, because it is not binding on the States and does not specifically target protecting endangered and threatened species, it is evidence that States around the globe recognize a problem exists and are taking action to find a way to protect the environment while focusing on sustainable development. The first step to solving a problem is recognizing that one exists. The Rio Declaration demonstrates that States are aware sustainable development must be achieved in order to ensure the survival of both humans and wildlife.

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Biographical Sketch

Jamie Schwartz was born in Los Angeles, California on November 27, 1973. She attended San Diego State University, receiving her Bachelor’s degree in Social Science with an Environmental Emphasis in 1996. With a growing awareness of environmental problems in the world and realizing that the law was an avenue of social change, she decided to attend Thomas Jefferson School of Law in San Diego, California. Receiving her Juris Doctor in May of 2000, she subsequently passed the California State Bar Exam and was sworn into practice on December 4, 2001. Now a licensed attorney at law she lives and works in San Diego, California.