

# CHINESE ENDANGERED SPECIES AT THE BRINK OF EXTINCTION: A CRITICAL LOOK AT THE CURRENT LAW AND POLICY IN CHINA

By  
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*The People's Republic of China harbors a vast number of plant and animal species, but those species have long been threatened by a thriving illegal trade. China became a signatory to the Convention on International Trade in Endangered Species in 1981 and has since passed a number of wildlife protection laws and regulations in an effort to curb the illegal trade and begin revitalizing some of its nearly-extinct animal populations. This article critically examines China's legislation and judicial decisions, concluding that much work remains to be done to protect endangered species in China.*

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## I. INTRODUCTION

The People's Republic of China ("PRC" or "China") is a vast country, richly endowed with forests, wildlife, and natural resources. China harbors an extensive number of plant and animal species. Almost 8.7% of the land area, 78,450 hectares, has been protected as nature reserves.<sup>1</sup> China is home to many well known and internationally recognized endangered species.<sup>2</sup> Examples of endemic endangered species<sup>3</sup> include the giant panda, the golden monkey, the moon bear, the Chinese alligator, the white-lipped deer, the brown-eared pheasant, the Chinese river dolphin, the ginkgo biloba tree, and the newly discovered *Reefesia*.<sup>4</sup> In addition to these native species, China also provides refuge for the Siberian tiger, the black-necked crane, the Asian elephant, the snow leopard, the pangolin, the Tibetan antelope, various rare species of orchids, and many other non-endemic species.<sup>5</sup> Unfortunately, a booming trade in illegal species has developed,<sup>6</sup> thus bringing these and other species of plants and animals to the brink of extinction.<sup>7</sup>

The Convention on International Trade in Endangered Species ("CITES"), passed in 1973, lists endangered and threatened plant and

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<sup>1</sup> China Wildlife Conservation Assn., *Nature Reserves in China*, <http://www.ifce.org/pages/conservation.html> (accessed Feb. 12, 2005). In 2000, China had 1,276 nature reserves, including 1,050 forest parks, 344 national parks, and 289 wetlands reserves. *Nature Reserves Cover One-Tenth of China's Territory*, China Materials News 6 (Feb. 13, 2001) (available at <http://forests.org/archive/asia/narescov.htm>).

<sup>2</sup> China Materials News, *supra* n. 1, at 6.

<sup>3</sup> Endangered species are plant and animal species that are on the brink of extinction. In this paper the term "endangered species" also includes plant and animal species, and their body parts or derivatives.

<sup>4</sup> *Reefesia rotunifolia* is a living plant fossil of the dinosaur era. It was recently discovered in the southern Chinese Guangxi Xhuang Autonomous Region. China Internet Info. Ctr., *Rare Plant Species Found in China*, <http://www.china.com.cn/english/TR-e/26196.htm> (accessed Feb. 12, 2005); see also China Wildlife Conservation Assn., *Wildlife in China*, <http://www.ifce.org/pages/conservation.html> (accessed Feb. 15, 2005) (describing some of China's rare and endemic wildlife).

<sup>5</sup> The Chinese government and other organizations have only recently started to pay attention to the conservation of natural resources and the protections of wildlife and the environment. By the end of 1995, there were a total of 779 forest, wild animal, and natural historic heritage reserves. These were developed to preserve China's unique flora and fauna and to serve as a basis for scientific, educational, and tourism purposes. China Wildlife Conservation Assn., *supra* n. 1, at <http://www.ifce.org/pages/conservation.html>.

<sup>6</sup> See e.g. Helen Luk, *Trade in Wild Animals Thrives in China*, [http://www.canoe.ca/CNEWSFeatures0104/27\\_animals-ap.html](http://www.canoe.ca/CNEWSFeatures0104/27_animals-ap.html) (Apr. 27, 2001) (discussing the restaurant industry's involvement with trade in wild animals in China).

<sup>7</sup> China's state media reports indicate that about fifteen to twenty percent of the animal and plant species in China are in danger of extinction. This is higher than the worldwide average of ten to fifteen percent. China's State Forestry Administration states that this is largely due to illicit poaching and the destruction of natural habitat. *15 to 20 Pct of Animal, Plant Species Face Extinction in China*, Xinhua General News Service (Oct. 6, 2003) (available at LEXIS, NEWS library, Xinhua file).

animal species, such as those previously stated, and bans their trade.<sup>8</sup> The Law of the People's Republic of China on the Protection of Wildlife, also referred to as the PRC Wildlife Protection Law ("WLP"), and other national and provincial laws similarly forbid the trade in many of these endangered species.<sup>9</sup> Although China imposes heavy criminal penalties for the smuggling of endangered species,<sup>10</sup> such illegal trade is on the rise.<sup>11</sup> CITES and PRC legislation have proven inadequate to

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<sup>8</sup> *Convention on International Trade in Endangered Species* (Mar. 3, 1973), <http://www.cites.org/eng/disc/text.shtml>. Appendix I of CITES lists those species that are endangered and threatened with extinction. *Id.* at app. 1. CITES prohibits commercial international trade in these species; however, trade is allowed under some circumstances, such as for scientific research. CITES Secretariat, *How CITES Works*, <http://www.cites.org/eng/disc/how.shtml> (accessed Oct. 26, 2004). In such situations, trade may be authorized by the granting of special certificates such as an export permit or an import permit. *Id.* The granting of such certificates must be done in accordance with the procedures laid down in a member state's national legislation with respect to trade in endangered species. *Id.*

<sup>9</sup> See *infra* pt. III (discussing the PRC Wildlife Protection Law with respect to trade in endangered species).

<sup>10</sup> Where species are protected under both the PRC Wildlife Protection Law and Appendix I or II of CITES, the death sentence may be imposed by the court. Wei Luo, *The 1997 Criminal Code of the People's Republic of China: With English Translation and Introduction* vol. 1, art. 151, 90-91 (William S. Hein & Co., Inc. 1998) (if the circumstances are especially serious, the death penalty may be imposed upon anyone who engages in smuggling rare animals and their products); *Interpretation of the Supreme People's Court on the Application of Law in the Trial of the Criminal Case of Smuggling* art. 4 (Sept. 20, 2000) (available at Isinolaw Ref. ID JI-0-71-0-2000118) (noting that "precious animals" as stipulated in Clause 2[,] Article 151 of the Criminal Law refer to the wildlife under state protection of grade I and [grade] II as listed in the Catalog of Wildlife under Key State Protection, and the wildlife and the domesticated species of the same kind as listed in the Appendix I and Appendix II of the Convention on the International Trade in Endangered Species of Wild Fauna and Flora," and listing the circumstances which fall into the category of "particularly serious circumstances"); Ministry of Pub. Sec. & State Bureau of Forestry, *Jurisdiction and Case-Registration Criteria of the Ministry of Public Security and the State Bureau of Forestry on Criminal Cases of Forests and Land Wild Animals* § II(11) (May 9, 2001) (available at Isinolaw Ref. ID 10376-2002001) (classifying as serious or especially serious illegal catching, killing, purchase, transport, sale, hunting, catching, and smuggling of wild animals listed in Appendix I and Appendix II of CITES and national grade I and grade II protected wild animals).

<sup>11</sup> Cf. Elizabeth Kempf, Alison Wilson & Christopher Servheen, *Bears in the Wild* 23-24 (World Wildlife Fund June 1999) (available at <http://www.panda.org/downloads/species/bears99.pdf>) (WWF species status report noting the rise in demand for gall-bladders and bile from bears). There is high demand for bear parts in China, Japan, Korea, and Taiwan. See Yenni Kwok & Ng Tze Wei, *Bear Farming Backed by Mainland Wildlife Official*, S. China Morning Post 4 (Aug. 1, 2000) (describing a proposal to lift the ban on international trading in bear parts to meet existing demand in Japan, South Korea, and China); J. A. Mills, Simba Chan, & Akiko Ishihara, *The Bear Facts: The East Asian Market for Bear Gall Bladder*, "Summary," <http://www.traffic.org/publications/summaries/summary-bear.html> (July 1995) (stating that East Asia is the center of the world demand for bear gall bladder). The species of bears listed as endangered are contained within the International Union for Conservation of Nature & Natural Resources (IUCN) Red List of Threatened Species. See Intl. Union Conservation Nat. & Nat. Resources, 2004 IUCN Red List of Threatened Species, <http://www.redlist.org> (accessed Mar. 11, 2005) (a comprehensive website containing and discussing the Red List). The IUCN Red

stem the tide of illegal trade in endangered species.<sup>12</sup> Moreover, so far as the PRC is concerned, its national and provincial laws do not list several of the species that are internationally protected under CITES.<sup>13</sup> In the PRC, trade in wildlife is oftentimes considered just another business and means of survival.<sup>14</sup>

The PRC Wildlife Protection Law, the PRC Constitution, and administrative regulations issued by the Ministry of Environment and Forests contain provisions dealing with the protection of, including the trade in, wildlife and endangered species.<sup>15</sup> However, there is no comprehensive law dealing specifically with trade in endangered species. Even though China is a signatory to CITES,<sup>16</sup> illegal trade in endangered species goes on unabashedly. There are no adequate legal provisions to curb such activity.<sup>17</sup> The International Union for the Conservation of Nature and Natural Resources ("IUCN") Red List lists 279 endangered species in China.<sup>18</sup> According to the World Wildlife

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List is believed to contain "the world's most comprehensive inventory of the global conservation status of plants and animals." Intl. Union Conservation Nat. & Nat. Resources Species Survival Commn., *The IUCN Red List of Threatened Species*, <http://www.iucn.org/themes/ssc/redlists/rlindex.htm> (accessed Mar. 19, 2005).

<sup>12</sup> Three thousand antelope skins were seized in New Delhi in early April 2003. Press Release, Intl. Fund for Animal Welfare, *Three Thousand Highly Endangered Antelopes Die for High-Priced Fashion* (Apr. 8, 2003) (available at <http://www.ifaw.org/ifaw/general/default.aspx?oid=13465>).

<sup>13</sup> See Luk, *supra* n. 6, at [http://www.canoe.ca/CNEWSFeatures0104/27\\_animals-ap.html](http://www.canoe.ca/CNEWSFeatures0104/27_animals-ap.html) (noting one Chinese animal protection officer's remark that some species listed as endangered by international organizations are not yet protected in China, and thus are not among those seized during raids).

<sup>14</sup> See e.g. Michael Dorgan, *Wildlife Advocates Criticize China on Protection of Tigers*, <http://www.savechinastigers.org/t-news/china-critics.htm> (Mar. 8, 2001) (describing one merchant's thoughts on trafficking in endangered species through a Chinese proverb: "If you live next to the mountain, you eat the mountain . . . If you live next to the river, you eat the river. We are nomads in Tibet. We are dependent on the animals."); see also Luk, *supra* n. 6, at [http://www.canoe.ca/CNEWSFeatures0104/27\\_animals-ap.html](http://www.canoe.ca/CNEWSFeatures0104/27_animals-ap.html) ("Despite authorities' attempts to stop the trade in state-protected animals and campaigns to discourage consumption of wildlife in general, business is booming at the market . . .").

<sup>15</sup> *Infra* pts. III-IV.

<sup>16</sup> CITES Secretariat, *Member Countries*, <http://www.cites.org/eng/disc/parties/index.shtml>; select list of parties (updated Mar. 18, 2005, 12:03 CET) (stating that China acceded to CITES on Jan. 8, 1981).

<sup>17</sup> See *infra* pts. II-III (discussing the laws and regulations that have been imposed, yet noting that officials continue to discover violations of those laws involving large numbers of endangered species); Critical Ecosystem Partn. Fund, *Leveraging SARS to Reduce Illegal Wildlife Trade in China*, CEPF E-News (electronic newsletter of the Critical Ecosystem Partn. Fund) (Jan. 2004), [http://www.cepf.net/xp/cepf/news/newsletter/2004/january\\_topstory.xml](http://www.cepf.net/xp/cepf/news/newsletter/2004/january_topstory.xml) (stating "[o]ver the past 15 years, China's Wildlife Conservation Law (1988) has not effectively prevented illegal trade").

<sup>18</sup> Intl. Union for Conservation of Nat. & Nat. Resources Species Survival Commn., *supra* n. 11, at <http://www.redlist.org/search/search-basic.php>; select EN-Endangered, select China, select search (updated Mar. 19, 2005).

Fund ("WWF") China, illegal hunting and the wildlife trade together form one of the key threats to the listed species' survival.<sup>19</sup>

The legal controls in effect are inadequate. Despite the efforts of the authorities to stop trade in state-protected endangered species, and campaigns to discourage the consumption of wildlife in general, "business [in the wildlife trade] is booming" in provincial Chinese markets.<sup>20</sup> Evidence provided by international organizations such as TRAFFIC International, WWF China, and WWF Hong Kong suggests that much of the illegal wildlife smuggled into and out of Asia passes through China.<sup>21</sup> The evidence further suggests that the Chinese populace is a major consumer of endangered species.<sup>22</sup> Almost half of the people surveyed in a recent study in Beijing admitted to eating wild birds and animals.<sup>23</sup> These people hold the belief that the meat of wildlife is "more nutritious than farm raised meat."<sup>24</sup>

Both illegal international and intranational trade are major reasons for the dwindling populations of endangered species in China. The increasing demand for endangered species has proven to be immensely profitable for the people involved in such a business.<sup>25</sup> Illegal traders take advantage of the insufficient legal protections for endangered species, and the inadequate implementation thereof, in order to successfully smuggle many exotic and rare species. The use of endan-

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<sup>19</sup> World Wildlife Fund, *China Conservation Programs - TRAFFIC Overview*, <http://www.wwfchina.org/english/loca.php?loca=3> (accessed Feb. 19, 2004).

<sup>20</sup> Luk, *supra* n. 6, at [http://www.canoe.ca/CNEWSFeatures0104/27\\_animals-ap.html](http://www.canoe.ca/CNEWSFeatures0104/27_animals-ap.html) (describing the Xin Yuan market on the outskirts of Guangzhou).

<sup>21</sup> See e.g. TRAFFIC Intl., *Plans Set for Training Workshops in China*, 10 TRAFFIC Dispatches 10 (Jan. 1999) (available at <http://www.traffic.org/dispatches/archives/january99/training-workshop.html>) (suggesting that a number of wildlife products found in traditional Chinese medicine are traded illegally into and out of China). The illegal trade products include tiger bone, bear bile, cat skins, orchids, turtles, ivory, live animals and Panax ginseng. *Id.* The report states that "[g]reater co-operation and sharing of wildlife trade information and expertise from the various regions within and around China is therefore vital in the ever-complex task of trying to reduce illicit or unsustainable trade." *Id.* See also TRAFFIC, *East Asia 1*, <http://www.traffic.org/25/network2.htm> (accessed Feb. 14, 2005) (identifying East Asia as a key consumer and supplier on endangered species in the international wildlife market); Samuel K H Lee, *Wildlife Trade: Factsheet No. 5*, 2-3, <http://www.wwf.org.hk/eng/pdf/references/factsheets/factsheet5.PDF> (updated Spring 2004) (discussing Hong Kong's substantial importation of exotic animals and plants as food and medicine from China).

<sup>22</sup> Luk, *supra* n. 6, at [http://www.canoe.ca/CNEWSFeatures0104/27\\_animals-ap.html](http://www.canoe.ca/CNEWSFeatures0104/27_animals-ap.html); CITES Secretariat, *Eleventh Meeting of the Conference of the Parties Gigiri (Kenya): Conservation of and Trade in Tigers*, Doc. 11.30 (Rev. 1) at 14 (April 10-20, 2000) (noting that "there is . . . reliable intelligence to indicate that China deserves to still be considered a consumer state").

<sup>23</sup> Luk, *supra* n. 6, at [http://www.canoe.ca/CNEWSFeatures0104/27\\_animals-ap.html](http://www.canoe.ca/CNEWSFeatures0104/27_animals-ap.html).

<sup>24</sup> *Id.*

<sup>25</sup> See *id.* (noting one restaurant owner's claim that he could make a profit of about one hundred yuan for five or six pots of soup made from one flying squirrel). One Guangzhou official interviewed by Helen Luk noted that "[i]t is hard to wipe out such sales because there is a demand and money to be made." *Id.*

gered species in Traditional Chinese Medicine ("TCM") also impacts and exacerbates the illegal trade in endangered species.<sup>26</sup>

This paper examines the legal framework and enforcement mechanisms in place that regulate the trade in endangered species in China. In this context the Author will examine how the weak international, national, and/or provisional legal framework is leading to dwindling populations of endangered species. The Author first examines the socio-cultural and economic background, including the national policy relative to the protection of endangered species in China. Second, the Author looks at the legal tools and mechanisms in place to protect wildlife and to curb the illegal trade in endangered species in China. Third, the Author critically examines China's international obligations relative to its national policy for the protection of endangered species. Next, the Author conducts a comparative study of judicial decisions in China, Hong Kong, and England, critically examining whether China's inability to deal with the illegal trade in endangered species is due to a lack of proper legislation or to improper enforcement of such legislation. Finally, the Author suggests that lawmakers in China should seriously consider how best to legislatively curb illegal trade in endangered species while at the same time taking into consideration the non-preservationist social and cultural attitudes towards the exploitation of these species.

The pervasive non-preservationist attitudes of the majority of the Chinese populace must be changed; people must be made to realize that endangered species are treasures that need to be preserved at all costs. Only upon such a reorientation of ideals will the plight of endangered species in China truly begin to improve.

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<sup>26</sup> From 1998 to 1999, Felixstowe Customs and Excise authorities seized commercial imports of traditional Chinese medicines from China. TRAFFIC Europe, *Seizures and Prosecutions: Examples of Illicit Trade in Musk*, <http://www.traffic.org/musk/illegaltrade.html> (accessed Feb. 15, 2005). They seized approximately 76,080 pills and 492 aerosols derived from endangered species such as the musk deer. *Id.* In March 1998 in Utrecht, the Netherlands, a Chinese medical company and its owner were found guilty of trading packages claimed to contain ingredients consisting of CITES-listed species. *Id.* The authorities seized eight truckloads of traditional Chinese medicines, including some packages claimed to contain musk deer and other species. *Id.* The owner of the company was sentenced to three months in jail and fined the equivalent of five thousand dollars. *Id.* The company was fined the equivalent of forty thousand dollars. *Id.* In March 1997, at Hampshire Magistrate's Court in England, a woman (Bang Hue Thu) pleaded guilty to four charges of illegally selling traditional Chinese medicinal products in violation of the Control of Trade in Endangered Species (Enforcement) Regulation of 1985. *Id.* She was fined the equivalent of \$3,586, including costs. *Id.* The items seized included packets alleged to have ingredients derived from the musk deer. *Id.* See also World Wildlife Fund, *Wildlife Trade FAQs: Traditional Chinese Medicine Trade*, [http://www.worldwildlife.org/trade/faqs\\_tcm.cfm](http://www.worldwildlife.org/trade/faqs_tcm.cfm) (accessed Feb. 15, 2005) (describing concern over the increasing use of threatened and endangered species in traditional Chinese medicine due to population growth).

## II. SOCIO-CULTURAL BACKGROUND

Many endangered species end up as soups and delicacies in China. Flying squirrel soup is proclaimed to provide “aromatic meat good for health” in Guangzhou.<sup>27</sup> For example, a flying squirrel can be purchased at a market for two hundred yuan RMB, turned into five or six pots of soup, and sold in restaurants for a profit of one hundred yuan RMB.<sup>28</sup> Monitor lizards, owls, pangolins, and rare birds, all under state protection, have been seized in a number of raids on restaurants in China.<sup>29</sup> In Xinyuan, the market caters to the curious, newly wealthy southern Chinese and Hong Kong businessmen who want an exotic dish and feel the need to have a leopard, giant turtle, masked palm civet, or king cobra for dinner.<sup>30</sup>

Restaurants are likely to provide rare and exotic birds or animals for dinner.<sup>31</sup> For example, at the Nanguo Pearl restaurant in Guangzhou, customers were able to pick out whichever animal they wanted from a selection of live caged animals. The restaurant was reported to have displayed “a crocodile, a spotted deer, a seagull, a civet and sturgeon,” as well as an empty cage, which had a price tag for a white crane.<sup>32</sup>

Restaurants may provide a customer with exotic dishes such as “Hundred Birds Returning to the Nest” or deer-blood steamed rice.<sup>33</sup> Vipers, cobras, and other snake species are also part of the cuisine.<sup>34</sup> Approximately ten thousand tons of snakes are served annually at restaurants, either stir-fried or in soup.<sup>35</sup> Furthermore, the venom of vipers and cobras is sought after for use in TCM. Snakeskin and other snake parts are believed to restore health and boost sexual prowess.<sup>36</sup> Of China’s 209 snake species, 43 of them are state-protected endangered species.<sup>37</sup>

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<sup>27</sup> Luk, *supra* n. 6, at [http://www.canoe.ca/CNEWSFeatures0104/27\\_animals-ap.html](http://www.canoe.ca/CNEWSFeatures0104/27_animals-ap.html).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Restaurants Exposed for Serving Wildlife*, China Daily (Sept. 17, 2004) (available at <http://www.china.org.cn/english/environment/107364.htm>) (“Local wildlife conservation authorities believe restaurants are exploiting loopholes in wildlife protection rules to supply customers with meals made from wild animals.”). A China Wildlife Conservation Association (CWCA) survey conducted in 1999 reveals that over twenty-five percent of dishes on the dinner table in China consist of state protected wildlife species. *Chinese Cooks Swear to Spare Wildlife*, China Daily (Jan. 29, 2002) (available at [http://www.chinadaily.com.cn/en/doc/2002-01/29/content\\_104677.htm](http://www.chinadaily.com.cn/en/doc/2002-01/29/content_104677.htm)).

<sup>32</sup> Luk, *supra* n. 6, at [http://www.canoe.ca/CNEWSFeatures0104/27\\_animals-ap.html](http://www.canoe.ca/CNEWSFeatures0104/27_animals-ap.html).

<sup>33</sup> *Id.*

<sup>34</sup> BBC News, *China’s Snakes ‘at Risk’*, <http://news.bbc.co.uk/1/hi/world/asia-pacific/1695255.stm> (Dec. 6, 2001).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

Many currently endangered species have been used as ingredients in TCM for thousands of years.<sup>38</sup> Examples include the use of rhinoceros horn to reduce fever and cleanse the body of toxic materials,<sup>39</sup> the use of tiger bone to relieve pain and strengthen bones,<sup>40</sup> and the use of bear parts to provide relief from fever and burns and to help cure heart disease.<sup>41</sup> Unfortunately, many of the animals and plants used in TCM are now endangered and threatened in China and around the world.<sup>42</sup>

The population of rhinoceros, an animal once found in China, has decreased greatly over the past fifty years. Only around ten thousand rhinoceros may be alive in the world today, amounting to approximately one-tenth of the rhinoceros population existing in the 1950s.<sup>43</sup> Similarly, the estimated population of tigers has decreased, and only five thousand may still be in existence.<sup>44</sup> A number of species unique

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<sup>38</sup> World Wildlife Fund, *supra* n. 26, at "Are These Medicines Effective?" [http://www.worldwildlife.org/trade/faqs\\_tcm.cfm](http://www.worldwildlife.org/trade/faqs_tcm.cfm).

<sup>39</sup> Ctr. Intl. Earth Sci. Info. Network, *Protection of Endangered Species Used in Traditional Chinese Medicine and Development of Alternatives* § 1, <http://sedac.ciesin.org/china/policy/acca21/218-3.html> (accessed Feb. 13, 2005); *see also* Karen Sack, *Rhino Horn Import Ban*, 2 Trade Env. Database Case Studies 58, § I(2) (Jan. 1993), <http://www.american.edu/TED/rhino.htm> (describing the medicinal purposes for which various rhinoceros parts are used); Julie Ferguson, *US China Rhino and Tiger Dispute*, 2 Trade Env. Database Case Studies 77, § A(2) (Jan. 1993), <http://www.american.edu/projects/mandala/TED/uschina.htm> (citing international trade as "perhaps the most important contributing factor to the decline in rhino numbers," and specifically noting that demand for rhinoceros and rhinoceros parts is largely driven by their use in traditional Chinese medicine).

<sup>40</sup> Rina Dey, *Tiger Trade*, 2 Trade Env. Database Case Studies 70, § A(2) (Jan. 1993), <http://www.american.edu/projects/mandala/TED/TIGER.htm>.

<sup>41</sup> *Chinese Medicine: Lions and Bears, Oh My!* 6 Beijing Scene, col. Comrade Language, 3 (Nov. 5–11, 1999) (available at [http://www.sino.uni-heidelberg.de/fachschaft/bs/06\\_04ChineseMedicine.pdf](http://www.sino.uni-heidelberg.de/fachschaft/bs/06_04ChineseMedicine.pdf)).

<sup>42</sup> J. A. Mills, *Summary: Rhinoceros Horn and Tiger Bone in China: An Investigation of Trade Since the 1993 Ban*, [http://www.traffic.org/publications/summaries/summary\\_china.html](http://www.traffic.org/publications/summaries/summary_china.html) (May 1997); Judy A. Mills & Peter Jackson, *KILLED FOR A CURE: A Review of the Worldwide Trade in Tiger Bone*, "Summary," <http://www.traffic.org/publications/summaries/summary-tigerbone.html> (Aug. 1994); *ETIS Shapes the Elephant Debate at CoP13*, 23 TRAFFIC Dispatches 8 (Feb. 2005) (available at <http://www.traffic.org/dispatches/DispNo23.pdf>).

<sup>43</sup> Ctr. Intl. Earth Sci. Info. Network, *supra* n. 39, at § 1, <http://sedac.ciesin.org/china/policy/acca21/218-3.html>; *see* Ferguson, *supra* n. 39, at 77 (case history of rhinoceros distribution and trade); Paul Massicot, *Animal Info - Javan Rhinoceros*, <http://www.animalinfo.org/species/artiperi/rhinond.htm> (last modified Jan. 11, 2005) (noting that the Javan Rhino is listed as critically endangered by the IUCN and may be extinct in China. It was hunted for various purposes, most especially for its horn, which is used in oriental medicine).

<sup>44</sup> Michael McCarthy, *UK Leads Fight to Stop Tiger Poaching*, <http://www.millennium-debate.org/ind18jan.htm> (Jan. 18, 1999) (estimating that as few as five thousand tigers may remain); Ctr. Intl. Earth Sci. Info. Network, *supra* n. 39, at § 1, <http://sedac.ciesin.org/china/policy/acca21/218-3.html> (estimating that only seven thousand tigers remain in existence); *see also* *News News News* 53 J. Chinese Med., "Tigers" (Jan. 1997) (available at <http://www.jcm.co.uk/news/News53.phtml>) (discussing the danger to tigers posed by excessive poaching).



to China, such as the musk deer, the Chinese alligator, and various rare species of orchids, are all fast disappearing.<sup>45</sup> Others species, such as the Saiga antelope once found in the Xinjiang Uygur Autonomous Region, have already become extinct.<sup>46</sup> Tigers are poached for their hide, bones, and various other body parts;<sup>47</sup> rhinos for their horns;<sup>48</sup> elephants for their ivory tusks, teeth, meat, and hide;<sup>49</sup> deer for their musk pods;<sup>50</sup> antelope for their hides;<sup>51</sup> and even butterflies and corals for their visual appeal.<sup>52</sup>

In fact, none of the rare and endangered species in China are safe from the onslaught of poachers and illegal traders. Illegal trade in endangered species poses a threat not just to the survival of individual species, but also to biodiversity conservation in China.<sup>53</sup>

The illegal trade in endangered species is fueled by the growing perceived need for such species for various consumptive, medicinal,

<sup>45</sup> Ctr. Intl. Earth Sci. Info. Network, *supra* n. 39, at § 1, <http://sedac.ciesin.org/china/policy/acca21/218-3.html> (discussing musk deer); Saving Wild Places, *Chinese Alligator*, <http://savingwildplaces.com/swp-home/swp-crocodile/3631558> (accessed Feb. 19, 2005); *Wild Orchids Disappearing in China*, People's Daily Online (updated May 17, 2004, 15:35), [http://english.people.com.cn/200405/17/eng20040517\\_143535.html](http://english.people.com.cn/200405/17/eng20040517_143535.html) (discussing rare orchids).

<sup>46</sup> Ctr. Intl. Earth Sci. Info. Network, *supra* n. 39, at § 1, <http://sedac.ciesin.org/china/policy/acca21/218-3.html>.

<sup>47</sup> Dey, *supra* n. 40, at § A(2); see also *Extinction Made in Taiwan: Taiwan Is the End of the Line for Endangered Species*, San Diego Earth Times (Dec. 1999) (available at <http://www.sdearthtimes.com/et1293/et1293s1.html>) (detailing the multitude of uses for which tiger parts are utilized in TCM). Tiger bones and other parts of the body are used in balms, pills, wines, and tonics to cure rheumatic pain, muscle cramps, malaria, boils, and other illnesses; tiger penises are used for their aphrodisiac powers. *Id.*

<sup>48</sup> Ferguson, *supra* n. 39, at § A(2).

<sup>49</sup> Chris R. Shepherd, *The Trade of Elephants and Elephant Products in Myanmar*, 5 TRAFFIC Online Rpt. Series 4 (Aug. 2002) (available at [http://www.traffic.org/news/asian\\_elephants.pdf](http://www.traffic.org/news/asian_elephants.pdf)). World Wildlife Fund, *Expeditions in Conservation*, "Asian Elephants," [http://www.worldwildlife.org/expeditions/teraiarc/wl\\_elephants.html](http://www.worldwildlife.org/expeditions/teraiarc/wl_elephants.html) (accessed Mar. 7, 2005).

<sup>50</sup> Volker Homes, *On the Scent: Conserving Musk Deer - The Uses of Musk and Europe's Role in Its Trade* 1 (TRAFFIC Europe 1999) (musk pods are harvested by killing the deer; the high value of musk has often been an incentive for illegal hunting of musk deer) (available at <http://www.traffic.org/musk/musk-fullreport.pdf>).

<sup>51</sup> *World Unites to Save Chiru*, China Daily (Oct. 4, 2004) (available at [http://www.chinadaily.com.cn/english/doc/2004-10/04/content\\_379734.htm](http://www.chinadaily.com.cn/english/doc/2004-10/04/content_379734.htm)) (describing the poaching of Tibetan antelopes, known as chirus, which are skinned to collect their highly prized fur).

<sup>52</sup> Earth Crash, *Endangered Species: Overhunting, Wildlife Poaching, and the Bushmeat and Pet Trades*, <http://eces.org/archive/ec/extinction/bushmeat.shtml> (accessed Feb. 13, 2005).

<sup>53</sup> China Biodiversity, *Investigation of Wildlife Use and Trade*, <http://www.chinabiodiversity.com/shwdyx/bwg-jj/bwg-3e.htm> (accessed Feb. 19, 2005); Xie Yan & Wang Song, *Chapter 11: People and Biodiversity*, <http://www.chinabiodiversity.com/shengwudyx2/training/chapter11.htm> (accessed Jan. 19, 2005) (noting that biodiversity provides value to China by contributing to recreation and tourism, as well as agriculture production, and by providing resources for an enormous range of products).

and aesthetic purposes.<sup>54</sup> With the kind of money that such trade is alleged to bring in, participants reap massive profits from even a single trophy and often from only a few parts of a rare or endangered species.<sup>55</sup> Traders acquire hides, skin, and bones that are sold at exorbitant prices on the international market. Since such wildlife is found in large numbers in China, the country has become a focal point of the trade.<sup>56</sup>

The Chinese bear population faces the same serious threat of extinction that the tiger, elephant, and rhinoceros populations face, due to the endangered species trade.<sup>57</sup> Many of the bear species that had been found previously in China are now extinct.<sup>58</sup> Bears, even those species which are critically threatened, are killed for trophies and butchered for their meat and paws to feed to exotic food consumers.<sup>59</sup> Bear gall bladders provide bear bile for TCM; bear meat and bones are also used. The gall bladders and front paws remain a favorite source of bear bile and exotic foods in many Asian countries.<sup>60</sup> Small amounts of bile can be valued up to eighteen times the price of gold in Asia's retail markets.<sup>61</sup> Trafficking in bear bile and paws has been reported from Canada to China, Taiwan, Hong Kong, and South Korea.<sup>62</sup>

Traffickers have been caught concealing gall bladders in various manners—under spare tires, in car seats, in dirty diapers on a vehicle's floor, or concealed on their person. Bear gall has been exported after having been dipped in chocolate, ground into honey, and hidden in boxes of candies.<sup>63</sup> Bear paw soup is an Asian gourmet dish, with roots tracing back to China's Chin dynasty as a food for the elite.<sup>64</sup>

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<sup>54</sup> China Biodiversity, *supra* n. 53, at <http://www.chinabiodiversity.com/shwdyx/bwg-ji/bwg-3e.htm>; see Hazel Feigenblatt, *Illegal Trade Endangering Many Species*, Wash. Times A16 (Nov. 3, 2003) (noting that the animals "are wanted for food; for their skins, organs and bones; as exotic pets; or for traditional medicine in Asia").

<sup>55</sup> *Extinction Made in Taiwan: Taiwan is the End of the Line for Endangered Species*, *supra* n. 47 (noting that a poacher may make as much as \$15,000 for a single tiger, or as much as \$60,000 if selling the tiger parts individually). Feigenblatt, *supra* n. 54 (noting that profits in the illegal trade are up to 800% in some cases, and estimating the trade's worth at \$6 billion annually in the world black market).

<sup>56</sup> Tan Ee Lyn, *Endangered Species under Threat from Richer China*, <http://www.planetark.com/dailynewsstory.cfm/newsid/13120/newsDate/5-Nov-2001/story.htm> (Nov. 5, 2001).

<sup>57</sup> World Wildlife Fund, *International Wildlife Trade: A CITES Sourcebook* 39–41 (Ginette Hemley ed., Island Press 1994).

<sup>58</sup> *Id.* at 40.

<sup>59</sup> Bear Alliance, *Report - From Forest to Pharmacy Part 1*, "Introduction," <http://www.animalalliance.ca/projects/bearalliance.html>; *select* Report - From Forest to Pharmacy part 1, *select* Introduction (accessed Feb. 17 2005).

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at "How the Trade Operates," § III(ii).

<sup>64</sup> Bear Alliance, *Report - From Forest to Pharmacy Part 2*, "Asian Demand," <http://www.animalalliance.ca/projects/bearalliance.html>; *select* Report - From Forest to Pharmacy part 2, *select* Asian Demand (accessed Feb. 17 2005).

The fate of mountain gorillas and African and Asian elephants is no less tragic. Gorilla and chimpanzee steaks are offered to diners in “some of the finest restaurants in Central Africa,” and severed gorilla hands “are considered a delicacy in some cultures;”<sup>65</sup> severed elephant legs are sold as foot-stools, and elephant skin is used for purses.<sup>66</sup> In 1992 there was a call for a complete ban, through an international moratorium, on the trade in any part of an elephant, from tusk to tail, by a number of African states, particularly Zambia.<sup>67</sup> In 2002 and 2004, these issues were readdressed on the international stage when further bans on illegal hunting in excess of quotas for bush meat and on the poaching of elephants and trade in ivory were implemented under the national laws of 167 countries party to CITES.<sup>68</sup>

Dealers and businessmen who trade in wildlife illegally have found a multitude of devious ways to maximize their ill-gotten gains. For example, some traders speculate in endangered species, often stockpiling as many animal products as possible so as to drive up prices.<sup>69</sup> Some speculators who are involved in organized crime place bets on the extinction of an endangered species to inflate the price of their inventories.<sup>70</sup> The resulting increase in demand puts even more pressure on the remaining populations in the wild through increased poaching and illegal hunting.<sup>71</sup>

### III. LEGISLATION IN THE PRC

Since the establishment of the PRC, China has enacted a number of laws and regulations for the protection of endangered species. This

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<sup>65</sup> Conservation Intl., *Species Focus: Primates*, “Hunting,” <http://investigate.conservation.org/xp/IB/speciesdiversity/threats.xml> (accessed Mar. 29, 2005).

<sup>66</sup> Associated Press, *Dutch Customs Seizes Elephant Parts*, [http://kdka.com/water/watercooler\\_story\\_054203428.html](http://kdka.com/water/watercooler_story_054203428.html) (Feb. 23, 2005). An adaptation of Dian Fossey’s work for the protection of mountain gorillas was beautifully captured by the movie *Gorillas in the Mist*, which depicted the horrific and fatal trade in mountain gorillas and tuskier elephants in Africa. *Gorillas in the Mist* (Universal Studios 1988) (motion picture).

<sup>67</sup> Owens Found. Wildlife Conservation, *Please Help Us Continue the Ivory Ban*, Dear Everybody Letters (newsletter of the Owens Foundation for Wildlife Conservation) (Feb. 1992) (available at <http://www.owens-foundation.org/africade/feb1992.htm>).

<sup>68</sup> Thirteenth Meeting of the Conference of Parties Bangkok (Thailand), *Bushmeat*, Conf. 13.11 (Oct. 2–14, 2004) (available at <http://www.cites.org/eng/res/13/13-11.shtml>); Decisions of the Conference of Parties to CITES in Effect after the Thirteenth Meeting, *Action Plan for the Control of Trade in African Elephant Ivory*, Annex 2, 49–50 (Oct. 2–14, 2004) (available at <http://www.cites.org/eng/dec/valid13/E13-Dec.pdf>).

<sup>69</sup> *Extinction Made in Taiwan: Taiwan is the End of the Line for Endangered Species*, *supra* n. 47.

<sup>70</sup> *Id.*

<sup>71</sup> CITES Secretariat, *Forty-fifth Meeting of the Standing Committee Paris (France): Conservation of and Trade in Specific Species*, Doc. 21 at 2 (June 19–22, 2001) (recognizing that “[t]he basic principles of supply and demand may also explain, for instance, why trade in leopard skins appears to have grown as tigers become rarer”).

includes acceding to CITES in 1981.<sup>72</sup> The PRC Constitution stipulates that it is the responsibility of the State to ensure rational exploitation of natural resources, to protect rare animals and plants, and to prohibit any organization or individual from seizing or destroying natural resources by any means.<sup>73</sup> In accordance with these Constitutional objectives, the Standing Committee of the National People's Congress ("SCNPC"), under the order of the President of the PRC, promulgated the WLP in 1989.<sup>74</sup> This law is particularly geared towards the protection of terrestrial wild animals and has completely prohibited all actions relative to trafficking in species identified under Class I and Class II State Protection, as well as those listed in Appendices I and II of CITES (e.g. tiger bone, Pandas, rhinoceros horn, and Tibetan antelopes).<sup>75</sup>

The WLP is the primary piece of legislation in the PRC dealing with the protection and management of wildlife. It includes provisions relative to the rational utilization of wildlife resources, including endangered species, so as to maintain an ecological balance.<sup>76</sup> It is a comprehensive piece of legislation which entrusts the Departments of Forestry and Fishery Administration under the State Council with the nationwide administration of terrestrial and aquatic wildlife. Article 7 of the WLP allocates jurisdiction and responsibility for the administration of the WLP to the Departments of Forestry Administration under the government at the province level and the municipal level, and directly to the Central Government for autonomous regions. The Departments of Forestry Administration are empowered to develop and implement specific criteria for managing and granting hunting licenses.<sup>77</sup> The Departments may grant special hunting licenses within their jurisdiction for hunting species under state or local protection, but only for special purposes as outlined in the WLP.<sup>78</sup> The relevant Forestry Administrations are empowered to investigate and penalize violators engaging in the illegal poaching, selling, hunting, or smug-

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<sup>72</sup> CITES Secretariat, *supra* n. 16, at <http://www.cites.org/eng/disc/parties/index.shtml>; *select* list of parties.

<sup>73</sup> PRC Const. art. 9, 26.

<sup>74</sup> *Law of the People's Republic of China on the Protection of Wildlife* (available at LEXIS, HKCHNA library, PRCLEG 3658 file) (LEXIS current through Oct. 14, 2004) [hereinafter WLP].

<sup>75</sup> *Id.*; *Convention on International Trade in Endangered Species*, *supra* n. 8, at apps. 1-3.

<sup>76</sup> WLP at art. 1 (LEXIS, HKCHNA library, PRCLEG 3658 file). Article 2 of the WLP defines wildlife to mean both terrestrial and aquatic species that are "at or near extinction and the . . . terrestrial wildlife which are beneficial or of important economic or scientific value." *Id.* at art. 2. Fisheries and aquatic resources which are not endangered are covered under the Fisheries Law. *Fisheries Law of the People's Republic of China (2004 Revision)* (available at LEXIS, HKCHNA library, PRCLEG 3663 file) (LEXIS current through Oct. 14, 2004) (article 37 notes that the WLP governs the use of species under the State's key protection).

<sup>77</sup> WLP at arts. 8, 16 (LEXIS, HKCHNA library, PRCLEG 3658 file).

<sup>78</sup> *Id.*

gling of wild animals under state protection and under special local protection.<sup>79</sup>

Article 9 of the WLP gives special protection to rare and endangered species by classifying them into Class I and Class II state protection lists. In addition to these lists, each autonomous region, province, and municipality directly under Central Government control may designate additional species as being under special local protection.<sup>80</sup>

Article 16 prohibits the catching, hunting, or killing of wildlife under special state protection. These activities may be allowed in limited circumstances, however, when the purpose of the activity is for scientific research, domestication, breeding, exhibition, or other special purposes deemed to be adequate for Class I species.<sup>81</sup> In order to conduct an activity affecting a Class I species, the person<sup>82</sup> seeking to conduct the activity needs to apply to the Department of Wildlife Administration under the State Council for a special license.<sup>83</sup> A person wishing to engage in an activity affecting a Class II species needs to apply to the relevant local Department of Wildlife Administration, be it at the provincial or municipal levels, or directly to the Central Government for autonomous regions.<sup>84</sup>

The WLP prohibits the sale, purchase, export, import, and transport of wildlife and wildlife products,<sup>85</sup> similar to the Hong Kong Animal and Plant (Protection of Endangered Species) Ordinance ("APO" or "Ordinance").<sup>86</sup> Such activities may only be permitted if approved by the Department of Wildlife Administration under the State Council, or by the relevant department under the government of a par-

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<sup>79</sup> *Id.* at arts. 15, 16, 21, 22, 31–34.

<sup>80</sup> *Id.* at art. 9.

<sup>81</sup> *Id.* at art. 22.

<sup>82</sup> For the purposes of sections III and IV of this paper the terms "person" and "individual" include groups of people, business entities, and other organizations.

<sup>83</sup> *Regulations for the Implementation of the People's Republic of China on the Protection of Terrestrial Wildlife*, arts. 11–13 (Mar. 1, 1992) (available at LEXIS, HKCHNA library, PRCLEG 679 file) (LEXIS current through Dec. 15, 2003) [hereinafter *Regulations for Protection of Terrestrial Wildlife*].

<sup>84</sup> *Id.* at art. 12. Hunting licenses are also required to hunt or catch wildlife that is not under state protection. Hunting of non-protected species can only be done within the sanctioned hunting quota, during the hunting season, and within the legal hunting areas. *Id.* at arts. 14–16; WLP at arts. 18, 19 (LEXIS, HKCHNA library, PRCLEG 3658 file).

<sup>85</sup> *Id.* at arts. 22–24.

<sup>86</sup> *Animal and Plants (Protection of Endangered Species) Ordinance, Cap. 187* (Aug. 6, 1976), Bilingual Laws Information System (database of the Dept. of Justice of the Hong Kong Special Administrative Region), <http://www.legislation.gov.hk/eng/home.htm>, *find* Go to chapter row, *enter* 187, *select* Chapter 187 ANIMALS AND PLANTS (PROTECTION OF ENDANGERED SPECIES) ORDINANCE, *select* CAP 187 ANIMALS AND PLANTS (PROTECTION OF ENDANGERED SPECIES) ORDINANCE (current through Mar. 28, 2005) [hereinafter APO]. The purpose of the APO is "to restrict the importation, exportation and possession of certain animals and plants, and parts of such animals and plants, and to provide for matters connected therewith." *Id.*

ticular province or municipality under the Central Government.<sup>87</sup> Violation of the provisions of the WLP results in criminal liability and punishment for the violator.<sup>88</sup> A number of related laws and regulations, including Article 130 of The 1997 Criminal Code of the People's Republic of China,<sup>89</sup> ("the Criminal Law") and provisions of the Regulations on Administrative Penalties for Public Security, might be invoked based upon the seriousness of the crime or offense committed under the WLP.<sup>90</sup>

The WLP covers a wide range of activities for which individuals or units may be punished, making WLP provisions more comprehensive than similar provisions contained in the APO.<sup>91</sup> The purpose of the WLP is to "[protect] and [save] the species of wildlife which are rare or near extinction, [protect], [develop] and rationally [utilize] wildlife resources and [maintain] ecological balances."<sup>92</sup> International agencies, such as TRAFFIC International, WWF China, and the IUCN, local and government sponsored non-governmental organizations ("NGOs"), and other conservation agencies within China, such as the China Wildlife Conservation Association, admit that the WLP has not been effective in controlling the illegal trade in endangered flora and fauna during its fifteen years of implementation.<sup>93</sup> Many organizations and reports allege a host of reasons why the illegal trade in endangered species continues unabated in China. Such allegations include the use of, and desire for, endangered species by illegal international traders, consumers, and trophy hunters.<sup>94</sup> Impoverished villagers and corrupt traders may also constitute a link in the chain that needs to be seriously addressed.<sup>95</sup>

### A. Penalties

Penalties for violations of the WLP, such as the catching or killing of endangered species, are contained in the Regulations for the Implementation of the People's Republic of China on the Protection of Ter-

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<sup>87</sup> WLP at arts. 22–24 (LEXIS, HKCHNA library, PRCLEG 3658 file). Article 24 also provides that those species which are protected under special state protection and under CITES require approval from the Department of Wildlife Administration under the State Council for any import or export of the species. *Id.*

<sup>88</sup> *Id.* at arts. 31–39.

<sup>89</sup> Luo, *supra* n. 10, at art. 130, 82.

<sup>90</sup> WLP at arts. 33–39 (LEXIS, HKCHNA library, PRCLEG 3658 file).

<sup>91</sup> While the WLP prohibits the sale, purchase, export, import, and transport of wildlife and wildlife products; the APO prohibits only export, import, and possession. *Id.* at arts. 1–42; APO at §§ 4–6, <http://www.legislation.gov.hk/eng/home.htm>; *find* Go to chapter row, *enter* 187, *select* Chapter 187 ANIMALS AND PLANTS (PROTECTION OF ENDANGERED SPECIES) ORDINANCE, *select* CAP 187 ANIMALS AND PLANTS (PROTECTION OF ENDANGERED SPECIES) ORDINANCE.

<sup>92</sup> WLP at art. 1 (LEXIS, HKCHNA library, PRCLEG 3658 file).

<sup>93</sup> Critical Ecosystem Partn. Fund, *supra* n. 17, at [http://www.cepf.net/xp/cepf/news/ newsletter/2004/january\\_topstory.xml](http://www.cepf.net/xp/cepf/news/newsletter/2004/january_topstory.xml).

<sup>94</sup> Feigenblatt, *supra* n. 53.

<sup>95</sup> *Id.*

restrial Wildlife ("the Regulations"), promulgated in 1992 by the State Bureau of Forestry.<sup>96</sup> These regulations dictate the responsibilities of the various administrative Departments of Forestry under the State Council, the provinces, municipalities, and autonomous regions under the control of the Central Government, and the Departments at the prefecture, county level.<sup>97</sup> The Departments of Forestry Administration are responsible for determining the species of wildlife for which hunting is allowed. Such determinations are based upon annual quotas developed in part by taking into account the sustainable utilization of resources for non-protected species.<sup>98</sup> The Departments are also empowered to issue hunting licenses based on the criteria provided by the Department of Forestry under the State Council.<sup>99</sup>

The Regulations also provide for the application, by an individual or unit to the relevant local government, for approval to export or import wildlife or any other product under special state protection, or restricted under relevant international conventions.<sup>100</sup> Article 32 of the Regulations dictates incentives and rewards for the relevant departments and individuals for properly implementing the WLP. Articles 33 through 44 dictate penalties for the violation of the WLP and the Regulations.

The Regulations provide for two kinds of offenses based on the illegal hunting, capturing, or killing of wildlife under special state protection.<sup>101</sup> The first type of offense is considered minor and as such does not warrant criminal punishment. The second type of offense is one which constitutes a serious crime. In the first case, the offender's capture (any animal or plant of a protected species), his hunting gear, and/or any unlawful gain made from the sale of an endangered species may be confiscated.<sup>102</sup> The Department may also choose to revoke the offender's hunting license. In addition, the offender may be fined up to ten times the value of the wildlife.<sup>103</sup> If the offender is not caught in possession of an endangered species, then the offender may be fined up to a maximum of ten thousand yuan RMB.<sup>104</sup> The penalties for actions which fall short of criminal range from a fine of one thousand yuan RMB, for an offender caught violating the law relative to a non-state protected species and found not to be in possession of any animals,<sup>105</sup> up to fifty thousand yuan RMB, for capturing a state protected species, for dealing in a state protected species, or for forging a hunting, im-

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<sup>96</sup> *Regulations for Protection of Terrestrial Wildlife* arts. 33-44 (LEXIS, HKCHNA library, PRCLEG 679 file).

<sup>97</sup> *Id.* at art. 3.

<sup>98</sup> *Id.* at art. 16.

<sup>99</sup> *Id.* at arts. 11-21.

<sup>100</sup> *Id.* at arts. 29, 30.

<sup>101</sup> *Id.* at arts. 33-44.

<sup>102</sup> *Regulations for Protection of Terrestrial Wildlife* art. 33 (LEXIS, HKCHNA library, PRCLEG 679 file).

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at art. 35(2).

port, or export license.<sup>106</sup> Fines may also include the value of the endangered species, or up to ten times that value. If the violation of the Regulations and the WLP constitute a criminal offense, then the offender is dealt with under the relevant provisions of the Criminal Law in addition to being fined accordingly.<sup>107</sup>

In 1993, the SCNPC promulgated the Supplementary Provisions Concerning the Punishment of Crimes of Catching or Killing Precious or Endangered Species of Wildlife under Special State Protection,<sup>108</sup> in an effort to make the WLP more effective. These provisions provided for up to seven years of incarceration in conjunction with applicable fines for the selling, reselling, or smuggling of endangered species under special state protection.<sup>109</sup> The Provisions were repealed in 1997, when the Criminal Law was revised to include heavier sentences for those found guilty of hunting, killing, transporting, and selling rare and endangered species.<sup>110</sup> Chapter six, section six of the Criminal Law now provides for sentences up to and in excess of ten years, as well as the imposition of heavy fines.<sup>111</sup>

More recently, in May 2001, the Ministry of Public Security and the State Bureau of Forestry promulgated the Jurisdiction and Case-Registration Criteria of the Ministry of Public Security and the State Bureau of Forestry on Criminal Cases of Forests and Land Wild Animals.<sup>112</sup> The criteria provided under these regulations empower the forest public security organizations to govern criminal cases regarding forest and land wild animals within their administrative areas as provided for by the Criminal Law.<sup>113</sup> Such criteria apply to a number of cases, including those involving the illegal catching, killing, buying, selling, transporting, or smuggling of precious and rare species of wild

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<sup>106</sup> *Id.* at art. 38.

<sup>107</sup> A person may be criminally prosecuted for a crime of theft, robbery, illegal hunting and killing wildlife, smuggling, speculation, endangering the public order, or damaging the state economy, and punishments for such crimes may range from minimal fines and incarceration periods up to the death penalty. WLP at arts. 31, 33, 35–38 (LEXIS, HKCHNA library, PRCLEG 3658 file); Luo, *supra* n. 10, at art. 130, 82, art. 151, 90–91, art. 167, 98, art. 341, 178; *Jurisdiction and Case-Registration Criteria of the Ministry of Public Security and the State Bureau of Forestry on Criminal Cases of Forests and Land Wild Animals* §§ 5, 8–11 (May 9, 2001) (available at Isinolaw Ref. ID 10376-2002001) [hereinafter *Jurisdiction and Case-Registration Criteria*]; *Regulations for Protection of Terrestrial Wildlife* arts. 33–44 (LEXIS, HKCHNA library, PRCLEG 679 file).

<sup>108</sup> *Supplementary Provisions of the Standing Committee of the National People's Congress Concerning the Punishment of the Crimes of Catching or Killing Precious and Endangered Species of Wildlife under Special State Protection* (Nov. 8, 1988) (available at LEXIS, HKCHNA library, PRCLEG 1196 file) (LEXIS repealed Oct. 1, 1997) [hereinafter *Supplementary Provisions on Endangered Species*].

<sup>109</sup> *Id.*

<sup>110</sup> Luo, *supra* n. 10, at 223–24, app. 1.

<sup>111</sup> *Id.* at art. 341, 178.

<sup>112</sup> *Jurisdiction and Case-Registration Criteria*, Isinolaw Ref. ID 10376-2002001.

<sup>113</sup> *Id.* at § I.



animals and plants and the products thereof.<sup>114</sup> Cases might also be registered for those who have been caught forging, altering, buying, or selling export and import certificates for wild land animals, import certificates of origin, hunting certificates, and special hunting or catching licenses, among other activities.<sup>115</sup> The penalties for smuggling rare and precious species under special state protection have been categorized based on the seriousness of the action in the case registration appendix.<sup>116</sup> Cases of illegally purchasing, transporting, or selling rare and precious species concerning product values of not more than 100,000 yuan RMB, or illegal gains of more than 50,000 yuan RMB, are considered serious cases. Cases concerning product values of more than 200,000 yuan RMB, or illegal gains of more than 100,000 yuan RMB, are considered especially serious cases.<sup>117</sup> The punishments range from incarceration for five to twelve years.<sup>118</sup> In extreme cases involving a species protected under Appendices I and II of CITES and under special state protection, a court may impose the death sentence upon the offender.<sup>119</sup>

In addition to prosecution under the Criminal Law, individuals caught illegally importing or exporting wildlife may also be punished by the Customs Department under the Customs Law.<sup>120</sup>

As compared to the punishments provided for violation of similar laws in the United States, India, the United Kingdom, and Hong Kong, China has imposed a very heavy punishment for violation of the WLP—the death penalty.<sup>121</sup> Nonetheless, evidence and reality both indicate that the illegal trade in endangered species continues in China. Cultural attitudes regarding the consumption of wildlife,<sup>122</sup> combined with lack of scientific data regarding the safe use of biotechnology,<sup>123</sup> lax enforcement of the WLP,<sup>124</sup> and resource problems related to its

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<sup>114</sup> *Id.*

<sup>115</sup> *Id.* at § II(12).

<sup>116</sup> *Id.* at § II(11); Luo, *supra* n. 10, at art. 151, 90–91; *Interpretation of the Supreme People's Court on the Application of Law in the Trial of the Criminal Case of Smuggling* art. 4 (Sept. 20, 2000) (available at Isinolaw Ref. ID JI-0-71-0-2000118).

<sup>117</sup> *Jurisdiction and Case-Registration Criteria* at § II(10–11), Isinolaw Ref. ID 10376-2002001.

<sup>118</sup> Luo, *supra* n. 10, at art. 151, 90–91, art. 130, 82, art. 225, 130, art. 178, 103–04, art. 341, 178.

<sup>119</sup> *Id.* at art. 151, 90–91.

<sup>120</sup> WLP at art. 36 (LEXIS, HKCHNA library, PRCLEG 3658 file).

<sup>121</sup> *Supra* nn. 107–108 and accompanying text.

<sup>122</sup> *Supra* pt. II.; see e.g. Dorgan, *supra* n. 14, at <http://www.savechinastigers.org/t-news/china-critics.htm> (reciting the view that, “[i]f you live next to the mountain, you eat the mountain . . . . If you live next to the river, you eat the river. . . . We are dependant on the animals.”).

<sup>123</sup> *China Vows to Control Loss of Biodiversity*, People's Daily Online (May 22, 2002), [http://english.peopledaily.com.cn/200205/22/eng20020522\\_96197.shtml](http://english.peopledaily.com.cn/200205/22/eng20020522_96197.shtml) (noting that “some foreign companies could take advantage of loopholes in Chinese law to bring transgenic products into the country, making it ‘a laboratory for transgenic products’”).

<sup>124</sup> Christopher Bodeen, *SARS Fears Prompt China to Ban Wildlife Cuisine*, <http://www.canoe.ca/CNEWS/World/2003/05/31/100417-ap.html> (May 31, 2003) (noting that

implementation<sup>125</sup> are exasperating the plight of China's endangered species. The ravaging of China's biodiversity only serves to seriously impede China's plan to conserve and protect its biological resources under China's Agenda 21<sup>126</sup> and under its international obligations.<sup>127</sup>

#### IV. INTERNATIONAL OBLIGATIONS AND ADMINISTRATIVE MEASURES

China ratified CITES in 1981 and the Convention on Biological Diversity (CBD) in 1993.<sup>128</sup> Since then, in addition to the WLP, the Chinese government has promulgated various laws and regulations for the protection of endangered species, such as Regulations Concerning Nature Reserves, China Biodiversity Conservation Action Plan, Regu-

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many of the animals on menus in Chinese restaurants are "listed by China as endangered species, meaning it should be illegal to catch them, but enforcement is lax"); Dorgan, *supra* n. 14, at <http://www.savechinastigers.org/t-news/china-critics.htm> (one official of the Environmental Investigation Agency noted that enforcement of laws protecting tigers had "slackened in the past few years despite seizures of exotic animal parts in several provinces").

<sup>125</sup> CITES Secretariat, *Eleventh Meeting of the Conference of the Parties Gigiri (Kenya): Conservation of and Trade in Tigers*, Doc. 11.30 (Rev. 1) at 15 (April 10–20, 2000). "China has, potentially, large numbers of enforcement staff. . . . It appears, though, that the level of training, equipment and specialization of such personnel is still well below that available in some more developed countries and China acknowledges that it faces problems due to the huge size of its country, its massive human population and the fact that its economy is still in transition." *Id.*

<sup>126</sup> See U.N. Dept. Econ. & Soc. Affairs, *Implementation of the Convention on Biological Diversity: Report of the Executive Secretary*, [http://www.johannesburgsummit.org/html/documents/backgrounddocs/cbd\\_report.pdf](http://www.johannesburgsummit.org/html/documents/backgrounddocs/cbd_report.pdf) (Feb. 8, 2002) (for a general summation of Agenda 21); see also *China's Agenda 21*, <http://www.acca21.org.cn/english/> (accessed Feb. 15, 2005) (for various materials detailing China's Agenda 21 program, including information on strategy).

<sup>127</sup> *Id.*; see also State Env'tl. Protec. Administration, *China and the Convention on Biological Diversity*, [http://www.sepa.gov.cn/english/biodiv/state\\_con\\_en/china\\_convention\\_en](http://www.sepa.gov.cn/english/biodiv/state_con_en/china_convention_en) (accessed Feb. 15, 2005) (detailing implementation of the Convention on Biological Diversity (CBD) in China). China's Coordinating Group for the Implementation of the CBD, headed by the State Environmental Protection Agency, was set up with the approval of the State Council. *Id.*

<sup>128</sup> See CITES Secretariat, *List of Contracting Parties*, <http://www.cites.org/eng/disc/parties/alphabet.shtml> (accessed Feb. 15, 2005) (listing CITES member countries and the dates each joined). See also Wang Sung et al., *Developing and Implementing National Biodiversity Strategy and Action Plan: Lessons from China, Part III*, <http://us.tom.com/english/planning/1858.htm> (accessed Feb. 15, 2005) (naming China as one of the first six contracting countries to the CBD). China is also party to the following seven Conventions with respect to Biodiversity: Convention Concerning the Protection of the World Cultural and Natural Heritage, Convention on the Wetlands of International Importance Especially as Waterfowl Habitat, International Convention for Regulation of Whaling, International Agreement about Tropical Timber, UN Convention to Combat Desertification, Agreement on the Conservation of Migratory Birds and Its Habitat between the PRC and Japan, and the Agreement on the Conservation of Migratory Birds and Its Habitat between the PRC and Australia. State Env'tl. Protec. Administration, *International Conventions and Agreements Related to Biodiversity that China Participates in*, [http://www.sepa.gov.cn/english/biodiv/inter\\_law\\_en/inter\\_law\\_en.htm](http://www.sepa.gov.cn/english/biodiv/inter_law_en/inter_law_en.htm) (accessed Feb. 15, 2005).

lation Concerning Protection of Terrestrial Wild Animals, and the Regulation Concerning Protection and Management of Wild Medicinal Resources, among others.<sup>129</sup> The WLP and the Implementing Regulations of the PRC on the Protection of Terrestrial Wildlife stipulate that, if any international treaty concerning the protection of wildlife contains provisions different than those of the WLP, the provisions of the international convention shall take precedence over the WLP, unless the provisions are ones to which the PRC has stated reservations.<sup>130</sup>

In accordance with the UN Convention on Biodiversity, management offices and nature reserves have been established and scientific committees have been set up to assess and regulate the importing and exporting of endangered species and plants.<sup>131</sup> These offices and committees, including research institutions, protection centers, and breeding farms, have been established throughout China, directly impacting species such as the Northeast Tiger and the Chinese Elk, as well as a variety of birds and dolphins.<sup>132</sup> The management authority has, in past years, monitored and developed a "comprehensive national legislative framework on effective implementation of CITES."<sup>133</sup>

In a recent initiative, the Regulations on Import and Export of Wild Fauna and Flora of the People's Republic of China have been drafted and submitted to the State Council for review.<sup>134</sup> In 2000, a new Division of Law Enforcement and Training was officially established in the Headquarters of the Management Authority in Beijing, focusing on law enforcement, coordination, and training to enforce CITES.<sup>135</sup> The Management Authority also works in close cooperation with other Management Authorities in Hong Kong, Indonesia, Thailand, and the with the CITES Secretariat.<sup>136</sup> Since 2000, the Manage-

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<sup>129</sup> State Env'tl. Protec. Administration of China, *China's National Report on Implementation of the Convention on Biological Diversity*, "Executive Summary" § 4 (1998) (available at <http://www.sepa.gov.cn/english/chanel-7/detail-7.php3?chanel=7&column=62&id=91>).

<sup>130</sup> WLP at art. 24 (available at LEXIS, HKCHNA library, PRCLEG 3658 file) (LEXIS current through Oct. 14, 2004).

<sup>131</sup> U.N. Dept. of Econ. & Soc. Affairs Div. for Sustainable Dev., *Natural Resource of Sustainable Development in China*, "Biodiversity," "Decision-Making Strategies, Policies and Plans," <http://www.un.org/esa/agenda21/natinfo/countr/china/natur.htm> (accessed Mar. 8, 2005). "Management institutions for wild animals and plants, as well as the nature reserves, have been established in 25 provinces, autonomous regions, and municipalities directly under the central Government." *Id.*

<sup>132</sup> *Id.* "In Sichuan, Junan, Guangdong, and Guangxi Provinces, 19 protection and breeding centres have been established for endangered wild animals and plants. . . . Across China, there are over 300 artificial breeding farms for wild animals and plants, one national bird centre, fifty bird stations, and five white-flag dolphin protection stations." *Id.*

<sup>133</sup> *Forty-fifth Meeting of the Standing Committee Paris (France): Regional Report on Implementation of CITES for Asia after COP11 at 2*, Doc. 15.2 (June 22, 2001).

<sup>134</sup> *Id.*

<sup>135</sup> *Id.* at 2.

<sup>136</sup> *Id.* at 3.

ment Authority has adopted the redesigned CITES permit format.<sup>137</sup> This format has advanced anti-counterfeit technology for permit issuance for the export and import of endangered species.<sup>138</sup> This new and improved system for the issuance of a permit has been adopted by the Chinese government in an attempt to effectively implement the law and to control the trade in endangered species.<sup>139</sup>

In September and November of 2000, the Supreme People's Court issued an explanation entitled Explanations on Some Questions Concerning the Concrete Applied Laws on Judging the Criminal Cases Involving Smuggling and Destroying Wild Animal Resources.<sup>140</sup> The explanations provide stipulations on punishment standards for illegal hunting, killing, transporting, selling, purchasing, and smuggling of endangered species.<sup>141</sup> Recently, the State Forestry Administration, in collaboration with the Customs, Public Security, Industry, and Commerce Departments, launched a joint operation in an onslaught against the illegal wildlife trade.<sup>142</sup> Many instances of wildlife crime were detected and investigated, and in a considerable number of cases wildlife and wildlife products were seized and confiscated.<sup>143</sup> In 2001, the State Forestry Administration, the Ministry of Customs, and the Ministry of Public Security jointly issued a circular entitled Making Further Efforts for Banning Trade in Tiger Bones that directed all provinces, autonomous regions, and municipalities to take effective measures to severely curb illegal activities involving the smuggling and selling of genuine or counterfeit tiger bones.<sup>144</sup>

The government has made efforts to enhance public awareness of endangered species by utilizing news agencies and other forms of publicity.<sup>145</sup> The goal of these programs is to promote public awareness and understanding of the ban on the use of particular endangered spe-

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Forty-fifth Meeting of the Standing Committee Paris (France): Regional Report on Implementation of CITES for Asia after COP11, supra* n. 133, at 3.

<sup>140</sup> *Id.* at 1.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.* at 2.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> Ministry of Forestry, *Notice of the Ministry of Forestry, the Ministry of Public Security, the Supreme People's Court and the Supreme People's Procuratorate on the Stern Crackdown of Illegal Activities of Sabotaging Forest Reserves* § 5 (Sept. 12, 1994) (available at Isinolaw Ref. ID JI-0-67-0-19942226) (stating "[i]t is required to carry out extensive propaganda. . . mobilizing the power of every field of society . . .") [hereinafter *Notice on the Stern Crackdown of Illegal Activities*]. See e.g. World Wide Fund for Nature, *Hundreds of Birds Fly Free on China's Bird Loving Week*, <http://www.wwfchina.org/english/loca.php?loca=164> (Apr. 1, 2002) (discussing the designation of special days or weeks such as "Bird Loving Week," enacted in individual provinces to encourage the protection of wild birds); A. Charisse Espy, *Tiger Trade from India*, 5 Trade Env. Database Case Studies 253, § A(2) (Jan. 1996), <http://american.edu/TED/tigerind.htm> (noting that such means have been used to protect tigers).

cies.<sup>146</sup> In addition, inspections, investigations, and prosecutions have been undertaken to eliminate the illegal trade in endangered species. In 1993, more than thirty-three thousand free markets, stores, and enterprises were inspected by over forty thousand persons and state officials.<sup>147</sup> Approximately eighteen thousand cases of illegal trading activity were investigated, and over twenty-five thousand criminals were prosecuted.<sup>148</sup> In January 1994, over fifty kilograms of genuine and fake tiger bone and rhinoceros horn and over one hundred kilograms of other endangered species products were confiscated in an onslaught against a smuggling operation.<sup>149</sup> In Heilongjiang Province, two tiger bone smuggling cases were uncovered in which authorities confiscated eight tiger skeletons and arrested eleven criminals.<sup>150</sup> Heilongjiang Province has instituted severe punishments for violating the WLP, particularly for anyone found dealing in tiger products without a license. The fines extend from US \$25,000 for the first conviction up to US \$50,000 and a six-month incarceration for subsequent convictions.<sup>151</sup>

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<sup>146</sup> *Regulations for the Protection of Terrestrial Wildlife* art. 6 (Mar. 1, 1992) (available at LEXIS, HKCHNA library, PRCLEG 679 file) (LEXIS current through Dec. 15, 2003) (requiring that local governments at or above the county level develop public education for the protection of wildlife and suggesting that they may proclaim certain times as “Month for Protection of Wildlife” . . . etc., in order to enhance the public consciousness of the protection of wildlife.”). See also U.N. Dept. on Econ. & Soc. Affairs: Div. for Sustainable Dev., *Natural Resource of Sustainable Development*, “Biodiversity,” “Capacity-building, Education, Training and Awareness-raising,” <http://www.un.org/esa/agenda21/natlinfo/countr/china/natur.htm> (accessed Mar. 8, 2005) (noting that China has “popularised the scientific knowledge of wild flora and fauna through various media and activities such as Bird-Loving Week, Biodiversity Day, Publicity Month for the Protection of Wild Animals, public lectures, exhibits . . . quiz games, composition contests, and summer camp activities about wild animal and plants for primary and middle school students”).

<sup>147</sup> Fu Jing, *New Campaign Hunts Down Illegal Wildlife Traders*, China Daily News (Apr. 29, 2003) (available at [http://www.chinadaily.com.cn/en/doc/2003-04/29/content\\_163583.htm](http://www.chinadaily.com.cn/en/doc/2003-04/29/content_163583.htm)).

<sup>148</sup> Espy, *supra* n. 145.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.* The fine of up to US \$50,000 seems comparable to that in Hong Kong for violation of the APO for commercial purposes. This fine applies to trade in endangered species listed under Appendix I of the WLP and for those in which trade is absolutely prohibited (e.g., tigers and rhinoceros). See APO § 13(A) (Aug. 6, 1976), Bilingual Laws Information System (database of the Dept. of Justice of the Hong Kong Special Administrative Region), <http://www.legislation.gov.hk/eng/home.htm>; find Go to chapter row, enter 187, select Chapter 187 ANIMALS AND PLANTS (PROTECTION OF ENDANGERED SPECIES) ORDINANCE, select CAP 187 ANIMALS AND PLANTS (PROTECTION OF ENDANGERED SPECIES) ORDINANCE (current through Mar. 28, 2005) (providing, for commercial purpose violations, maximum fines of \$500,000 for scheduled species that are not considered “highly endangered” and \$5 million for those that are considered “highly endangered”).

In 2001, legislators in the Guangdong Province in southern China implemented regulations for the protection of endangered species.<sup>152</sup> These regulations impose a fine of up to 10,000 yuan RMB (\$1,200) on anyone convicted of having knowingly consumed the meat of any state protected endangered species.<sup>153</sup> In addition to placing restrictions on diners, these regulations set clear rules against the hunting, breeding, killing, and use of any animal parts for medicinal purposes.<sup>154</sup> Further, a fine of up to 100,000 yuan RMB (\$12,048) may be imposed on persons who illegally hunt, process, purchase, or slaughter such protected animals.<sup>155</sup>

In support of an international ban on tiger trade and products, the Chinese government in 1994 resolved to carry out specific regulations following the Thirtieth Standing Committee meeting of CITES.<sup>156</sup> These regulations stipulated strengthening the existing measures and provided for improved control and supervision of tiger populations.<sup>157</sup> A number of officials were recruited into the Administrative Office of Import and Export of Endangered Species Department and its branch offices.<sup>158</sup>

Although the legislative provisions and the administrative efforts by the government at the national and local level may seem impressive, the Eleventh Conference of the Contracting Parties (COP) Reports to CITES by China admits that, despite the ban on trade in tiger parts and derivatives since 1993, there have been significant seizures involving endangered species within various parts of China, indicating

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<sup>152</sup> China Internet Info. Ctr., *Harsh Penalties Imposed on Wildlife Eaters*, <http://www.china.org.cn/english/2001/Jun/14048.htm> (June 4, 2001).

<sup>153</sup> *Id.*

<sup>154</sup> *China Has 1,270 Nature Reserves*, People's Daily Online (Apr. 4, 2001), [http://english.peopledaily.com.cn/english/200104/03/eng20010403\\_66694.html](http://english.peopledaily.com.cn/english/200104/03/eng20010403_66694.html).

<sup>155</sup> *Chinese Cooks Swear to Spare Wildlife*, People's Daily Online (Jan 30, 2002), [http://english.peopledaily.com.cn/200201/30/eng20020130\\_89627.shtml](http://english.peopledaily.com.cn/200201/30/eng20020130_89627.shtml).

<sup>156</sup> *Thirtieth Meeting of the Standing Committee Brussels (Belgium)*, SC30 Summary Rpt. 13 (Sept. 6–8, 1993) (available at <http://www.cites.org/eng/com/SC/30/E30-SumRep.pdf>) (Chinese observer reporting to the Standing Committee regarding several measures taken by the Chinese government for rhinoceros and tiger conservation, and noting that “any wildlife trade sanctions imposed on the country would be a heavy blow to the determination of China to conserve endangered species . . .”). The Standing Committee Decisions reported “with some concern that the measures taken by the People's Republic of China . . . are not adequate to sufficiently control illegal trade in rhinoceros horn and tiger specimens and failed to comply with measures outlined in Resolution Conf. 6.10.” *Id.* at 28. *Notice on the Stern Crackdown of Illegal Activities*, Isinolaw Ref. ID JI-0-67-0-19942226; Espy, *supra* n. 145, at § A(2).

<sup>157</sup> *Notice on the Stern Crackdown of Illegal Activities*, Isinolaw Ref. ID JI-0-67-0-19942226; Espy, *supra* n. 145, at § A(2). Some of the measures taken prior to the 1993 Standing Committee meeting included a ban on trade in rhinoceros horn and tiger bone, further investigations of enforcement and implementation of existing laws, research for substitutes in medicines, and improvement of anti-poaching and anti-smuggling measures. *Thirtieth Meeting of the Standing Committee Brussels (Belgium)*, *supra* n. 156, at 13.

<sup>158</sup> Espy, *supra* n. 145, at § A(2). Furthermore, Establishment Criteria for the Criminal Cases Concerning Terrestrial Wildlife were implemented in 1994. *Id.*

that enforcement problems and strong demand still exist.<sup>159</sup> In a progress report on the trade in tiger bones it was stressed that:

Constraints of economic, cultural and scientific nature still exist in China and the century-long utilization of wild fauna and flora in Chinese medicine is a typical example. In this connection protection of wildlife species is a long-term arduous task for the Chinese people, with many difficulties and problems waiting to be dealt with.<sup>160</sup>

In 2002 and 2003 the Severe Acute Respiratory Syndrome ("SARS"), a flu-like, near fatal disease, struck China, Hong Kong, and the rest of the world.<sup>161</sup> In its wake it left approximately 774 people dead in seven countries, including 300 people dead in China.<sup>162</sup> This event, though tragic, was an eye-opener for the governments and the people of China, Hong Kong, and the whole world. Many suspected that it was spread by an animal viral infection that initially spread through contact with, or the consumption of, wildlife.<sup>163</sup> One of the most likely carriers of the disease was determined to be the masked palm civet cat.<sup>164</sup>

The civet cat, among other rare wild animals, has been consumed as a delicacy in China, especially in the Guangdong Province in southern China.<sup>165</sup> Investigations into the cause of SARS showed that the disease spread through the SARS virus most probably jumped from exotic wild animal food products to humans.<sup>166</sup> The investigation uncovered and highlighted some very interesting facts about the illegal trade of endangered species in China, and the government crackdown on traders and restaurant owners illegally selling endangered species in the southern provinces of China. As many as 800,000 animals were confiscated from markets by Chinese officials in early 2003 and almost 4,000 people were arrested for selling protected species.<sup>167</sup> Consequently, the government ordered the closure of many wildlife markets in Guangdong, exterminated thousands of masked palm civets and

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<sup>159</sup> CITES Secretariat, *Eleventh Meeting of the Conference of the Parties Gigiri (Kenya), Conservation of and Trade in Tigers*, Doc. 11.30 (Rev. 1) at 15 (Apr. 10–20, 2000). "[T]he Chinese delegation to a recent meeting of the Interpol Working Group on Wildlife Crime reported that a major enforcement action, conducted throughout many parts of the country in January 2000, had resulted in three thousand cases being detected involving over two thousand endangered species. 28,000 kg of wildlife products, 1,652 animal skins and 42 firearms were seized." *Id.*

<sup>160</sup> Espy, *supra* n. 145, at § A(2).

<sup>161</sup> Critical Ecosystem Partn. Fund, *supra* n. 17. See World Health Org., *Severe Acute Respiratory Syndrome (SARS)*, <http://www.who.int/csr/sars/en> (accessed Feb. 17, 2005) (providing information and news archives).

<sup>162</sup> Critical Ecosystem Partn. Fund, *supra* n. 17.

<sup>163</sup> *Id.*; Associated Press, *WHO: More Evidence of Civet Cat-SARs Link*, <http://www.cnn.com/2004/HEALTH/01/16/china.sars.ap> (Jan. 16, 2004).

<sup>164</sup> Critical Ecosystem Partn. Fund, *supra* n. 17.

<sup>165</sup> Associated Press, *supra* n. 163, at <http://www.cnn.com/2004/HEALTH/01/16/china.sars.ap>.

<sup>166</sup> *Id.*

<sup>167</sup> Critical Ecosystem Partn. Fund, *supra* n. 17.

other animals on sale, and prohibited people from consuming wildlife.<sup>168</sup> This led to the development of health concerns and care programs administered in conjunction with a number of international agencies, including projects to combat the illegal wildlife trade involving TRAFFIC International, WWF China, the IUCN Veterinary Specialist Group, World Health Organization (WHO), and the State Forestry Administration.<sup>169</sup>

Such projects and programs have been drafted to take action in identifying and strengthening China's existing wildlife protection laws, to build a constituency of consumers for the sustainable use of wildlife, and to contain the illegal trade of wildlife in China. However, as Craig Kirkpatrick, the director of TRAFFIC East Asia, has pointed out, despite laws and regulatory policies, the emphasis should be on "raising the importance of the concept of sustainable use in decisions about wildlife consumption," since the use of wildlife has deep cultural roots in China.<sup>170</sup>

The use of wild animals and plants in medicine is a centuries-old tradition—a culturally embedded practice in China.<sup>171</sup> To expect the Chinese people to change the cultural and traditional methods employed in treating their health problems seems to undermine and ignore their culture. Many patented Chinese medicine products contain derivatives that can be extremely difficult to detect.<sup>172</sup> Fake parts of various species are also being increasingly sold because of the strict bans imposed on tiger, rhino, and elephant parts.<sup>173</sup> Fake tiger parts are so skillfully crafted that it oftentimes takes a laboratory test to distinguish them from the original.<sup>174</sup> Such derivatives and counterfeit products have provoked the killing and the international trade in

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<sup>168</sup> Xinhua News Agency, *Guangzhou Deals Heavy Blow to Wildlife Trade*, <http://china.org.cn/english/2003/May/65643.htm> (May 28, 2003). On July 11, 2003, the Beijing Forestry Bureau also banned the eating of wildlife within Beijing in response to scientific proof that linked the consumption of wildlife with SARS. The municipal order banned serving and eating 1,800 species of wildlife, such as civet cats, snakes, and pangolins, in restaurants and street kiosks. Intl. Fund for Animal Welfare, *IFAW Applauds Beijing's Ban of Wildlife from Menu*, <http://www.ifaw.org/ifaw/general/default.aspx?oid=13312> (July 21, 2003).

<sup>169</sup> Critical Ecosystem Partn. Fund, *supra* n. 17.

<sup>170</sup> *Id.*; see also Sabri Zane, *SARS Spurs China into Action . . . But Concerns Remain*, 19 TRAFFIC Bull. 109, 122 (2003) (available at [http://www.traffic.org/final\\_bulletin.pdf](http://www.traffic.org/final_bulletin.pdf)) (noting that, despite a reported seizure by the Chinese Government of 930,000 animals or animal parts in response to the SARS epidemic, "the sheer scale of items seized . . . this year would suggest that much of the trade is currently illegal or unsustainable. Also, "in light of the SARS scare, there may also be an increase in the number of consumers of . . . traditional medicines," which may negatively impact medicinal plant conservation.).

<sup>171</sup> Andrea L. Gaski & Kurt A. Johnson, *Prescription for Extinction: Endangered Species and Patented Oriental Medicines in Trade* ix (World Wildlife Fund May 1994).

<sup>172</sup> *Id.* at xi.

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*; Dorgan, *supra* n. 14, at <http://www.savechinastigers.org/t-news/china-critics.htm>.



endangered species by fueling the market, pushing more species towards the brink of extinction.<sup>175</sup>

Major seizures of endangered species products have occurred in China.<sup>176</sup> Legal measures will not prove effective, and illegal hunting and trade will continue throughout the PRC, Asia, and the world, unless alternative sources for these valuable medicines can be developed.<sup>177</sup> There are too many reports of the availability of endangered species being consumed for taste, perceived need, and luxury, despite strict national and local bans on such practices. Consumer countries must develop and adopt educational programs and other strategies to eliminate the demand for such derivatives of endangered species.

## V. JUDICIAL DECISIONS

### A. *Judicial Decisions in the PRC*

Before the WLP came into force in 1987, the courts would punish offenders dealing with endangered species and their products either under the Criminal Law or on the grounds that their activities were calculated to put the economy in peril.<sup>178</sup> A brief review of the available cases indicates that wildlife trafficking, hunting, and smuggling is being dealt with very seriously by the courts. Nonetheless, despite the extreme punishment meted out to offenders, including threats of imprisonment, deprivation of political rights, and imposition of heavy fines, the instances of illegal trade in the PRC are still staggering and alarming. The punishments accorded to offenders in the following cases provide a conflicting view and can best be understood through the explanation that such cases are few and far between when compared to the evidence of frequent violations as reported by State Authorities and other local and international agencies.

In the 1987 case of *Chen Yonglin and Chen Zupei*,<sup>179</sup> the defendants, Yonglin and Zupai, were arrested for smuggling a panda skin out

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<sup>175</sup> Gaski & Johnson, *supra* n. 171, at xi; Dorgan, *supra* n. 14, at <http://www.savechinastigers.org/t-news/china-critics.htm>. Some experts argue that "China's failure to crack down on the sale of fake body parts reflects the government's lack of interest in protecting endangered species, and leaves in place a marketing network through which real parts also can be sold." *Id.*

<sup>176</sup> CITES Secretariat, *supra* n. 159 (describing the results of enforcement actions in a one month span).

<sup>177</sup> World Wildlife Fund, *It's the Law! Ancient Traditions . . . New Alternatives: Endangered Species Do Not Belong in Traditional Chinese Medicine* 3 (World Wildlife Fund, Inc. 2003) (available at <http://www.worldwildlife.org/trade/pubs/tcmbrochure.pdf>).

<sup>178</sup> See e.g. *Decision of the Standing Committee of the National People's Congress Regarding the Severe Punishment of Criminals Who Seriously Sabotage the Economy* (Mar. 8, 1982) (available at LEXIS, HKCHNA library, PRCLEG 33 file) (LEXIS current through Dec. 15, 2003) [hereinafter *Decision of the Standing Committee Regarding Punishment of Criminals*] (providing penalties for smuggling, speculation, and other crimes for which dealers of endangered species could be prosecuted under the criminal law).

<sup>179</sup> *Chen Yonglin and Chen Zupei* (Guangzhou Middle Ct. Nov. 25, 1987) (Luo Qing trans., on file with *Animal Law*).

of China without a license. The defendants knew that it was forbidden to smuggle panda skins out of China.<sup>180</sup> The Guangzhou Middle Court sentenced them to long-term imprisonment, twelve and ten years respectively, and deprived them of their political rights for four and three years respectively.<sup>181</sup> The authorities also confiscated the vessel that was carrying the panda skin.<sup>182</sup> The court stated that the defendants had caused serious damage to the social order through their actions.<sup>183</sup>

In a 1992 case, *Jing Guolong and Others*, the first defendant, an illegal trader, was sentenced to death by the Sichuan Mianyang City Intermediate Court for, among other crimes, illegally hunting and killing a panda.<sup>184</sup> He was also sentenced for speculation and was deprived of his political rights for life.<sup>185</sup> Of the three other defendants, one was sentenced to thirteen years imprisonment and the others received suspended sentences of two and three years respectively.<sup>186</sup> Upon review of the case, the highest court upheld the sentences meted out by the middle court.<sup>187</sup>

The fourteen defendants in *Bu Luxiao and Others* were prosecuted for illegal hunting and repeated speculation and smuggling of rare and endangered animals in Xishuangbanna Wildlife Natural Reserve.<sup>188</sup> The defendants were caught smuggling thirteen Asian elephants and a wild buffalo and had illegally bought and sold two pairs of ivory tusks. All of the defendants were prosecuted under the Decision of the Standing Committee of the National People's Congress Regarding the Severe Punishment of Criminals Who Seriously Sabotage

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<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*; see Luo, *supra* n. 10, at art. 151, 90–91 (authorizing confiscation of goods smuggled into China in violation of the Criminal Law).

<sup>183</sup> *Chen Yonglin and Chen Zupei* (Guangzhou Middle Ct. Nov. 25, 1987) (Luo Qing trans., on file with *Animal Law*); see *Decision of the Standing Committee Regarding Punishment of Criminals* § I(1) (LEXIS, HKCHNA library, PRCLEG 33 file) (increasing penalties for certain violations of the criminal law, including smuggling, when the circumstances are “especially serious,” to include a fixed-term prison sentence not less than ten years, life imprisonment, or death).

<sup>184</sup> *Jing Guolong and Others* (Intermediate Ct. of Mianyang City, Sichuan Province Mar. 11, 1992), *death sentence upheld* (Highest People's Ct. 1993) (Luo Qing trans., on file with *Animal Law*). The case involved four defendants, Jing Guolong, Gao Mingbao, Jing Xingbing and Ren Wanyou. All four were prosecuted under articles 118, 22, 23, 53(1), 60, 67, and 42 of the Criminal Law of the PRC and article 1(1) of the Decision of the Standing Committee of the National People's Congress Regarding the Severe Punishment of Criminals Who Seriously Sabotage the Economy. *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> *Bu Luxiao and Others* (Middle Ct. of Yunan Province, Xishuangbanna Autonomous Prefecture Aug. 18, 1995), *decision issued on appeal* (High Ct. of Yunan Province Sept. 21, 1995), *death sentences reviewed* (Highest People's Ct. Nov. 1, 1995) (Luo Qing trans., on file with *Animal Law*).

the Economy,<sup>189</sup> the Supplementary Provisions of the Standing Committee of the National People's Congress Concerning the Punishment of the Crimes of Catching or Killing Precious and Endangered Species of Wildlife Under Special State Protection,<sup>190</sup> and the Criminal Law.<sup>191</sup>

The Middle Court of Yunnan Province, in one of the most severe decisions dealing with illegal traffickers, sentenced Bu Luxiao to death for smuggling rare wildlife, products derived from endangered species, and for speculation.<sup>192</sup> Additionally, he was sentenced to seven years for hunting endangered species, and was deprived of his political rights for the remainder of his life. Of the thirteen other defendants, one other, Lu Buxian, was sentenced to death.<sup>193</sup> Two defendants received life imprisonment, three received thirteen year sentences, and the rest received one to eight years in prison.<sup>194</sup> The court also confiscated the illicit property and the illegally gained money. All but two of the defendants appealed to the High Court of the Yunan Province.<sup>195</sup> In its review, the court noted the seriousness of the defendants' offenses and the fact that they had previously engaged in such criminal activity. The court further noted that Bu Luxiao was a security guard and had engaged in eight previous counts of illegal hunting, killing ten Asian elephants.<sup>196</sup> The court decided that his activities constituted serious crimes requiring severe punishment. Thus, the High Court dismissed the appeal and affirmed the original judgment. In a review decision by the Highest People's Court the death sentences were upheld.<sup>197</sup>

The death sentence in *Bu Luxiao*, as in the other cases mentioned above, is unprecedented in China and in the rest of the world as a punishment for criminals participating in the illegal trade in endangered species. If these instances of the highest form of punishment do not deter those involved in the illegal trade in endangered species, and send a chill down the spines of others in surrounding areas, these sentences will have been rendered in vain. This would be the last straw, signifying a wasted sacrifice of human life as well as the loss of an endangered species.

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<sup>189</sup> *Decision of the Standing Committee Regarding Punishment of Criminals* (LEXIS, HKCHNA library, PRCLEG 33 file).

<sup>190</sup> *Supplementary Provisions on Endangered Species* (Nov. 8, 1988) (available at LEXIS, HKCHNA library, PRCLEG 1196 file) (LEXIS repealed Oct. 1, 1997).

<sup>191</sup> Luo, *supra* n. 10, at arts. 151-57, 90-94 (regarding crimes of smuggling).

<sup>192</sup> *Bu Luxiao and Others* (Middle Ct. of Yunan Province, Xishuangbanna Autonomous Prefecture Aug. 18, 1995), *decision issued on appeal* (High Ct. of Yunan Province Sept. 21, 1995), *death sentences reviewed* (Highest People's Ct. Nov. 1, 1995) (Luo Qing trans., on file with *Animal Law*).

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

The level of punishment meted out to offenders of the WLP and related regulations seems to be high in China, but, as in other countries, there are only a few such cases that actually reach the courts. Furthermore, higher courts have been known to reduce the offenders' sentences, to exempt them from punishment, or to let them off the hook due to a lack of evidence.

For example, in *Tang and Others*, the People's Court of Shanghai, Changning District, sentenced five offenders who bought butterflies and sold them to a U.S. company by mail.<sup>198</sup> All of the defendants were charged under Articles 22(1), 24(1), 35(2), 36, and 40 of the WLP,<sup>199</sup> Articles 59(2), 64, 67(1), and 117 of the Criminal Law,<sup>200</sup> the Supplementary Provisions of the Standing Committee of the National People's Congress Concerning the Punishment of the Crimes of Catching or Killing Precious and Endangered Species of Wildlife under Special State Protection,<sup>201</sup> and Article 2(2) of the Decision of the Standing Committee of the National People's Congress Regarding the Severe Punishment of Criminals Who Seriously Sabotage the Economy.<sup>202</sup> Tang was sentenced to five years imprisonment and imposed fines of one thousand yuan RMB for smuggling and speculation.<sup>203</sup> Two defendants were sentenced to two years imprisonment for speculation, and two others to one year imprisonment (which was suspended for one year). On appeal, the Intermediate Court reduced Tang's sentence from five years to one year and six months, reduced defendant Longxing's prison sentence by six months, exempted defendant Xiaoyu from punishment, and found not guilty the two remaining defendants.<sup>204</sup>

Recently, however, the courts have again been handing out strict punishments. For example, a strict sentence was imposed on defend-

<sup>198</sup> *Tang and Others* (People's Ct. of Shanghai, Changning Province May 31, 1995), sentences modified upon appeal (Intermediate Ct. of Shanghai 1996) (Luo Qing trans., on file with *Animal Law*).

<sup>199</sup> WLP arts. 22, 24, 35, 36, 40 (available at LEXIS, HKCHNA library, PRCLEG 3658 file) (LEXIS current through Oct. 14, 2004).

<sup>200</sup> Luo, *supra* n. 10, at art. 59, 53–54, art. 64, 55–56, art. 67, 56–57, art. 117, 78.

<sup>201</sup> *Supplementary Provisions on Endangered Species* (LEXIS, HKCHNA library, PRCLEG 1196 file).

<sup>202</sup> *Decision of the Standing Committee Regarding the Punishment of Criminals* (LEXIS, HKCHNA library, PRCLEG 33 file).

<sup>203</sup> *Tang and Others* (People's Ct. of Shanghai, Changning Province May 31, 1995), sentences modified upon appeal (Intermediate Ct. of Shanghai 1996) (Luo Qing trans., on file with *Animal Law*).

<sup>204</sup> *Id.* Between 1998 and 2000, the enforcement authorities uncovered many smuggling rings and dealt with 5,080 cases involving endangered species. Yuge & Huang Hongzhang, *Serious Circumstances on Smuggling of Wildlife*, 4 Dadi (Great Land) (Luo Qing & Wnag Nan trans., 2000) (copy on file with *Animal Law*). The police dealt with at least 666 cases of illegal hunting and killing of wildlife species, 1,020 cases of illicit hunting, 2,434 cases of buying and selling wildlife products, and 103 cases involving the smuggling of wildlife. *Id.* Approximately 520,000 wild animals were captured and confiscated. *Id.*

ants in a 2002 case before the Haikou Court of the Hainan Province.<sup>205</sup> Two residents of the Guangdong Province were sentenced to life imprisonment after being convicted for the illegal trafficking of 566 monitor lizards, 259 pythons, 5 pangolins, and 7,563 snakes from Thailand into the Hainan port in Sanya.<sup>206</sup> In 2004, the Intermediate Court at Lhasa, Tibet sentenced two people to death and another to life imprisonment for smuggling the skins of 31 tigers, 581 leopards, and 778 otter skins.<sup>207</sup> In 2003, the deputy-director of the Endangered Species Import and Export Management Office, Chen Jianwei, reiterated that “[a]ny case regarding illegal purchase, transport, sale or trafficking of a piece of ivory or 6kg of ivory handcrafts would be dealt with as a deadly serious case to be sentenced to over ten years or a life-long imprisonment or even a death penalty.”<sup>208</sup>

### B. Legislative Measures and Judicial Decisions in Hong Kong<sup>209</sup>

As far back as 1976, Hong Kong began making serious efforts to combat both legal and illegal trade in endangered species. It was in that year that the APO was passed to control the trade in endangered species and to provide for fines and penalties for violations.<sup>210</sup> The APO empowers the Agricultural, Fisheries and Conservation Department (AFCD) to seize and prosecute illegal traders.<sup>211</sup> The Legislative Council has amended the APO to combat the increased level of illegal trade.<sup>212</sup> It currently provides for high fines and imprisonment of up to two years for commercial trading in highly endangered species.<sup>213</sup> This

<sup>205</sup> Xinhua News Agency, *Wild Animal Smugglers Sentenced to Life Imprisonment*, [http://news.xinhuanet.com/english/2002-10/26/content\\_609393.htm](http://news.xinhuanet.com/english/2002-10/26/content_609393.htm) (Oct. 26, 2002).

<sup>206</sup> *Id.*

<sup>207</sup> TRAFFIC Intl., *Seizures and Prosecutions*, 20 TRAFFIC Bull. 85 (Feb. 2005) (available at [http://www.traffic.org/publications/TRAFFIC\\_%20BULLETIN\\_20.pdf](http://www.traffic.org/publications/TRAFFIC_%20BULLETIN_20.pdf)).

<sup>208</sup> Zhu Lizhen, *China Hasn't Yet Lifted the Ban on Ivory Trade*, Peoples Daily Online (Jan. 7, 2003), [http://english.peopledaily.com.cn/200301/07/eng20030107\\_109676.shtml](http://english.peopledaily.com.cn/200301/07/eng20030107_109676.shtml) (also noting that, “[i]n the past five years, other countries and China have jointly tracked down [and] seized about 300 cases of ivory smuggled to China, and confiscated around 30 tons of ivory or ivory handcrafts”).

<sup>209</sup> This section on Hong Kong has been drawn from a previous work by the Author. Charu Sharma, *Enforcement Mechanisms for Endangered Species Protection in Hong Kong: A Legal Perspective*, 5 Vt. J. Envtl. L. 1 (2003–2004).

<sup>210</sup> APO (Aug. 6, 1976), Bilingual Laws Information System (database of the Dept. of Justice of the Hong Kong Special Administrative Region), <http://www.legislation.gov.hk/eng/home.htm>; *find* Go to chapter row, *enter* 187, *select* Chapter 187 ANIMALS AND PLANTS (PROTECTION OF ENDANGERED SPECIES) ORDINANCE, *select* CAP 187 ANIMALS AND PLANTS (PROTECTION OF ENDANGERED SPECIES) ORDINANCE (current through Mar. 28, 2005).

<sup>211</sup> *Id.* at §§ 2, 3.

<sup>212</sup> *Id.*

<sup>213</sup> See e.g. APO at § 13(A), <http://www.legislation.gov.hk/eng/home.htm>; *find* Go to chapter row, *enter* 187, *select* Chapter 187 ANIMALS AND PLANTS (PROTECTION OF ENDANGERED SPECIES) ORDINANCE, *select* CAP 187 ANIMALS AND PLANTS (PROTECTION OF ENDANGERED SPECIES) ORDINANCE (providing maximum fines for commercial purpose violations of HK \$500,000 for scheduled species that are not considered “highly endangered” and HK \$5 million for those that are con-

amendment reflects the legislature's intent to deal with illegal traders seriously. However, the Ordinance has gaps and many traders take advantage of these loopholes to avoid apprehension. The increased sanctions have not proved to provide much deterrence, and the relatively low number of judicial decisions has not made any significant difference in the situation.

Despite Hong Kong's strict legal penalties, vigilant customs, police and enforcement authorities, and its small area, Hong Kong is well-known to be a consumer of, and a transit port for, such endangered species commodities coming into and out of China.<sup>214</sup> The illegal traders seem to be members of international organized criminal organizations which prey on the lucrative markets of Hong Kong and China, from both within and without.<sup>215</sup>

A study of cases in Hong Kong involving violations of the APO over the last twenty years reveals only a few reported decisions when compared to the actual volume of illegal trade and the number of seizures in Hong Kong as reported by WWF Hong Kong and the media.<sup>216</sup> Most cases that have come to the courts consist of illegally importing, exporting, and possessing endangered species, or technical violations of the APO.<sup>217</sup>

The Hong Kong courts have recognized the threat to endangered species, taking into account the provisions under CITES and Hong

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sidered "highly endangered"); see also Hong Kong Special Administrative Region of the People's Republic of China, *Protection of Endangered Species* 1 (Nov. 2004) (available at <http://www.info.gov.hk/info/endanger.pdf>) (noting the maximum penalty for illegal import, export, or possession is a HK \$5 million fine and two years imprisonment). Other fines vary from section to section depending on the severity of the offense.

<sup>214</sup> In 2003, the AFCD prosecuted over 230 illegal traders for export, import, or possession of endangered species. Agric., Fisheries, & Conservation Dept., *Environmental Report 2003* at 5 (Agric., Fisheries & Conservation Dept. 2003) (available at [http://www.afcd.gov.hk/downloads/text\\_downloads\\_e.htm](http://www.afcd.gov.hk/downloads/text_downloads_e.htm); select Environmental Report 2003 (PDF format)); see also TRAFFIC Intl., *Seizures and Prosecutions*, 19 TRAFFIC Bull. 77 (Nov. 2002) (noting three seizures involving pangolin scales representing approximately 5,000 to 6,000 pangolins, 9,300 live turtles, 1 rhino horn, and 79 pieces of ivory, all on route to China); Sheila Tefft, *Hong Kong is Smuggling Hub for Banned Animal Parts*, *Christian Sci. Monitor* (Nov. 30, 1993) (describing Hong Kong's role as a smuggling hub for endangered species coming into and out of China).

<sup>215</sup> Feigenblatt, *supra* n. 54 (describing the wildlife trade in China, including references to a "Chinese mafia shark-fin war" and "gang-style killings").

<sup>216</sup> A search on LEXIS of reported Hong Kong cases for the terms "endangered species" and "Animal and Plants Protection Ordinance," without date restriction, reveals less than twenty cases that have come up through the courts. Search of LEXIS, HKCHNA library, HKALL file (Jan 10, 2004). In 2003, the AFCD prosecuted over 230 illegal traders for export, import, or possession of endangered species. Agric., Fisheries & Conservation Dept., *supra* n. 214. In 2001, AFCD officers seized an illegal shipment of freshwater turtles from Singapore, and with the help of Kadoorie Farm and Botanic Garden, four thousand turtles were sent for the purpose of conservation to the United States and Europe. Agric., Fisheries & Conservation Dept., *Department Annual Report 2001-2002, Chapter 5 Nature Conservation* ch. 5, 75 (2002) (available at <http://www.afcd.gov.hk/downloads/annualreport2002/pdf/60-75.pdf>).

<sup>217</sup> Sharma, *supra* n. 209, at pt. VI.

Kong's commitment to enforce its international obligations and reaffirming its international objectives.<sup>218</sup> Nonetheless, the overall response of the judiciary has been diverse.<sup>219</sup> Judges have refrained from imposing imprisonment for longer than two months and have given suspended sentences in several other cases.<sup>220</sup> Further, the appellate court in many cases has lowered the fines originally imposed.<sup>221</sup> A review of the decisions in Hong Kong indicates that although the courts have recognized the threat to endangered species, their decisions are not in line with the policy behind the APO—to deter violation of its provisions.<sup>222</sup>

There has recently been an increase in the recorded number of violations of the APO.<sup>223</sup> The courts have started to hand down serious sentences and authorities in Hong Kong have started to maintain a serious vigil, especially after 1999.<sup>224</sup> The following section reflects the difficulties the prosecution has faced and the nature of the cases that have been brought to the courts. One can see that the judicial attitude is now more sensitive toward the protection of endangered species and

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<sup>218</sup> See e.g. *The Queen v. Kong Chi Yue*, 1997 HKCU LEXIS 700 at \*1 (Sup. Ct. of Hong Kong, App. Jxn. 1997) (holding that a substantial fine was appropriate because the pills in question contained genuine endangered species parts); *Attorney General v. Yau Kwok-Lam Johnny*, 1988 WL 862312 at ¶¶ 3–10 (Ct. of App. 1988) (describing obligations under CITES and the Hong Kong Ordinance).

<sup>219</sup> See e.g. *The Queen v. Chong Ping Tung*, 1997 HKCU LEXIS 904 at \*\*1 (Sup. Ct. of Hong Kong, App. Jxn. 1997) (reversing a one month prison sentence and instead imposing a HK \$50,000 fine for selling pills that were claimed to contain endangered species, even though it is doubtful that they actually contained any endangered animal parts); *Kong Chi Yue*, 1997 HKCU LEXIS 700 at \*5 (imposing a two-week prison sentence if a HK \$120,000 fine for selling actual endangered animal parts was not paid in three months); *The Queen v. Tsoi Wai Ching*, 1997 HKCU LEXIS 587 at \*\*1, 3–4 (Sup. Ct. of Hong Kong, App. Jxn. 1997) (reversing a lower court fine of HK \$125,000 for possession of a bear gall bladder and only fining HK \$40,000, because possession was not for commercial purposes); *The Queen v. Ki Chor On*, 1996 WL 33123096 (High Ct. 1996) (reducing a HK \$425,000 fine to HK \$95,000 in order to maintain a deterrent effect while still allowing ability to pay); *The Queen v. Both Prime Co. Ltd.*, 1996 WL 17716352 at \*31 (High Ct. 1996) (holding a fine reduced from HK \$500,000 to HK \$200,000 as adequate).

<sup>220</sup> In one case, the offender was only threatened with two weeks imprisonment if he failed to pay HK \$120,000 for commercially trading in animal parts of scheduled species. *Kong Chi Yue*, 1997 HKCU LEXIS 700 at \*5.

<sup>221</sup> See e.g. *Both Prime Co. Ltd.*, WL 17716352 at \*31 (defendant's fine was reduced by HK \$300,000 on appeal).

<sup>222</sup> Sharma, *supra* n. 209, at pt. VI.

<sup>223</sup> The Agriculture, Fisheries and Conservation Department noted in a 2002 press release that “[a]ccording to our enforcement data, the number of prosecution cases involving tourist items has increased from 33 cases in 1999 to 119 cases in 2001.” Press Release, Agric., Fisheries and Conservation Dept., *Public Reminded Not to Bring Unlicensed Endangered Species into HK* (Mar. 25, 2002) (available at <http://www.afcd.gov.hk/news/text/ePressReleases/pr278.htm>).

<sup>224</sup> See *infra* nn. 244–48 (discussing *Hong Kong v. Assomull*). Hong Kong hosted a Regional CITES enforcement raining seminar on December 6, 1999. Press Release, Agric. Fisheries and Conservation Dept., *Reward Scheme for Endangered Species Protection* (July 8, 1999) (available at [http://www.afcd.gov.hk/news/news\\_e.htm](http://www.afcd.gov.hk/news/news_e.htm); select 8-7-99: Reward scheme for endangered species protection).

the environment. Furthermore, one can observe from the nature of the cases that have been brought before the courts that the lack of scientific evidence and the structure of the legislation in Hong Kong, which formerly had focused on control over trade rather than on the protection, conservation, and preservation of species, has resulted in many offenders receiving light sentences or never facing trial. Earlier cases decided from the period of approximately 1980 to 1990 reflect the earlier focus of the courts in treating violations of the APO as merely a trade offense, worthy of no more than a slap on the wrist for the offender, rather than severe sentencing or admonition.<sup>225</sup> Thus, the gravity of trading in a protected species in which trade was banned was not seriously considered. The overall impact of such trade upon the very survival of endangered species was nowhere evident nor reflected in these decisions.<sup>226</sup>

In *The Queen v. Man Hing Express & Godown Co. Ltd.*, the appellant was an import-export company charged with possession of 208 imported hides of clouded leopard without the required license.<sup>227</sup> The appellant claimed, among other things, ignorance of the licensing requirement for the goods it had received, and that it did not know that the bales contained hides of clouded leopard until it received the delivery note.<sup>228</sup> The appellate court concluded that this was not an offense where a severe penalty was appropriate and held that the danger to the community was not so great as to warrant absolute prohibition against possession.<sup>229</sup> Hence, the defendant received a minimal penalty. The case was decided in 1980, only four years after the APO had been enacted. The judge's interpretation of the APO was more in consonance with what earlier legislative intent reflected: the restriction, not the prohibition, of the endangered species trade.<sup>230</sup>

The case of *The Queen v. Leung Kam Hung* involved the import of 619 ivory tusks and 225 crocodile hides into Hong Kong.<sup>231</sup> The defendant did not have a license with him and was convicted of criminal conspiracy to import these pieces from Macau without a license. Since both ivory tusks and crocodile hides were listed in Schedule 2 of the APO, both items could only be imported into Hong Kong by a trader who had procured a license to do so. The court held that importing

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<sup>225</sup> See e.g. *The Queen v. Man Hing Express & Godown Co. Ltd.*, CACC001025/1979, [http://legalref.judiciary.gov.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=425&QS=%28%7BCACC001025%2F1979%7D%7C%7BCACC001025%2F1979%7D+%25caseno%29&TP=JU](http://legalref.judiciary.gov.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=425&QS=%28%7BCACC001025%2F1979%7D%7C%7BCACC001025%2F1979%7D+%25caseno%29&TP=JU) (Sup. Ct. of Hong Kong, App. Jxn. Jan. 11, 1980) (the court seemingly failed to appreciate the implication of trade in clouded leopard without a license, and held that the licensing requirements required by the Ordinance did not prohibit trade in endangered species).

<sup>226</sup> Sharma, *supra* n. 209, at pt. VII.

<sup>227</sup> *Man Hing Express & Godown Co. Ltd.*, CACC001025/1979 at ¶¶ 4, 9.

<sup>228</sup> *Id.* at ¶ 48.

<sup>229</sup> *Id.* at ¶ 39.

<sup>230</sup> Sharma, *supra* n. 209, at pt. V(a).

<sup>231</sup> *The Queen v. Leung Kam-Hung and Others*, 1986 WL 591972 (DC) (Kowloon Dist. Ct. Aug. 28, 1986).



unlicensed goods was a strict liability offense and that liability should be imposed on those persons who were actually responsible for shipping such items without a license.<sup>232</sup> Although the judge emphasized the importance of protection of endangered species in his opinion, he found that the court had no jurisdiction in this case and as such was unable to charge the defendant with criminal conspiracy.<sup>233</sup> The judge found the defendant to be an "innocent agent."<sup>234</sup> Again, one can see that although prohibited items were found on the vessel and had been brought into Hong Kong's waters, legal loopholes prevented the prosecution of the defendant. This fettered the authorities in their ability to apprehend the actual trader due a lack of evidentiary proof and a supposed lack of knowledge. In contrast, had this case been one involving seizure of prohibited drugs under the Hong Kong Dangerous Drugs Ordinance ("DDO"), the outcome of the case might have been different, and the possessor of such prohibited items punished severely.<sup>235</sup>

In the 1996 case of *The Queen v. Both Prime Co. Ltd.*,<sup>236</sup> the defendant was a wholesaler of Chinese medicines and pled guilty to possessing controlled medicine in violation of the APO.<sup>237</sup> He was found to be in possession of a number of pills listing tiger bone and tiger penises in the ingredients without a permit. The magistrate's court fined the defendant HK \$500,000, but on appeal the high court reduced the fine to HK \$200,000.<sup>238</sup> According to the judge, because "this case fell within the lower range of offences" under the APO and the relevant Criminal Procedure Ordinance,<sup>239</sup> a higher fine would not be

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<sup>232</sup> *Id.*

<sup>233</sup> *Id.*

<sup>234</sup> *Id.*

<sup>235</sup> *Dangerous Drugs Ordinance (Cap. 134)* §§ 4, 6, 8 (available at LEXIS, HKCHNA library, 134 LOHK file) (LEXIS current through Feb. 2, 2005).

<sup>236</sup> 1996 WL 1771635 (HC) (High Ct. Feb. 15, 1996).

<sup>237</sup> APO at §§ 6(3), (4), <http://www.legislation.gov.hk/eng/home.htm>; *find* Go to chapter row, *enter* 187, *select* Chapter 187 ANIMALS AND PLANTS (PROTECTION OF ENDANGERED SPECIES) ORDINANCE, *select* CAP 187 ANIMALS AND PLANTS (PROTECTION OF ENDANGERED SPECIES) ORDINANCE. Both sections deal with restrictions on possession of a scheduled species (listed under schedules 1-6, particularly 1, 2, 5, and 6), controlled medicinal species, and the licensing requirement for possession of the species for non-commercial purposes. *Id.*

<sup>238</sup> *Both Prime Co. Ltd.*, 1996 WL 1771635 at \*31.

<sup>239</sup> *See* APO at §§ 4, 5, 6, 13(A), <http://www.legislation.gov.hk/eng/home.htm>; *find* Go to chapter row, *enter* 187, *select* Chapter 187 ANIMALS AND PLANTS (PROTECTION OF ENDANGERED SPECIES) ORDINANCE, *select* CAP 187 ANIMALS AND PLANTS (PROTECTION OF ENDANGERED SPECIES) ORDINANCE; *Criminal Procedure Ordinance* §§ 113(B)-(C) (available at LEXIS, HKCHNA library, 221 LOHK file) (LEXIS current through Mar. 3, 2005). For example, the fines under sections 4, 5, and 6 of the APO are at a level five (at HK \$50,000) and six (at HK \$100,000) and involve imprisonment from six months up to one year, while under section 13(A) of the APO the fine is up to HK \$5 million and two years imprisonment. APO, <http://www.legislation.gov.hk/eng/home.htm>; *find* Go to chapter row, *enter* 187, *select* Chapter 187 ANIMALS AND PLANTS (PROTECTION OF ENDANGERED SPECIES) ORDINANCE, *select* CAP 187 ANIMALS AND PLANTS (PROTECTION OF ENDANGERED SPECIES) ORDINANCE.

appropriate.<sup>240</sup>

In *The Queen v. Chong Ping Tung*, decided in 1997, the defendant ran a chemist shop dealing largely in TCM.<sup>241</sup> He pled guilty to possessing 880 pills containing tiger bones, and was fined and sentenced to one month's imprisonment.<sup>242</sup> On appeal, however, the appellate court reduced the fine imposed by the magistrate from HK \$100,000 to HK \$50,000 and refused to impose imprisonment.<sup>243</sup>

However, in 1999, while deciding *Hong Kong v. Assomull*, the "Shahtoosh" case, the court adopted a very stern attitude towards persons found to be trading in endangered species, especially those species in which commercial trade was absolutely banned under the APO.<sup>244</sup> In this case, a trader was convicted of illegally possessing Tibetan Antelope (Shahtoosh) wool shawls.<sup>245</sup> The judge convicted the offender for violating the provisions of the APO and for disregarding CITES requirements. She was ordered to pay a fine of over US \$40,000, and was sentenced to a three-month suspended term of imprisonment.<sup>246</sup> However, her sentence was later suspended.<sup>247</sup> The judge in this case stressed the importance of the protection of endangered species, of Hong Kong's international obligations, of the law that imposes strict bans on trade in endangered species worldwide, of the apparent ignorance of that law by Hong Kong citizens, and the lax attitude of businesspersons.<sup>248</sup> After this case, there have been other re-

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<sup>240</sup> Sharma, *supra* n. 209, at pt. V(B).

<sup>241</sup> *Chong Ping Tung*, 1997 HKCU LEXIS 904 at \*1.

<sup>242</sup> *Id.*

<sup>243</sup> *Id.* at \*3; see also Sharma, *supra* n. 209, at pt. V(C) (discussing the *Chong Ping Tung* case). On the facts of the case, section 13(A) of the APO was not relied upon. *Id.* Section 13(A) imposes the maximum possible penalty for trading in highly endangered species (such as tigers or those species in which trade is either banned commercially or banned absolutely). For possession of a scheduled species or a controlled medicine, the maximum fine would be at a level 6 and up to one year imprisonment. APO at § 13(A), <http://www.legislation.gov.hk/eng/home.htm>; find Go to chapter row, enter 187, select Chapter 187 ANIMALS AND PLANTS (PROTECTION OF ENDANGERED SPECIES) ORDINANCE, select CAP 187 ANIMALS AND PLANTS (PROTECTION OF ENDANGERED SPECIES) ORDINANCE.

<sup>244</sup> Judy Mills, *Fashion Statement Spells Death for Tibetan Antelope*, TRAFFIC East Asia Newsletter 12 (Oct. 21, 1999) (available at <http://www.traffic.org/shahtoosh/hongkongstory.html>) (stating that *Hong Kong v. Assomull* "may go down in history as the case that closed the shahtoosh loophole," and noting the judge's stern remarks).

<sup>245</sup> The Tibetan Antelope is a highly endangered species in Hong Kong, where trade in the species is absolutely banned. It is a CITES Appendix I listed species, and therefore international trade in the species is banned. *Convention on International Trade in Endangered Species*, *supra* n. 8, at art. 3. The offender was arrested for possessing shahtoosh shawls. Mills, *supra* n. 244. AFCD seized 186 items after raiding various shops. *Id.*

<sup>246</sup> Mills, *supra* n. 244.

<sup>247</sup> *Id.*

<sup>248</sup> *Id.*

ports of other illegal traders being prosecuted, but no significant cases have reached the courts.<sup>249</sup>

A critical look at the above cases suggests that, despite the fact that the APO imposes severe penalties for its infraction and, notwithstanding a handful of cases that have caught the eye of the media recently, sentencing by the courts does not reflect the force and the deterrence that the law and its amended penalties seek to achieve. However, in the past five years, Hong Kong has begun to wipe clean its record of being at the center of illegal trade in endangered species and has doubled its efforts to combat the problem.<sup>250</sup> As in the PRC, the efforts have involved public discussions, seminars, "save endangered species" campaigns, strict vigilance, and educational programs to increase awareness.<sup>251</sup> But, like on the mainland, illegal consumption and illegal smuggling of endangered species is still a matter of worry in Hong Kong for the government and the designated authorities.<sup>252</sup> Generally, what is true in Hong Kong is true on a much larger scale in the PRC. Following this analogy, it is interesting to note that, although PRC legislation imposes the heaviest penalties upon an individual for the infraction of endangered species laws (as compared to other countries), and although the judicial decisions seem to impose severe sentences, the illegal trade in endangered species goes on unabated.

### C. *Legislative Measures and Judicial Decisions in the United Kingdom*

In the United Kingdom ("UK"), which is labeled as a consumer state, there are three sets of regulations that are relevant for controlling the trade in endangered species: European Community ("EC")

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<sup>249</sup> A search on LEXIS of reported Hong Kong cases for the terms "endangered species" and "smuggling," without date restriction, reveals no cases that have come up through the courts since 1999. Search of LEXIS, HKCHINA library, HKALL file (Feb 3, 2004).

<sup>250</sup> The Secretary-General's Certificate of Commendation was awarded in March 2003 to the Customs and Excise Department and Agriculture, Fisheries and Conservation Department in recognition of an exemplary and successful enforcement action against illegal trade in endangered species in October of 2002. CITES Secretariat, *Secretary-General's Certificate of Commendation*, Notification to the Parties No. 2003/021 (Apr. 4, 2003) (available at <http://www.cites.org/eng/notif/2003/021.shtml>). Customs officials continue to intercept illegal endangered species. TRAFFIC Intl., *supra* n. 207, at 85 (noting six seizures in 2004).

<sup>251</sup> See Sharma, *supra* n. 209, at pts. I-IV, VI-VII (regarding enforcement efforts, judicial review, and legal loopholes of Hong Kong endangered species legislation).

<sup>252</sup> *Id.*

Regulations,<sup>253</sup> the Customs and Excise Management Act of 1979,<sup>254</sup> and the Control of Trade in Endangered Species (Enforcement) Regulations of 1997 (“COTES”).<sup>255</sup> In contrast to other jurisdictions in Europe, the UK has a legislative framework which supports the fight against wildlife-trade crime. Within the current system there are many positive changes taking place.<sup>256</sup> However, a WWF-TRAFFIC report published in 2002 highlights the inadequacies connected to legal enforcement and reflects a pattern of high-rate consumption in the UK.<sup>257</sup> The report highlights the fact that the legal system in the UK is not as effective as it ought to be. The authors of the report point out that the legal system “is characterized by low criminal penalties, inconsistent and differing judicial or administrative sanctions . . . and an uninformed approach to a damaging illicit trade with far reaching impacts on the endangered species sustainability.”<sup>258</sup> Significant cases have been cited by the authors of the report to highlight the problems.<sup>259</sup>

In the case of *Renaissance Corporation*, decided in 2000, the company was charged with, and admitted to, trading in shahtoosh shawls.<sup>260</sup> One hundred and thirty-eight shawls were confiscated by the authorities. Although the shawls had a value of about UK £353,000, the company was only fined UK £1,500.<sup>261</sup>

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<sup>253</sup> See Council Regulation 338/97 1997 O.J. (L 61) 1 (on the protection of species of wild fauna and flora by regulating trade therein) (implemented by Commission Regulation 939/97, 1997 O.J. (L 140) 9). Subsequent amendments have been made by Commission Regulation 2307/97, 1997 O.J. (L 325) 1, Commission Regulation 2214/98, 1998 O.J. (L 279) 3, and Commission Regulation 1476/99 (1999 O.J. (L 171) 5). In September, 2001, Regulation 1808/2001 was adopted, laying down detailed rules concerning the implementation of Regulation 338/97, and repealing Regulation 939/97. Commission Regulation 1808/2001 O.J. (L 250) 1. European Community Regulations apply to the United Kingdom through Article 249 of the Treaty Establishing the European Community. *Treaty Establishing the European Community* ch. 2, art. 249 (Mar. 25, 1957), [http://europa.eu.int/eur-lex/en/treaties/dat/C\\_2002325EN.003301.html](http://europa.eu.int/eur-lex/en/treaties/dat/C_2002325EN.003301.html).

<sup>254</sup> *Customs and Excise Management Act*, 1979, c. 2 (U.K.).

<sup>255</sup> *Control of Trade in Endangered Species (Enforcement) Regulations (COTES)*, (1997) SI 1372 (UK).

<sup>256</sup> For example, the UK amendments to the Criminal Justice Bill increased maximum penalties for illegal trade in endangered species from two to five years imprisonment, making illegal trade in endangered species an arrestable offense, and increasing the power of police officers to enforce the provisions through a number of methods. WWF-UK, *WWF and TRAFFIC Applaud Government for Tackling Wildlife Crime*, [http://www.wwf.org.uk/News/n\\_0000000916.asp](http://www.wwf.org.uk/News/n_0000000916.asp) (June 18, 2003). In addition, the London Metropolitan Police Department provided two police officers to the already existing Wildlife Crime Unit to combat illegal wildlife crime in the city of London. WWF-UK, *Two New Police Officers to Fight Wildlife Crime*, [http://www.wwf.org.uk/News/n\\_0000000813.asp](http://www.wwf.org.uk/News/n_0000000813.asp) (Feb. 27, 2003).

<sup>257</sup> Jason Lowther, Dee Cook, & Martin Roberts, *Crime and Punishment in the Wildlife Trade*, WWF-TRAFFIC Report 15 (WWF-UK 2002) (available at [http://www.wwf.org.uk/filelibrary/pdf/crime\\_and\\_punishment.pdf](http://www.wwf.org.uk/filelibrary/pdf/crime_and_punishment.pdf)).

<sup>258</sup> *Id.*

<sup>259</sup> *Id.* at 34–36.

<sup>260</sup> *Id.* at 15, 35.

<sup>261</sup> *Id.*

In 1998, Robert Brastock, a bird breeder having established a business for that purpose, imported under license six hyacinth macaws and two golden conures, both endangered species listed under Appendix I of CITES and EC Annexure A.<sup>262</sup> In 1999 it was found that one bird had been sold without a license for UK £23,000. The offender was charged under COTES but “claimed to have found the licensing requirement confusing despite his previous experience as a bird breeder.”<sup>263</sup> The judge, who heard the case and the expert testimony, imposed a fine of UK £330, made an order for forfeiture of the bird, and otherwise discharged Mr. Brastock.<sup>264</sup>

Another case, decided in 2000, involved the prosecution of Robert Sclare, the owner of a taxidermy shop in London.<sup>265</sup> He was charged with forging permits under COTES and under the Wildlife and Countryside Act of 1981.<sup>266</sup> The raid on his shop revealed a gorilla skull, a tiger with a litter of cubs, vultures, sparrow hawks, and snowy owls. Although the judge stressed the seriousness of the offense, he sentenced the offender to only three months imprisonment.<sup>267</sup>

Recently, a few more serious sentences have been imposed. Offenders have been sentenced from two and a half years<sup>268</sup> to over six years<sup>269</sup> in prison, and fines have been levied ranging from UK £5000, including the forfeiture of the seized goods, to UK £150,000.<sup>270</sup>

The WWF-TRAFFIC report further suggests that the UK legislative provisions relating to the illegal wildlife trade are particularly weak when set against other enforcement priorities, such as the illegal importation of drugs and, more recently, the smuggling of cigarettes and alcohol on which no duty has been paid.<sup>271</sup>

<sup>262</sup> *Id.* at 35.

<sup>263</sup> Lowther et al., *supra* n. 257.

<sup>264</sup> *Id.*

<sup>265</sup> BBC News, “*Shop of Horrors*” Trader Jailed, <http://news.bbc.co.uk/1/hi/uk/1050813.stm> (accessed Feb. 13, 2005). TRAFFIC Intl., *Seizures and Prosecutions*, 18 TRAFFIC Bull. 125 (Dec. 2000) (available at <http://www.traffic.org/bulletin/bulletin.pdf>) (listing details of this and other UK cases involving endangered species).

<sup>266</sup> TRAFFIC Intl., *supra* n. 265, at 125.

<sup>267</sup> Lowther et al., *supra* n. 257, at 35.

<sup>268</sup> *The Queen (on the application of Sissen) v. Newcastle Upon Tyne Crown Court*, 2004 WL 1808849 (Q.B. (Admin. Court) July 9, 2004). Harold Sissen was found guilty of importing three Lear’s Macaws contrary to COTES and CITES and was sentenced to two and a half years imprisonment. *See also* TRAFFIC Intl., *supra* n. 265.

<sup>269</sup> *The Queen v. Humphrey*, 1 Cr. App. R.(S.) 39, \*252 (C.A. (Crim. Div.) June 23, 2003). Raymond Humphrey was found guilty of twenty-two offenses relating to smuggling and engaging in the trade of endangered species. *See also* Partn. Action Against Wildlife Crime, *Recent Prosecutions*, “Bushmeat,” “CITES specimens – smuggling,” <http://www.defra.gov.uk/paw/prosecutions/default.htm> (accessed Mar. 3, 2005) (discussing *Humphrey*).

<sup>270</sup> *See Newcastle Upon Tyne Crown Court*, 2004 WL 1808849 (reducing original UK £150,000 fine). The Partnership for Action Against Wildlife Crime website details many of the UK cases involving endangered species. Partn. Action Against Wildlife Crime, *supra* n. 269, at <http://www.defra.gov.uk/paw/prosecutions/default.htm>.

<sup>271</sup> Lowther et al., *supra* n. 257, at 35–36.

Although UK penalties are not as harsh as those under Chinese laws, a recently proposed amendment to the UK COTES Regulations evidence that the UK government is making genuine efforts, comparable to those of the Chinese government and courts in the recent years, to strengthen the controls on illegal trade in endangered species.<sup>272</sup> The proposed amendments would allow for prison sentences of up to five years for some COTES offences and would enable police officers to stop and search suspects.<sup>273</sup> Efforts in China, Hong Kong, and the United Kingdom clearly indicate that government authorities are taking serious steps to deter illegal traders.

*D. Time for Change in the Policy, Law, or Attitude in the PRC?*

The PRC needs to reflect on its commitment to preserve and conserve its biological diversity and natural resources and to set an example in combating illegal trade in endangered species. It needs to prioritize the protection of endangered species within its agenda of reforming laws under its WTO membership. This would be consistent with China's absolute commitment to adhere to its international obligations and sustainable development agenda. If most of the reports published by international organizations and news agencies within Asia, including those published by the government itself, admit and reflect that too many infractions of the WLP occur, and if the endangered species trade continues unabated, then it is indeed time to reflect seriously on two things: 1) whether legal prohibitions need to be set to a significantly higher deterrent level, and 2) whether there is a need to study, reflect, and bring about a gradual change in the socio-cultural attitude.

The PRC government, international organizations, and the community of TCM practitioners have most decidedly accepted the gravity of the problem. But the question that needs to be answered is whether developing alternatives to TCM and dispelling the many myths related to TCM, when done by only a few enlightened individuals, can seep into the larger conscience of consumers and traders both within and outside of China, or whether consumers in China will only be motivated by tragedies such as SARS sweeping across the country in 2002. The need of the hour is to target the populations of consumers, traders, and government officials, all of whom together form a symbiotic web that can reverse the trend towards species eradication only by working together.

Obviously centuries-old attitudes and beliefs cannot be changed overnight, or even in a few years. Overcoming resource constraints with respect to illegal trade in endangered species seems like a journey of a thousand miles. Once the consequences of the imminent danger

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<sup>272</sup> News Release, Dept. for Env. Food and Rural Affairs, *Five years in Prison for Illegally Trading Endangered Species* (Jan. 4, 2005) (available at <http://www.defra.gov.uk/news/2005/050104b.htm>).

<sup>273</sup> *Id.*

have been realized, performing lip service on paper will not set things right. Strict laws and harsh sentences need to be supplemented by equal and concerted efforts by the State to instill changes in cultural attitudes that move away from consumption, extraction, and abuse and instead move towards protection, preservation, and conservation. In other words, the PRC must instill changes that will encourage a sustainable process that does not erode nature's balance.

## VI. CONCLUSION

Many environmental investigation agencies and international experts believe that the presence of, and brazen trade in, fake and real endangered species products is deeply alarming and that more rigorous enforcement of international agreements against trafficking in tigers and other endangered species should be undertaken.<sup>274</sup> Law is but one of the tools to protect wildlife from overexploitation and depletion. Sanctions under the law may not provide enough deterrence without an increase in social awareness. Enforcement by authorities in China can at least serve as a deterrent so that poachers and illicit traders will have trouble finding a market both inside and outside of China. One can only hope that the PRC authorities who have taken up the fight seriously in recent years will not let endangered species disappear forever. Despite the SARS scare, avian influenza, and other obstacles at the moment, people still do not think in terms of wildlife protection or conservation of biodiversity, because they do not understand the gravity of the situation. Foremost in their minds is how to use wildlife for their own purposes, be it for business or trade, for food, medicine, pleasure, or as a symbol of economic prosperity. Comments by a Tibetan trader in endangered species, echoing a Chinese proverb, seem to sum up the situation and the perception of those who actually indulge in trafficking or consume or use such products: "If you live next to the mountain you eat the mountain. . . . If you live next to the river you eat from the river. We are nomads in Tibet. We are dependant on the animals."<sup>275</sup>

Admittedly, changing attitudes is an uphill task, but raising awareness and publicizing the impacts and fatal consequence of the disappearance of endangered species upon China's ecosystems and biodiversity needs to happen. Only through an alteration of attitudes can the deep impact on the psyches of consumers and traders of endangered species occur that is necessary for the protection of these species.

Dissemination of information, increased awareness, and educational programs are the ground tools that the PRC can use to initiate endangered species protection under the various state programs it has

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<sup>274</sup> Jeffery Gluckman, *Vancouver Aquarium AquaNews: Aquatic Environmental News Network, Thailand: Conference Results in Greater Protection for Endangered Aquatic Wildlife*, <http://www.vanaqua.org/aquanew/fullnews.php?id=1686> (updated Oct. 19, 2004).

<sup>275</sup> Dorgan, *supra* n. 14, at <http://www.savechinastigers.org/t-news/china-critics.htm>.

adopted for biodiversity protection. There is a definite and acute need to reeducate the people who are involved with wildlife and those who find using products derived from endangered species to be a sign of prosperity and a status symbol in society. Involving international agencies in this effort is crucial because they are not bound by any cultural constraints. Attempts by local officials have limitations. Local non-governmental organizations and local governments might be restrained by local politics and cultural practices.

More publicity and comparisons with other countries would open local people's eyes as to what they are doing to their natural resources. Campaigns to educate and raise awareness among students and the youth should begin at the earliest stages of their lives, when new ideas of conservation and preservation can still influence their minds.

In terms of political objectives and international obligations, the Chinese government has declared its policy under Agenda 21 to be to protect, preserve, and sustainably use its biological diversity. This policy has initiated development of alternatives to TCM, stricter bans under the law, and concerted efforts to preserve and conserve endangered species. These efforts have included new initiatives, such as the creation and declaration of new natural reserves, research and advanced technical development in preserving and conserving habitats, and programs like captive breeding, conservation banks, bioengineering, data collection, and education and publication.

Mindful of the fact that the PRC is the largest country in Asia, harboring a spectrum of biological diversity, including many endangered species, continued efforts must be made at social, cultural, administrative, and law enforcement levels, in order to control and abate illicit trade and unsustainable consumption of endangered species before more are lost forever.