International Law on Precautionary Approaches To National Regulation of Live Animal Imports

Peter T. Jenkins

Defenders of Wildlife

White Paper:

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This paper accompanies the report by Defenders of Wildlife entitled: *Broken Screens - The Regulatory System for Live Animal Imports in the United States*, to be published in August, 2007. That full report, this white paper, and other information are available free online at: www.defenders.org/animalimports .

Author: Peter T. Jenkins, Attorney, Director of International Conservation

Defenders of Wildlife is a national nonprofit membership organization dedicated to the protection of all native wild animals and plants in their natural communities.

National Headquarters
Defenders of Wildlife
1130 17th St. NW
Washington, DC 20036 USA
Tel: 1.202.682.9400; website: www.defenders.org

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Introduction

This White Paper addresses the challenge for national governments in complying with international law while regulating intentional imports of live wild animals that may become invasive or may carry human or animal pathogens. It is supplemental to Defenders of Wildlife's report entitled, *Broken Screens - The Regulatory System for Live Animal Imports in the United States*.

Defenders' report shows that the live animal trade carried large volumes of more than 2,200 different non-native species into the United States, during the study period of 2000 to 2004. This ongoing trade contributes to the second most important factor, after habitat destruction, in the past loss of native biological diversity in the United States (and likely globally as well).[1] That factor is the accumulated invasions by introduced species of pests, weeds, and microbes. The live animal trade also poses critical risks of spreading more animal and human diseases. It is foreseeable that new outbreaks could occur comparable to - or worse than - the SARS outbreak in 2003 that killed at least 774 people worldwide and had a cumulative economic impact estimated at several tens of billions of dollars.[2]

[1] Wilcove, D., D. Rothstein, J. Dubow, A. Phillips, E. Losos. 1998. Quantifying threats to imperiled species in the United States. *Bioscience* 48:607–615; see Clout, M. 1998. And now the Homogocene. *World Conservation*. Jan., p. 3.

[2] World Health Organization - Summary of probable SARS cases with onset of illness from 1 November 2002 to 31 July 2003; online at: www.who.int/csr/sars/country/table2004_04_21/en/index.html ; Robertson, J. 2003. *The Economic Costs of Infectious Diseases*. Research Note no. 36 2002-03. Parliament of Australia, Parliamentary Library, Foreign Affairs, Defence and Trade Group. May 13; online at: www.aph.gov.au/Library/Pubs/RN/2002-03/03rn36.htm .

Nations across the world suffer from non-native animal invasions, often by the same species. Introduced Burmese pythons have caused problems in both the United States and Japan. Piranhas from South America have been discovered occasionally in U.S. waters, and also have been found in Germany, surviving in a length of river warmed by a nearby mine.[3] Many other examples exist.

The problem of harmful species introductions calls for global solutions. However, the problem also can be addressed in numerous bilateral and regional forums. Examples include negotiations on trade liberalization, environmental protection, and health standards that nations conduct virtually every day with their trade partners.[4] Other examples are regional forums such as the North American Free Trade Agreement and the Asian Pacific Economic Cooperation organization. This White Paper does not delve into bilateral or regional agreements and forums. It analyzes only relevant international laws with global reach.[5] Due to the U.S. focus of the *Broken Screens* report, this paper emphasizes how these laws would apply to the United States. However, the international laws cited herein would apply in a similar manner to other nations that are parties to them.

Several nations have created proactive regulatory systems that cut down on introductions of potentially harmful live animals. New Zealand and Australia are examples.[6] Their systems have not violated international law and no legal obstacle prevents the United States or other nations from implementing similar systems.

The World Trade Organization Discipline

Defenders' *Broken Screens* report culminates in the main recommendation that the U.S. regulatory system should be more "risk averse" to the potential dangers of animal imports. It calls for new national legislation to implement pre-import screening of each wild animal species proposed for importation, coupled with full risk assessments for species that presents risk indicia. This topic of new, risk averse, regulatory approaches also is the focus of much legal and technical discussion in international invasive species policy circles.[7]

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[3] Japanese example: Anon. 2005. Laws can't keep up with surge in exotic pets - or irresponsible owners. *The Asahi Shimbun*, Sept. 9; German example: Crossland, D. 2007. Invasion of the pet piranhas. *Spiegel Online,* Feb. 23; online at: www.spiegel/de/international/0,1518,467865,00.html .

[4] See, Jenkins, P., and H. Mooney. 2006. The United States, China, and invasive species: present status and future prospects. *Biological Invasions* 8:1589-1593.

[5] Other global laws too numerous to list may contain scattered provisions that may come into play on invasive animal in indirect ways. The Convention on International Trade in Endangered Species (CITES) only addresses conservation risks to the exporting countries of trade in certain listed animals, thus CITES is not covered in this White Paper. It is addressed briefly in Appendix C of *Broken Screens*.

[6] See, e.g., Christensen, M., 2004, Invasive Species Legislation and Administration: New Zealand, in Miller, M., and R. Fabian, eds. 2004. *Harmful Invasive Species: Legal Responses*, Environmental Law Institute, Washington DC. Biosecurity Australia regulates animal imports; see www.daffa.gov.au/ba/about/animal .

[7] For a comprehensive analysis, including well-documented explanation of points in this section on the WTO SPS Agreement, see: Burgiel, S., G. Foote, M. Orellana, and A. Perrault. 2006. *Invasive Alien Species and Trade: Integrating Prevention Measures and International Trade Rules*. Report of the Center for International Environmental Law, Defenders of

Adopting risk averse legislation and regulations requires sophistication to avoid running afoul of the trade discipline of the World Trade Organization (WTO). Policy discussions sometimes include sweeping suggestions that risk averse invasive species legislation would violate the WTO discipline, leading to legal challenges. According to one commentator, these suggestions have caused "a kind of regulatory paralysis" in which fear of making a mistake is resolved by legislators and agency officials in favour of taking no action.[8] This need not be the case, as explained here.

The Basics of the WTO Sanitary and Phytosanitary Agreement

A nation's chosen level of risk aversion is known as its "appropriate level of protection" under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, ("SPS Agreement") Preamble and Article 5.[9] The SPS Agreement Preamble and Art.s 2.1, 2.2, 3.3, 5.3, and 5.7 affirm that WTO members, in seeking to reach their appropriate level of protection, have the right to take what are described as "sanitary measures," which may include prohibitions on proposed imports. However, such prohibitions must be "applied only to the extent necessary to protect human, animal or plant life or health" and be "based on scientific principles" (Art. 2.2).[10] The SPS Agreement imposes several procedural and substantive requirements upon such national measures. These include transparency, avoidance of discrimination against imports without justification, consistency of national protections across comparable categories of risks, and others. The key requirements are set forth in SPS Agreement Art. 5. They are reproduced in Box 1 and elaborated below.

Wildlife, The Nature Conservancy, and Global Invasive Species Programme; Washington, DC. Online at: www.cleantrade.net .

[8] Geoffrey Howard, Regional Programme Director, IUCN Regional Office for Eastern Africa, Nairobi, Kenya, as quoted by consultant Tomme Young in an unpublished report.

[9] For the complete WTO SPS Agreement see: www.wto.org/english/docs_e/legal_e/15sps_01_e.htm .

[10] See, Jenkins, P. 2005. International law related to precautionary approaches to national regulation of plant imports. *Journal of World Trade* 39:895-906. Also, note that under SPS Agreement Annex A.1. the definition of "Sanitary or phytosanitary measure" is:

> *Any measure applied: (a) to protect animal or plant life or health within the territory of the Member from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms; (b) to protect human or animal life or health within the territory of the Member from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs; (c) to protect human life or health within the territory of the Member from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests; or (d) to prevent or limit other damage within the territory of the Member from the entry, establishment or spread of pests.*

Box 1. Provisions of Article 5 of the WTO SPS Agreement

Article 5: Assessment of Risk and Determination of the Appropriate Level of Sanitary or Phytosanitary Protection

1. Members shall ensure that their sanitary or phytosanitary measures are based on an assessment, as appropriate to the circumstances, of the risks to human, animal or plant life or health, taking into account risk assessment techniques developed by the relevant international organizations.

2. In the assessment of risks, Members shall take into account available scientific evidence; relevant processes and production methods; relevant inspection, sampling and testing methods; prevalence of specific diseases or pests; existence of pest- or disease-free areas; relevant ecological and environmental conditions; and quarantine or other treatment.

3. In assessing the risk to animal or plant life or health and determining the measure to be applied for achieving the appropriate level of sanitary or phytosanitary protection from such risk, Members shall take into account as relevant economic factors: the potential damage in terms of loss of production or sales in the event of the entry, establishment or spread of a pest or disease; the costs of control or eradication in the territory of the importing Member; and the relative cost-effectiveness of alternative approaches to limiting risks.

4. Members should, when determining the appropriate level of sanitary or phytosanitary protection, take into account the objective of minimizing negative trade effects.

5. With the objective of achieving consistency in the application of the concept of appropriate level of sanitary or phytosanitary protection against risks to human life or health, or to animal and plant life or health, each Member shall avoid arbitrary or unjustifiable distinctions in the levels it considers to be appropriate in different situations, if such distinctions result in discrimination or a disguised restriction on international trade. Members shall cooperate in the Committee, in accordance with paragraphs 1, 2 and 3 of Article 12, to develop guidelines to further the practical implementation of this provision. In developing the guidelines, the Committee shall take into account all relevant factors, including the exceptional character of human health risks to which people voluntarily expose themselves.

6. Without prejudice to paragraph 2 of Article 3, when establishing or maintaining sanitary or phytosanitary measures to achieve the appropriate level of sanitary or phytosanitary protection, Members shall ensure that such measures are not more trade-restrictive than required to achieve their appropriate level of sanitary or phytosanitary protection, taking into account technical and economic feasibility.

7. In cases where relevant scientific evidence is insufficient, a Member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information, including that from the relevant international organizations as well as from sanitary or phytosanitary measures applied by other Members. In such circumstances, Members shall seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly within a reasonable period of time.

8. [omitted]

Discussion of Article 5

The goals of the SPS Agreement distilled in Art. 5 are not to eliminate all restraints on trade, rather they are to preclude arbitrary, unreasonable, and unjustifiably discriminatory restraints. Attention should be drawn to the risk assessment requirements and the factors listed in Art.s 5.1 and 5.2. (Box 1.) A governmental decision by a WTO member nation to non-provisionally (i.e., permanently) prohibit a particular animal species proposed for importation would require an assessment taking into account the factors listed therein. For example, an assessment of the risk of invasion in the United States by a potentially invasive non-native animal would need to consider whether its prospects of actually surviving there would be enhanced or reduced by the "ecological and environmental conditions" available in the U.S., as per Art. 5.2. Importantly, with respect to invasiveness risks, no other enforceable global law exists apart from SPS Art.s 5.1 and 5.2 that defines what any national government must consider in a risk assessment for live animal imports.

Defenders' *Broken Screens* report urges the United States to broadly adopt the risk averse step of temporarily prohibiting any "gray" list animal species that is proposed to be imported. Gray list species are those for which inadequate information is available for a full risk assessment, thus they are prohibited provisionally while adequate scientific information needed to fully assess their potential risk is sought. This precaution amounts to applying an SPS Agreement Art. 5.7 "provisional measure" to a gray-listed species. Thus, regulatory agencies can be WTO-compliant when provisionally prohibiting proposed animal imports even in the absence of relevant scientific evidence that the animal is too risky, so long as they make reasonably timely attempts to obtain the needed information. No time period is specified in Art. 5.7 as "reasonable," thus the parameters of that term would need case-by-case resolution. The agencies can, under Art. 5.7, place the primary burden of obtaining the further information needed to satisfy the requirements for the risk analysis on the entity proposing the import.[11]

If an animal species proposed for import was <u>not</u> provisionally prohibited during the phases of risk screening, gathering of any additional needed information, and full risk assessment, the potential risks of that animal would, in effect, be incurred by the importing nation. This may not meet the nation's appropriate level of protection. The assessment could become useless, i.e., too late to stop an invasion of the species from occurring during the assessment period. As discussed at length in *Broken Screens*, this "invasion during assessment" scenario

[11] The key Appellate Body decision on "precaution" under Art. 5.7 involved Japan's attempt to keep out certain fruit varieties due to perceived pest risks. Japan - Varietals, WT/DS76/AB/R (adopted 19 Mar. 1999), par. 89. The decision states:

> *Article 5.7 of the SPS Agreement sets out four requirements which must be met in order to adopt and maintain a provisional SPS measure. Pursuant to the first sentence of Article 5.7, a Member may provisionally adopt an SPS measure if this measure is:*
>
> > *(1) imposed in respect of a situation where 'relevant scientific information is insufficient'; and*
> > *(2) adopted 'on the basis of available pertinent information'.*
>
> *Pursuant to the second sentence of Article 5.7, such a provisional measure may not be maintained unless the Member which adopted the measure:*
>
> > *(1) 'seek[s] to obtain the additional information necessary for a more objective assessment of risk'; and*
> > *(2) 'review[s] the … measure accordingly within a reasonable period of time'.*

has occurred relatively frequently with proposed and actual U.S. Lacey Act injurious species listings promulgated by the U.S. Fish and Wildlife Service.

A "coarse-mesh screening process" for an animal species proposed to be imported is when a regulatory agency conducts a relatively rapid preliminary search of scientific data to see whether the species had previously been identified by a reliable source as potentially harmful. (Defenders' *Broken Screens* report includes a coarse screening process for all identified non-native U.S. live animal species imported from 2000 to 2004.) This can assist the agency in deciding whether to require a full risk assessment under Art. 5.2 for a potentially risky species identified in that screening. Screening also can assist the agency in deciding what species to prioritize within the agency's risk assessment approach and whether a particular species may merit a provisional prohibition under Art. 5.7. In any event, it is important to recognize that coarse pre-import screening does not substitute for a full Art. 5.2 risk assessment.

If a species proposed to be imported poses a significant risk, Art.s 5.4 and 5.6 would generally favor measures like increasing inspection, surveillance, and quarantine measures aimed at reducing that risk, rather than adopting outright import prohibitions, because such measures would be less "trade-restrictive". However, often the risks of imported animals cannot be averted solely by such less restrictive measures. That is, the less restrictive measures generally would not be as effective in averting invasion by a novel species of unclear risk as prohibiting its entry in the first instance. Inspection and quarantine at ports of entry do not detect invasiveness risks, and surveillance often is ineffective and applies only after the fact of a non-native species incursion. Some of these same concerns would apply to the use of inspection, surveillance, and quarantine for averting disease risks. Thus, in the terms of Art. 5.6, the less restrictive measures may lack the necessary "technical and economic feasibility" to achieve the importing nation's desired level of protection. Lack of feasibility is not a theoretical problem – it is a real practical concern of regulators and inspectors confronted with huge volumes of live animals in trade that cannot be effectively identified, inspected, quarantined, refused, and/or returned to the exporting country if found to be diseased, otherwise too risky, or in violation of the importing country's laws.[12]

A complication for regulating some animal imports may arise from SPS Agreement Art. 5.5., which says a member must "avoid arbitrary or unjustifiable distinctions in the levels it considers to be appropriate in different situations, if such distinctions result in discrimination or a disguised restriction on international trade". (Box 1.) This means that, when regulating a non-native species proposed for import into a particular WTO member nation with respect to invasiveness risks, the regulator would need to consider whether that same species also was being bred in captivity in that nation. Presumably sales from captive bred stock would have the same invasiveness risk as sales from imports, other factors being equal (although the risks may be higher or lower if the other factors are not equal). Regulating just the imported stock for invasiveness, but not the domestic captive-bred stock, could be

[12] For opinion from the U.S. Centers for Disease Control on the lack of feasibility of less trade-restrictive measures, see, Marano, N. Public health impact of regulating animal trade, in: Roth, D. 2004. Proceedings of Aug. 4, 2004, meeting, Wildlife Survival and National Security – Enhancing Collaboration to Combat Threats to Wildlife and Related Threats to National Security. System Planning Corporation, Arlington, VA.

discriminatory against trade in violation of Art. 5.5.[13] The number of commonly sold animal species that are sourced from both imports and domestic captive breeding and that would merit such regulation is unknown.

The Absence of International Standards on Invasive Animals

Under SPS Agreement Art. 3.2, measures adopted by members conforming to recognized international standards will be considered necessary and justified in the event of a dispute under the WTO. However, under Art. 3.3, measures that are more strict than international standards are permitted "if there is a scientific justification" or if the measures are needed "as a consequence of the level of sanitary or phytosanitary protection a Member determines to be appropriate."

On the topic of animal *invasiveness*, no international standards exist that are recognized by the WTO as authoritative in the way that the OIE standards are recognized by the WTO with respect to animal *disease*, discussed below. This leaves nations with extensive flexibility to adopt the standards they see fit to achieve their desired level of protection from invasions, so long of course as they comply with SPS Agreement Art. 5 and other provisions. The negative side of this is the absence of any recognized "invasive animal standards" offers nations little guidance as to what appropriate national standards would look like and offers little practical advice on national "best practices" to prevent harmful invasions.

Significance of Past Regulatory Practices

If the United States or another WTO member were to pursue a more risk averse approach to regulating live animal imports, then the question may arise as to the significance of their past practices of allowing relatively unrestricted imports of animal species. Are regulatory agencies bound to presume that they must permit shipments of a long-imported "Species X" to continue to enter freely in the absence of new scientific information justifying a change of Species X's status? The answer is no. Past practices and official or unofficial "approved species" lists that were not based on prior scientific risk assessments bear no legal significance under the WTO SPS Agreement. No provision prohibits a nation from raising its level of protection, thereby blocking a particular species it previously allowed or, for that matter, from lowering its level of protection and allowing a species it previously blocked.

However, a general heightening of a WTO member's level of protection must be justified in compliance with SPS Agreement Art.s 5.3 through 5.6, which aim at ensuring that such heightening does not create new discriminatory or unnecessary trade barriers. (Box 1.) The higher level of protection should be based on scientific studies, expert reviews, and background analysis of the risks the member nation is subjected to and seeks to avoid.

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[13] The key WTO decision on SPS Agreement Art. 5.5 is: Australia, Measures Affecting Importation of Salmon (WT/DS18/AB/R), Report of the Appellate Body, October 20, 1998.

To summarize, the United States and other nations may be well-justified under the SPS Agreement in choosing to raise their levels of protection and tightening their import systems, including the use of prohibitions against risky animal species. In doing so, WTO members must follow all of the SPS Agreement provisions carefully, but this is achievable.

The Convention on Biological Diversity

The merits of a precautionary approach to animal imports are buttressed by another key global agreement. The Convention on Biological Diversity (CBD), to which almost all the world's nations **except the United States** belong, provides:[14]

> *Art. 8. In-situ Conservation - Each Contracting Party shall, as far as possible and as appropriate: .... (h) Prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species.*

In 2002, the CBD's Conference of the Parties (COP) fleshed this provision out when it overwhelmingly adopted its Guiding Principles for the Implementation of Article 8(h), on alien invasive species.[15] Those principles contain extensive support for a precautionary screening approach applied to proposed species imports (as is advocated in Defenders of Wildlife's *Broken Screens* report). Should the United States become a CBD party it would strengthen the justification for Federal agencies to rely on and adhere to those Guiding Principles when they craft tighter import systems.

U.S. membership would enhance the ability of Federal agencies to take part in the ongoing development of CBD invasive species standards and guidelines. Further, to the extent that other nations, particularly developing nations, who trade with the United States are able to recognize and reduce the levels of invasiveness and disease risks in their animal exports, the United States would obtain reciprocal benefits in the form of less risky imports. The CBD Secretariat, based in Montreal, serves that end through capacity building efforts aimed at developing nations, as well as in channeling expert advice and needed resources. U.S. membership and funding contributions would enhance these CBD functions.

The CBD's Consideration of Invasive Animals

In 2005, the CBD convened an Ad Hoc Technical Expert Group on Gaps and Inconsistencies in the International Regulatory Framework in Relation to Invasive Alien Species. That Group made important findings regarding the animal trade, stating:

> *(f) A significant general gap in the international regulatory framework relates to lack of international standards to address animals that are invasive alien species but are not pests of plants under the International Plant Protection Convention. Some of the specific gaps identified in this report, including in particular various conveyances as pathways for*

[14] The only other non-members of the CBD are: Andorra, Brunei Darusallam, Iraq, and Somalia; see www.biodiv.org/world/parties.asp .
[15] CBD COP Decision VI/23.

invasive alien animals, could be viewed as subsets of this broader issue.

Options to deal with this general gap include:

(i) Expansion of the mandate of the World Organization for Animal Health (OIE) beyond a limited number of animal diseases;

(ii) Development of a new instrument or binding requirements under an existing agreement or agreements such as the Convention on Biological Diversity or other appropriate frameworks;

(iii) Development of non-binding guidance.[16]

Internationally, protective standards exist for other pathways such as the live plant trade, release of ballast water from ships, and animal pathogens, but, as indicated, the Ad Hoc Expert Group found no standards for addressing invasive animals themselves. In 2006, the CBD's Conference of the Parties (COP) essentially endorsed the Ad Hoc Expert Group's findings of an "invasive animal gap".[17] Particularly relevant to the matters discussed in Defenders' *Broken Screens* report are these paragraphs in the COP's decision stating that it:

> *53. Urges Parties and other Governments to take measures, as appropriate and consistent with their national and international obligations, to control import or export of pets, aquarium species, live bait, live food or plant seeds, that pose risks as invasive alien species;*

and it:

> *12. Urges Parties and other Governments to communicate to potential importing countries relevant information about particular species that are subject to export and are known to be potentially invasive, through, for example, web-based databases, alert lists or other appropriate information-sharing mechanisms at global and regional levels, and to provide information that is relevant for risk analysis and other proactive measures as appropriate to prevent or minimize effects of invasive alien species in other countries, in accordance with Article 3 of the Convention.*

Paragraph 53 above bolsters the recommendations made to the U.S. government in the *Broken Screens* report, i.e., to impose stronger import controls. Paragraph 12, along with Paragraph 61, of the COP decision, bolsters the use of the IUCN Invasive Species Specialist Group's (ISSG), Global Register on Invasive Species (GRIS) database as a tool to aid national and international decisionmaking. The GRIS database, which the ISSG has publicly launched in prototype form, was used in *Broken Screens* to screen all known animal species imported to the United States from 2000 to 2004. The GRIS database contains the names of more than 16,000 of the world's known invasive or potentially invasive species, however, it needs further funding and development to become fully functional. The purpose of the

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[16] Alien Species that Threaten Ecosystems, Habitats or Species (Article 8 (H)): Further Consideration of Gaps and Inconsistencies in the International Regulatory Framework, Note by the CBD Executive Secretary for the Subsidiary Body on Scientific, Technical and Technological Advice, Eleventh Meeting, UNEP/CBD/SBSTTA/11/16, 2005, at p. 2; online at: www.biodiv.org/doc/meetings/sbstta/sbstta-11/official/sbstta-11-16-en.pdf .

[17] Report of the Eighth Meeting of the Parties to the CBD, decision VIII/27, at p. 70 and Annex 1, pp. 316-323, UNEP/CBD/COP/8/31, 2006; online at: www.biodiv.org/doc/meetings/cop/cop-08/official/cop-08-31-en.pdf .

GRIS database is: "to provide information that is relevant for risk analysis and other proactive measures," as urged by the CBD COP. With adequate funding, GRIS is expected to evolve into a web-based application and reporting site that can be linked with other invasive species and nomenclatural databases, creating a massive, instantly responsive, network. This would presumably occur in collaboration with the Global Invasive Species Programme (GISP), which aims at improving and coordinating prevention and control measures. GISP works closely with the CBD in assisting with implementation of Art. 8(h) and the COP decisions under it.

Further elaboration on ways to fill the "invasive animal gap" and delineation of state-of-the-art international guidance on achieving proactive protections are expected from the CBD by the 9th COP. This will take place in Bonn, Germany, in May 2008.

Animal Disease and the World Organization for Animal Health[18]

According to its website, the objectives of the Paris-based World Organization for Animal Health (OIE) are:

- *To ensure transparency in the global animal disease situation*
- *To collect, analyse and disseminate veterinary scientific information*
- *To provide expertise and encourage international solidarity in the control of animal diseases*
- *Within its mandate under the WTO SPS Agreement, to safeguard world trade by publishing health standards for international trade in animals and animal products*[19]
- *To improve the legal framework and resources of national Veterinary Services*.[20]

The OIE is responsible for listing diseases as "notifiable" in order to enhance their surveillance and control their spread through trade. Few diseases are listed as notifiable in wildlife entering the United States. This is partly because the OIE's historic mission had been controlling just livestock diseases. However, OIE is increasingly recognizing that wildlife diseases also fall under its authority.

The fact of a disease not being listed as notifiable by the OIE in no way restricts the United States or other OIE members from responding to the risks posed by that disease in trade. In other words, OIE and WTO members are not bound to use only OIE's standards.[21]

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[18] The analysis and recommendations related to OIE here were largely contributed by the Consortium on Conservation Medicine (CCM), primarily by Katherine F. Smith, Ph.D.

[19] The SPS Agreement recognizes the OIE as an authoritative international standard-setting body, SPS Agreement Preamble, Art.s 3.4 and 5.1, Annex A.

[20] OIE Objectives webpage, online at: www.oie.int/eng/OIE/en_objectifs.htm?e1d1 .

[21] A more detailed guide to the interaction of OIE and WTO provisions is: Cooper, M., and A. Rosser. International regulation of wildlife trade: Relevant legislation and organizations. 2002. *Rev. Sci. Tech. Off. Int. Epiz.* 21:103-123.

Further, the Animal Codes promulgated by the OIE as of mid-2007 address only mammals, birds, bees, fish, molluscs, and crustaceans.[22] Members are free to adopt standards beyond the limited set the OIE has promulgated and have done so on many occasions.

An expert committee convened by the National Academy of Sciences (NAS) to assess the effectiveness of U.S. animal disease responses issued a major report in 2005, *Animal Health at the Crossroads: Preventing, Detecting and Diagnosing Animal Diseases.*[23] It criticized the U.S level of international involvement, concluding:

> *The United States is not sufficiently engaged with international partners to develop strategic approaches to preventing, detecting, and diagnosing animal diseases before they enter this country.*

The NAS report called for more aggressive U.S. involvement with bodies such as the OIE to ensure stronger protective standards.

International Policy Recommendations

Based on the above analysis of the international context, Defenders of Wildlife recommends:

CBD

Recommendation 1 – Support state-of-the-art international guidance for regulating wild animal imports. Global prevention efforts will benefit from official CBD recognition of the value of a global database for screening invasive animal risks, as well as other associated risks. Specifically, the CBD parties should support a more comprehensive GRIS, by which any individual species or list of proposed animals for trade can first be rapidly assessed in relation to information about tens of thousands of known invasive or potentially invasive species available in worldwide databases. If completed as a globally-accessible web-based database, GRIS will provide a revolutionary coarse screening tool to aid all agencies regulating in this area. The new international guidance and information it offers, if endorsed via a decision of the CBD COP, has the potential to fill much of the "invasive animal gap" identified by the Ad Hoc Technical Expert Group on Gaps and Inconsistencies in the International Regulatory Framework in Relation to Invasive Alien Species.

A CBD COP decision supporting GRIS as a tool for pre-import screening and other uses would amount to a recommended "best practice," but not a requirement, for nations to follow. Improved species-by-species regulation of the global animal trade would result from broad adherence to that practice. The global level of protection for native biological diversity and other interests affected by alien invasive animals would elevate accordingly.

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[22] See the OIE International Standards webpage, online at: www.oie.int/eng/normes/guide%20to%20OIE%20intl%20standards%20v6.pdf .

[23] Board on Agriculture and Natural Resources. 2005. *Animal Health at the Crossroads: Preventing, Detecting, and Diagnosing Animal Diseases*, National Academies Press, Washington, DC; online at: www.nap.edu/catalog.php?record_id=11365#orgs .

Recommendation 2 - The United States should ratify and support the CBD. The U.S. Senate should ratify the CBD, which will enhance U.S. influence in the development of state-of-the-art invasive animal guidelines and best practices. Its non-party status denies the United States an official and needed voice on CBD implementation. Further, the U.S. Administration should support the CBD Secretariat and associated organizations, such as GISP, in building global capacity to address the risks of the worldwide animal trade.

WTO

Recommendation 3 - Support WTO recognition of CBD invasive species standards, guidance, and best practices. The United States and other members should exert their influence in the WTO to support recognition of the CBD Guiding Principles on Invasive Species, as well as other future guidance and best practices related specifically to animals that the CBD COP may adopt. To be effective in the WTO such recognition needs to come from the Committee on Sanitary and Phytosanitary Measures under the SPS Agreement. (Annex A, definition 3.d.) WTO sanction is now given under that provision to international standards for **invasive plants** and **plant diseases**, under the International Plant Protection Convention, and for **animal diseases**, under the OIE, but not for **invasive animals**. This legal asymmetry or gap in the SPS Agreement should be corrected. The CBD plainly is the most competent international body to correct it, indeed it is the only international body explicitly considering the invasive animal issue.

OIE

Recommendation 4 - Encourage a wider focus for the OIE. Encouraging the OIE members to focus OIE's work not just on listing diseases as notifiable, but also on conducting international research on the potential of the animal trade to spread new pathogens, would benefit the United States and the global economy as a whole. What was in effect a single sustained outbreak of SARS beginning in 2003 caused nearly **1,000 human deaths, thousands of illnesses**, and economic damage estimated in the range of **US$ 30 billion**, as well as massive social disruption. Despite this, not enough research is underway on the likelihood of further comparable global outbreaks of other viruses. A wider focus on all aspects of disease spread associated with the live animal trade, beyond OIE's traditional livestock focus, would highlight the potential benefits of broader surveillance and control of this trade sector. This would benefit public health globally, and probably especially for the United States, as one of the major importers of live animals.

Recommendation 5 - **Enhance OIE prevention and research efforts.** As recommended by the NAS, the United States, as well as other OIE members, should support OIE assuming a more proactive and strategic role in preventing the future spread of zoonotic diseases. It is particularly important for the OIE to oversee increased research on the movement of infectious agents through the global trade in wild animals. It is well positioned to assume this responsibility, but has lacked the needed resources and commitment. The OIE's current prevention and research efforts fail to match the magnitude of the risks.

Conclusion

The United States and other countries have extensive discretion under international law to take needed precautionary measures against the invasiveness, disease, and economic risks posed by the global live animal trade. Indeed, it would be shocking to suggest that any country would have given up, in any international trade agreement, its sovereign right to protect its citizens and environment from the risks posed by that trade.

A vital need exists for guidance and best practices to address the massive global trade in potentially invasive wild animals. The CBD, in support of Art. 8(h), represents the only international body with competence to issue such guidance and best practices. With respect to risks of animal disease in the trade, the OIE is the competent body, but it needs to exert a much more aggressive approach to identifying the human and animal disease risks of non-livestock animals, in particular, and providing global guidance on reducing those risks.