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COMMENTS

Poachers, Tigers and Bears . . . Oh My! Asia's Illegal Wildlife Trade

Joonmoo Lee

I. INTRODUCTION

The international trade of wild animals and wildlife-related products is a major industry that is growing at a rapid pace. In 1992, according to the U.S. Fish and Wildlife Service, the international wildlife trade was a \$5 billion-a-year industry with as much as 25% of it being illegal. That is, wild animals were illegally killed and traded either whole or in parts with an annual turnover of nearly \$1.25 billion.¹ By 1993, however, Traffic International, which monitors wildlife trafficking for the United Nations, reported that illegal trade alone had generated \$5 billion to \$10 billion in one year. This makes the illegal wildlife trade the third largest illegal trade in the world after drugs and arms.² In the United States, the world's largest importer of wildlife and wildlife products, protected plants and animals are second only to drugs among illegal items smuggled into the country.³

In most cases, what makes the trade illegal is that the animals or plants being traded are endangered. Such trade is either prohibited entirely or restricted to regulated, seasonal hunting and trading. The

¹ Michael Hanback, *Poaching: Crime in Our Wilderness, Part 1*, OUTDOOR LIFE, October 1992, at 58.

² Uli Schmetzer, *Phasing Out Animal Abuse*, THE HOUSTON CHRONICLE, Oct. 3, 1993, at 25.

³ Robert McClure, *12-Day Conference to Combat Trade in Endangered Species*, SUN-SENTINEL, Nov. 6, 1994, at 1A.

Asiatic tigers and the North American black bears are two classes of animals that fall into these categories.⁴ The tiger and bear both hold special places in the folklore and mythology of several Asian nations. Today, however, they also hold a position in many Asian societies that is far from sacred. Demand for various tiger and bear parts has fueled an explosion of poaching and illegal trading that threatens the Asiatic tigers with extinction and the American black bear with endangerment.

Increasing interest of environmentalists and politicians alike will affect legitimate businesses involving unendangered wildlife products as proposed solutions to the problem enter the realm of international trade negotiations and sanctions. Therefore, this Comment will: (1) discuss the current plight of the Asiatic tigers and the North American black bears, describing the extent of their endangerment and the purposes for which they are being poached and traded in various Asian countries; (2) describe and analyze currently proposed means of ending the poaching and trading of these animals; and (3) propose a protection program that combines viable aspects of current proposals and reflects the particularities of the problem concerning the tigers and of the problem concerning the bears.

II. THE CURRENT PLIGHT OF THE TIGER AND BLACK BEAR

A. The Asiatic Tigers — On the Brink of Extinction

At the beginning of the 20th Century, nearly 100,000 wild tigers populated the earth.⁵ Today, the tiger population numbers between 5,000 and 7,000 worldwide.⁶ This is a decrease of over 90%.⁷ Russia lost 25% of its tigers in 1994 alone, leaving estimates at no more than 180.⁸ Three breeds of tigers, the Caspian, Balinese, and Javan, are

⁴ Although dozens of wild animals are currently endangered, such as the African elephant and African rhinoceros, this Comment will only discuss the current status and future outlook for the Asiatic tigers and American black bears as traded in Asia. The two animals may not necessarily be the most endangered nor the most traded among endangered wildlife. However, they represent two different stages of endangerment and are prominent subjects of concern in the wildlife trading industry of Asia.

⁵ Philippe Naughton, *China Enlists Support for "Industrial" Tiger Breeding*, THE REUTER LIBRARY REPORT, Aug. 25, 1992, available in LEXIS, News Library, Cumws File.

⁶ Robert Evans, *China Set to Avoid Sanctions Over Tiger Trade*, REUTERS WORLD SERVICE, Mar. 24, 1994, available in LEXIS, News Library, Cumws File.

⁷ Naughton, *supra* note 5.

⁸ Michael Day, *Range States, Consumer Nations Convene at UN Conference to Seal Fate of the Tiger*, U.S. NEWswire, Nov. 14, 1994, available in LEXIS, News Library, Cumws File.

already extinct, while others such as the South China Tiger and Siberian Tiger are under imminent threat of extinction.⁹

The tigers are hunted for various body parts which are used to make traditional medicines. For example, in China and Hong Kong, tiger bones are ground and used to make tonics and balms to soothe rheumatic pain and to help cure a variety of other illnesses. Tiger penises preserved in wine are used to increase sexual virility and help treat impotence.¹⁰ Certain medical encyclopedias prescribe tiger bones, stir-fried with wine or vinegar to reinforce sinews and bones and to help bring down fevers.¹¹

Such recipes and medical prescriptions command a loyal following of believers in their medicinal powers who will pay top dollar. In Taiwan, for example, tiger penis soup sells for up to \$320 a bowl, while a bottle of wine containing 10 grams of powdered tiger bones sells for approximately \$10.¹² Tiger products, such as claws and hides, are also in great demand in countries like South Korea, Japan, and Yemen.¹³

The United States has taken a first step toward halting the trade. On August 9, 1994, President Clinton announced limited sanctions imposed on Taiwan, banning the importation of five categories of animal-related products from Taiwan due to that country's slow and half-hearted attempts to curb the poaching and illegal trade of tigers and tiger parts.¹⁴ This action was taken in accordance with the 1971 Pelly Amendment to the Fishermen's Protective Act of 1967.¹⁵ This Amendment authorizes the Secretary of the Interior to issue a certification to the President claiming violations of international conservation efforts by certain countries.¹⁶ The certification can then be the basis for a presidential decision to impose trade sanctions. It is esti-

⁹ Naughton, *supra* note 5.

¹⁰ Naughton, *supra* note 5

¹¹ See *supra* note 2.

¹² Pratap Chakravarty, *Tiger Faces Oblivion as Penis Soup Fetches 320 Dollars a Bowl*, AGENCE FRANCE PRESSE, March 5, 1994, available in LEXIS, News Library, Curnws File.

¹³ Vicki Allen, *U.S. Announces Sanction on Taiwan for Tiger Trade*, REUTERS, LIMITED, Apr. 11, 1994, available in LEXIS, News Library, Curnws File. See generally *CITES Seeks Halt to Illegal Trade in Tiger Products*, JAPAN ECONOMIC NEWswire, Nov. 15, 1994, available in LEXIS, News Library, Curnws File.

¹⁴ The ban, which took effect on August 19, 1994, banned the importation from Taiwan of items made from reptile leather; jewelry made from coral, mussel shells, and bone; edible frogs' legs; live fish for the aquarium trade; and bird feathers, down, and specimens. *Clinton Details Bans on Five Types of Animal-Related Goods From Taiwan*, INTERNATIONAL TRADE REPORTER, Aug. 17, 1994, available in LEXIS, News Library, Curnws File.

¹⁵ 22 U.S.C. § 1978 (1994).

¹⁶ *First Step Toward Sanctions Against China, Taiwan, Mexico Considered*, BNA INTERNATIONAL ENVIRONMENT DAILY, Feb. 24, 1994, available in LEXIS, News Library, Curnws File.

mated that the ban will decrease Taiwan's annual exports to the United States by \$22 million to \$25 million.¹⁷ These limited sanctions have brought more needed attention to the tiger crisis. However, Taiwan has found the task of fighting illegal trade a difficult and slow one, and the United States threatened to step up its sanctions against Taiwan unless it shows progress in stopping sales of tigers parts by mid-November of 1994.¹⁸

What makes combating this killing of tigers so difficult is the fact that these medical traditions date back nearly 3,000 years and are a deeply rooted part of these countries' cultures.¹⁹ Though officials in China, the world's largest consumer of tiger products,²⁰ recognize the seriousness of the threat to the tiger population, measures to restrict tiger-based medicines have been met with resentment from its citizens. Chinese consumers, who have used these medicines for generations, see the international pressure to halt such practices as a threat to their culture and the West's attempt to impose Western ideals on the East.²¹

B. The North American Black Bear — Increasingly Threatened

Unlike the Asiatic tigers, North American black bears are not considered an endangered species. Significant numbers of black bears live in at least forty-one states in the United States, and individual bears are often spotted in areas without permanent bear populations.²² With the total population numbering from 150,000 to 250,000, the American black bear is not under such dire consequences as tigers.²³ However, with all five of Asia's bear species on the verge of extinction, poachers and traders are increasingly looking to the North American continent to satisfy a demand that used to be satisfied through hunting in Asia. The relatively healthy population of Ameri-

¹⁷ *Taiwan to Step Up Wildlife Protection*, REUTERS WORLD SERVICE, Aug. 12, 1994, available in LEXIS, News Library, Curnws File. See Tom Kenworthy, *President Imposes Sanctions on Taiwan; Action Taken Over Endangered Wildlife*, THE WASHINGTON POST, Apr. 12, 1994, at C1.

¹⁸ The sanction against Taiwan was imposed due to Taiwan's lacking efforts in combating the trade of rhinoceros products as well, not just tiger products. See generally *Taiwan Seeks More Time to Stop Rhino, Tiger Trade*, REUTERS WORLD SERVICE, Oct. 22, 1994, available in LEXIS, News Library, Curnws File.

¹⁹ *Id.*

²⁰ *Asian Nations Pledge to Save Wild Tigers*, REUTERS, LIMITED, Nov. 14, 1994, available in LEXIS, News Library, Curnws File.

²¹ See Schmetzer, *supra* note 2.

²² Adam Rappaport, *American Black Bear Body Parts Fueling Illegal International Trade*, STATES NEWS SERVICE, Apr. 16, 1993, available in LEXIS, News Library, Curnws File.

²³ *Id.*

can black bears and their similarities in appearance and behavior to their Asian counterparts make them a tempting target for international traders.²⁴

Bears are hunted for various medicinal and culinary purposes. Bear meat and paws are considered to be delicacies that fortify the body and soul.²⁵ In 1992, the Seoul Hilton Hotel included braised bear paw on its menu for \$700 a serving.²⁶ The flesh is considered to be highly invigorating and refreshing in a medical sense, preventing colds and detoxifying the body.²⁷ Bear paw soup originates back to the Ming Dynasty in China and is quickly becoming the preferred dish of affluent restaurant patrons in Japan, South Korea, and Taiwan. In 1992, a serving of bear paw soup in Taiwan cost \$1,400.²⁸

Perhaps even more prized than the meat or pelt is the bear's gall bladder. The gall's bile is valued for its medicinal qualities. Written prescriptions for bear gall bladders first appeared during the 7th Century, but many historians believe that actual use dates back nearly 3,000 years.²⁹ The bile supposedly cures blood disorders, heart and liver ailments, nausea, hemorrhoids, and impotence.³⁰ The gall bladders are also dried and ground into powder and prescribed for abdominal pains as well as for high blood pressure and fevers.

Studies have shown that the active ingredient in bear bile, ursodeoxycholic acid (UDCA), does appear to be effective against hemorrhoids and safely dissolves gall stones.³¹ A synthetic form of UDCA has been created and marketed in Japan since 1957, but consumers have been skeptical and prefer "the real thing."³² "In a survey [conducted by the World Wildlife Fund, an international conservationist group] of fifty traditional Chinese doctors in Korea, 92% said that bear bile is an essential part of their medical practice and that they would pay between \$1,000 and \$18,000 for a bear gallbladder."³³ The

²⁴ See Hanback, *supra* note 1.

²⁵ See Hanback, *supra* note 1.

²⁶ 138 Cong. Rec. E582, 583 (Mar. 9, 1992) (statement of Rep. Bentley) *citing* Sy Montgomery, "Grisly Trade Imperils World's Bears — Thriving Asian Black Market in Paws, Gallbladders Now Targeting Animals in the United States" BOSTON GLOBE, Mar. 2, 1992.

²⁷ 138 Cong. Rec. H1166 (Mar. 11, 1992)(statement of Rep. Bentley).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ See *supra* note 26.

³² See *supra* note 26.

³³ Kathryn Crawford, *High Prices for Bear Gallbladders Encourage Poaching*, LOS ANGELES TIMES, Oct. 9, 1994, at 23.

survey also revealed that only two percent of them would recommend synthetic substitutes to bear bile for their patients.³⁴

Because the endangerment of American black bears has not accelerated to the level of tigers, there has not been as vigorous an outcry by international groups to halt the trade of bear body parts. The U.S. Fishing and Wildlife Service estimates that while 40,000 American black bears are legally killed each year in the United States, about 20,000 to 40,000 more are killed illegally. That is, they are killed out of season, killed in their dens, or baited.³⁵ Currently there are no national laws prohibiting the sale or export of bear gall bladders. However, it is outlawed by forty-two states. The remaining eight states—Idaho, Maine, New Hampshire, New York, Vermont, Virginia, West Virginia and Wyoming—do allow documented sale and export of bear parts and viscera.³⁶

III. CURRENTLY AVAILABLE AND PROPOSED SOLUTIONS

A. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is an international treaty designed to control and regulate international trade in certain animal and plant species which are or may become threatened with extinction.³⁷ Presently, 124 countries are parties to CITES. Among them are the United States, Hong Kong, China, Japan, and South Korea.³⁸

The Convention has been one of the most successful of all international treaties dealing with the conservation of wildlife. Its operating principles are basic, and it has had much more effective enforcement than previous multilateral treaties regarding wildlife. CITES lists the species of animals and plants it strives to protect in three Appendices to the Convention.³⁹ With a few exceptions, it prohibits international trade in species listed in the appendices without a prior grant of a CITES permit. Each Party to the Convention must establish at least one Management Authority and Scientific Authority which are responsible for ensuring that certain conditions and require-

³⁴ *Id.*

³⁵ See *supra* note 26.

³⁶ See *supra* note 22.

³⁷ *Foreign Proposals to Amend Appendices to the Convention on International Trade in Endangered Species*. 59 Fed. Reg. 46023 (1994) (codified at 50 C.F.R. pt. 23, 1995)

³⁸ *Asian Nations Pledge to Save Wild Tigers*, *supra* note 20.

³⁹ Simon Lyster, *INTERNATIONAL WILDLIFE LAW* 240 (1985).

ments are met before permits are issued. There is also a Secretariat in Switzerland whose function is to oversee the permit system on the international level.⁴⁰

CITES calls for biennial meetings of the Conference of the Parties. There, members review the convention's implementation, develop provisions enabling the CITES Secretariat to carry out its functions and consider amendments to the list of species in Appendices I and II. Appendix I lists species threatened with extinction that are or may be affected by trade. Although the Convention is unclear about what is meant by "threatened with extinction," past meetings of the Parties have listed some factors in determining such status. These include population size, geographic range, and potential causes of extinction. Commercial trade in these species is prohibited.

Appendix II includes species that are not currently threatened with extinction but may become threatened unless trade in these species is strictly controlled. The list also includes species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under control. This provision aims to protect look-alike species. For example, if Species A is threatened by trade and Species B is not but both are physically similar enough that Species A could be smuggled out of a country under the guise of being Species B, both species will be listed under Appendix II. Such similarities may also lead to extended and threatening hunting of the Species B. Trade in these animals and plants is allowed with strict documentation of their origin and other information.⁴¹ Both Appendix I and II share the same preconditions necessary for the Scientific Authority to approve and for the Management Authority to actually issue a permit for export: (1) the export is not detrimental to the survival of the species; (2) the specimen was not obtained illegally in the country of export; (3) shipments of live specimens will be under humane conditions; and (4) an import permit has been granted by the destination state.⁴²

Finally, Appendix III lists species that any Party nation identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other nations in controlling trade.⁴³ Basically, the objective

⁴⁰ *Id.*

⁴¹ *Supra* note 37, at 46023-46024.

⁴² David S. Favre, *INTERNATIONAL TRADE IN ENDANGERED SPECIES* 71 (1989).

⁴³ *Supra* note 37 at 46023-46024. Despite criticism that it lacks real power to enforce its resolutions, CITES has had some successes in the past. Export quotas and ranching have increased the numbers of some endangered wild crocodiles; a 1990 ban on the ivory trade, com-

of Appendix III is to provide a mechanism whereby a Party with domestic legislation regulating the export of species not listed in Appendix I or II can seek international help in enforcing its legislation.⁴⁴ Thus the trade restrictions on species under Appendix III are limited to specimens originating from the State which listed them. To export these species, CITES requires the prior grant and presentation of an export permit (the importer, in turn, must present an import permit and certificate of origin).⁴⁵

In the United States, Section 9 of the Endangered Species Act (ESA) prohibits the shipping, sales, or offer for sale in interstate or foreign commerce of any endangered species taken in violation of ESA standards,⁴⁶ while Section 8 of the Act implements CITES.⁴⁷ According to Section 8, the Secretary of the Interior, acting through the U.S. Fish and Wildlife Service, serves as both the Scientific and Management Authority for the United States.⁴⁸

Currently, Asiatic tigers are listed under Appendix I. At a meeting of CITES on November 7, 1994, in Fort Lauderdale, Florida, ten Asian nations proposed a major resolution to launch a global initiative to save the tiger. The resolution, prepared by China, India, Indonesia, Japan, Malaysia, Nepal, South Korea, Singapore, Thailand and Vietnam, calls for increased border patrols to stop poaching, more funding for conservation efforts and public awareness campaigns designed to discourage consumption of tiger products.⁴⁹ CITES has been criticized in the past as being largely powerless to enforce its resolutions. It depends on the active efforts of its Party nations, some of whom lack the will or resources for effective enforcement.⁵⁰ The key to this resolution's success will be the voluntary contributions by way of domestic trade bans by each of the Asian nations proposing it. Especially important is the participation of China and South Korea, two of the largest consumers of tiger products.⁵¹

While the resolution is a promising step toward increased protection of the tiger, it remains to be seen whether the resolution will be

bined with a crackdown on poaching, helped to slow the loss of African elephants. Brad Knickerbocker, *Conservationists Sound Antipoaching Alarm*, THE CHRISTIAN SCIENCE MONITOR, Nov. 9, 1994, at 3.

⁴⁴ See Lyster, *supra* note 39, at 246.

⁴⁵ See Lyster, *supra* note 39, at 255.

⁴⁶ Endangered Species Act of 1973 9, 16 U.S.C. § 1538(a)(1) (1994).

⁴⁷ *Id.* § 1537a.

⁴⁸ *Id.* § 1537a (a).

⁴⁹ *Asian Nations Pledge to Save Wild Tigers*, *supra* note 20.

⁵⁰ *Supra* note 37.

⁵¹ *Asian Nations Pledge to Save Wild Tigers*, *supra* note 20.

vigorously enforced. The question of standard procedures for enforcement is also left unanswered. Much of the criticism of CITES in the past has been its lack of well-defined standards by which the Scientific and Management Authorities make their permit-granting decisions. This makes for a lack of clear and predictable guidelines. Despite the four preconditions listed above, the Scientific Authority has yet to define what actions actually constitute "detriment" or what are "humane" conditions. Perhaps devising a measuring stick for determining harm to a species or inhumane transport conditions is an impossible task in itself considering the various and differing sets of circumstances surrounding each endangered species.

B. Captive Breeding

One measure taken by the Chinese in an attempt to meet the ever-present demand for tiger products was the industrial breeding of tigers on government-subsidized tiger farms. The British conservation group, Tiger Trust, has documented at least one tiger farm in the Heilongjiang province of China⁵² and similar farming in Thailand.⁵³ The tigers are born and bred in captivity to be slaughtered at the age of three years.⁵⁴ Not surprisingly, the farms have drawn criticism. Some conservationists believe that farming actually acts as a form of stimulation for tiger poaching elsewhere. By legitimizing the use of tiger products and by feeding the demand through government-funded farms, conservation groups such as Tiger Trust argue that wild tigers will be poached at an increased rate.⁵⁵ The problem will be exacerbated by the fact that captive-bred tigers are difficult, if not impossible, to differentiate from wild tigers that have been illegally killed. If such a program of captive breeding is to be undertaken, detailed and closely monitored tagging systems will have to be developed to prevent the potential for fraud and abuse.

Still, supporters of tiger farming contend that such measures are now necessary if tigers are to be saved. They feel that it is better to have tigers in captivity than no tigers in existence at all.⁵⁶ The supporters also point to the success of the farms in increasing tiger populations. The Heilongjiang tiger farm, for example, was started in 1986 with fourteen Siberian tigers. By 1992, that number increased to sixty-

⁵² Linda Yeung, *Mission to Halt Trade in Tigers*, SOUTH CHINA MORNING POST, Jun. 4, 1994, at 4.

⁵³ See Day, *supra* note 8.

⁵⁴ See Schmetzer, *supra* note 2.

⁵⁵ Yeung, *supra* note 52.

⁵⁶ Naughton, *supra* note 5.

two tigers and could have risen to 600 by the year 2000 with continued funding. With modern reproductive techniques, it may be possible to breed 2,000 tigers in seven years.⁵⁷ These industrially bred tigers can be sacrificed to meet the demand for tiger products while the few remaining wild tigers are spared.

While the debate continues over the farms, the Chinese government, faced with the threat of trade bans, stepped up its regulations against the tiger trade and cut its government subsidies to the local tiger farms. This reversal in policy has left many captive, industrially bred tigers dying of malnutrition.⁵⁸

The Chinese government's own indecision regarding the debate suggests that some sort of resolution shared by exporters and importers of the tigers and tiger parts is necessary. Should conservationists follow a plan of absolutely abolishing tiger farms and increasing policing efforts to crack down on the trade itself, or should they follow a plan of integrating farms with regulatory trade agreements? Given the strong and deeply rooted cultural origins of the trade, a plan of integration seems more realistic and sensitive to cultural considerations.

CITES's has attempted to respond to the debate of captive breeding. Article VII(4) of CITES states that specimens of Appendix I animals bred in captivity for commercial purposes shall be treated as specimens listed under Appendix II.⁵⁹ For a species to be considered to be "bred in captivity," the breeding stock must be established in a manner not detrimental to the survival of the species in the wild and must be managed in a way that is capable of reliably producing a second generation and maintaining a continuing breeding stock indefinitely.⁶⁰ Basically, these criteria attempt to ensure that a captive breeding stock of animals listed in Appendix I will be able to sustain itself in captivity without further replenishment from the wild population. Otherwise, such farming of animals in captivity would defeat its own purpose of protecting the wild.

Bear farming also has been explored by China.⁶¹ Around 1984, China began experimenting with "milking" the bile from individually caged bears through surgically implanted tubes attached directly to

⁵⁷ Naughton, *supra* note 5.

⁵⁸ See Schmetzer, *supra* note 2.

⁵⁹ See Lyster, *supra* note 39, at 260.

⁶⁰ See Lyster, *supra* note 39, at 260.

⁶¹ See *supra* note 26.

the bears' gall bladders.⁶² Along with humanitarian arguments against such procedures, the farms have been criticized for aggravating the problem of poaching. While some larger farms breed their own bears, others replace their bears with those captured from the wild.⁶³

These practices among the existing tiger and bear farms seem to suggest that the CITES provisions for captive breeding go unheeded. Debate continues over the value and appropriateness of the general concept of captive breeding. There is also a need for standardization and clearly defined goals of captive breeding. The existing CITES provisions regarding captive breeding need to be fleshed out in detail concerning enforcement of farming standards such as initiation and maintenance of the breeding stock, living conditions, treatment, and transport conditions in the case of live specimens. Another area of major concern is the proper labeling of captive-bred animals to distinguish them from those extracted from the wild. This would serve to mitigate the poaching and smuggling of illegally obtained tiger or bear parts under the pretense that the parts were taken legally from captive-bred specimens.

C. The Rhinoceros and Tiger Conservation Act of 1994

Currently pending in Congress is a bill initially introduced in August of 1994, titled the "Rhinoceros and Tiger Conservation Act of 1994." The purpose of the Act would be "to assist in the conservation of rhinoceros and tigers by supporting and providing financial resources for the conservation programs of nations whose activities directly or indirectly affect rhinoceros and tiger population, and of the CITES Secretariat."⁶⁴ Under the Act, a country, the CITES Secretariat, or any other person would submit to the Secretary of the Interior a project proposal for the conservation efforts of tigers. If approved, funds from the "Rhinoceros and Tiger Conservation Fund" of the Treasury would be donated to assist in executing the proposed project. The Fund would consist of donations made to the Secretary of the Interior and other moneys appropriated to the Fund. The bill proposes that \$10,000,000 be appropriated to the Fund for each of fiscal years 1996 through 2000.⁶⁵

⁶² Michael Satchell, *Now, It's Save the Bears*, U.S. NEWS & WORLD REPORT, Nov. 14, 1994, at 48.

⁶³ *Id.*

⁶⁴ H.R. 4924, 103rd Cong., 2nd Sess. (1994).

⁶⁵ *Id.*

D. The American Black Bear Protection Act

In 1992, Representative Helen Bentley of Maryland introduced a bill called the "American Black Bear Protection Act of 1992." She re-introduced it in 1993 simply as the American Black Bear Protection Act, and today the bill is still pending.⁶⁶ If passed, the Act would provide a three-fold attack against the poaching and trading of black bears from the United States. First, the Act would "prohibit the export from the United States of American black bear viscera."⁶⁷ The Secretary of Commerce would have the authority to intercept bear parts at the national borders⁶⁸ under the Export Administration Act of 1979.⁶⁹ Second, the Act would call for the "Secretary of the Interior, in consultation with the Secretary of the Treasury, [to] prepare and submit to the Congress, not later than one hundred eighty days after the date of the enactment of this Act, a report"⁷⁰ on the effectiveness of existing computerized information systems in tracking the illegal commercial supply networks of bear viscera.⁷¹ Finally, the Act would direct the United States Trade Representative to discuss the issues of illegal bear and bear viscera trade with representatives of those nations involved in the trade.⁷²

IV. PROPOSAL—AN INTEGRATIVE PROGRAM

Any proposed program to stop the poaching and illegal trading of the Asiatic tigers and American black bears must take into account the difference in level of endangerment between the two animals. While both are threatened by a demand for traditional medicines and culinary delicacies, the two animals represent different ends of the scale of endangerment. The tiger population has been decimated to near-extinction, while the American black bear population is just recently beginning to feel the threat of mass poaching.

The following section suggests a plan for saving the Asiatic tigers by integrating a program of regeneration of the existing population with strict, standardized regulation of legitimate trade, geared toward the eventual decline of the illegal trade. It will then discuss a proposal for halting the current threat to the American Black Bear and

⁶⁶ S. 181, 103rd Cong., 1st Sess. (1993).

⁶⁷ *Id.*

⁶⁸ 139 Cong. Rec. S692 (Jan. 5, 1993)(statement of Sen. McConnell).

⁶⁹ 50 U.S.C. App. § 2401 (1979).

⁷⁰ See *supra* note 66.

⁷¹ See *supra* note 27.

⁷² See *supra* note 27.

preventing further endangerment. The plan involves stricter regulation and tracking of legitimate trade. The plan recognizes the difference in the plights of the tiger and black bear, while reflecting a valuable lesson from the severity of the tiger situation. As a result, rather than focusing on curative efforts, it is preventive in its attempt to curtail further deterioration of the American Black Bear population caused by poaching and illegal trade. The focus of the protection of the black bear should be in the United States's own domestic policies regarding the trade.

A. The Asiatic Tigers

CITES has often been criticized as lacking any real power to enforce its resolutions within any nation's domestic policies. Its provisions are only as effective as the Party nations' own efforts at conservation and regulation of its borders. As a major international trade entity, the United States must, therefore, give CITES some teeth with which the Convention could begin to protect the Asiatic tigers. Passing the Rhinoceros and Tiger Conservation Act of 1994 would be a step in this direction. By legislatively setting aside a fund from which various nations and conservation groups can receive financial support, the United States will be lessening the chances of having nations that are currently involved in the tiger trade retreat from conservation projects due to a lack of resources.⁷³

Decisions regarding the allocation of the funds should be made by a committee comprised of both officials acting under the Secretary of the Interior as well as directors of non-governmental conservation groups. The committee should be structured to allow for checks and balances of power between the government and the conservation groups—each being held accountable to the other for its actions and judgments so as to prevent extraneous interests from being pursued. The decisions of whether or not to grant funds to a proposed program and if so, how much, should be decided according to such factors as purported goals of the program and its overall feasibility. The presence of non-governmental conservation groups would also provide valuable expertise and monitoring regarding the on-going status of the tiger and effectiveness of past and currently financed programs.

Along with this show of financial support for conservation, the United States must also demonstrate an active commitment to controlling the current trade, with an eye toward eventually halting the

⁷³ See *supra* note 37.

illegal trade entirely. The United States should continue its limited sanctions against Taiwan for their slow efforts to control the trade. Whether Taiwan joins as a Party to CITES is not vital to the solution. However, the purpose of the sanctions should not be to pressure Taiwan to completely halt the trade in tiger products immediately. Such a demand is unrealistic and unfair, for it disregards the level to which the problem has accelerated and the depths from which the problem arose.

That is, the illegal trade in tigers cannot be halted immediately or even in a matter of a few years. Instead, a solution will have to consist of a long-term program which slowly strangles the illegal trade out of business by maintaining and regulating a legitimate trade. Through limited sanctions and, if requested, through funds from the Rhinoceros and Tiger Conservation Fund, the United States should encourage Taiwan to improve its current fight against the illegal trade with increased border control, increased manpower of inspectors and agents in the field to police and enforce regulations, and increased tracking and prosecution of suspected violators. Particularly, the United States should pressure Taiwan to pass domestic laws which call for harsher punishment of poachers and illegal traders that includes substantial prison sentences rather than mere fines.

Along with these changes, the United States should support a program of captive breeding. Despite criticism that such programs stimulate and encourage the existing poaching situation, captive breeding can nevertheless ensure a steady rise in the population of tigers—the Heilongjiang farm being one example before its funds were cut off.⁷⁴ The major risk involved in captive breeding is the possibility of wild tigers being passed off as captive-bred tigers, thus continuing the depletion of the wild tiger population.⁷⁵ However, that is a risk that must be taken and can be mitigated with a detailed system of tagging and close tracking of captive populations.

An argument that such tracking efforts are difficult to maintain accurately and therefore captive breeding is unfeasible is shortsighted. Such an argument ignores the most immediate problem of the tiger situation—the dwindling population. The immediate effect of captive breeding would be the increase in the tiger population, though captive. The long-term effects, however, will be twofold. First, tiger farms would regenerate the currently declining population of tigers in the world. A number of tigers could be bred in captivity for the pur-

⁷⁴ See Schmetzer, *supra* note 2.

⁷⁵ See Favre, *supra* note 42.

pose of being reintroduced into the wild to replenish the wild population. These specimens would be raised in preserves accurately simulating the wild in order to make their eventual assimilation into the real wild more successful. Second, the tiger farms could supply a stock of tigers bred to meet the long-present demand for tiger products. Despite studies that have shown consumer preference toward products from wild tigers, consumers will eventually opt for these legitimate products once they realize the higher cost of obtaining wild (illegal) tiger products. These higher costs would include the risk of severe penalties of fines and imprisonment.

If tiger farms prove productive, perhaps even the price of illegal tiger products would eventually rise higher than readily available, legal tiger products through a sort of saturation of the market. This could also act as a deterrent to seeking wild tiger products. In addition, educational programs should be launched to emphasize the environmental harm of consuming illegal, wild tiger products and the general evil and unpleasantness of seeking out dealers of contraband.

A proposal suggesting the consumption of captive-bred tigers will undoubtedly meet vehement opposition from a moral perspective. The image of an animal such as the tiger, which has so often been portrayed as a beautiful and majestic predator, being farmed for slaughter and commercial processing, is an unsettling one.⁷⁶ However, the plight of the tiger has become desperate and time is running short. Such a drastic measure as captive breeding must be incorporated into a long-term plan of trade regulations if we are to see the tiger population rise rather than continue to fall.

This drastic measure is also respectful of the fact that the use of such products has such deep roots in the traditions and cultures of its consumers. Although synthetic substitutes have been found, consumers are not likely to settle for such a different alternative to the traditional means by which they satisfied their traditional tastes as long as there are still tigers in existence. Shifting their supply from wild to captive tigers, however, is a less drastic change which could be more readily accepted. The proposal also recognizes the fact that these cultures' uses of the tiger products and the qualities they attribute to

⁷⁶ According to Korean mythology, the nation of the Korean peninsula was created from the union of a bear and a tiger. It is sadly ironic that South Korea is currently one of the largest consumers of products made from illegally killed and traded tigers and bears, two animals that hold such an important position in the country's mythology and folklore. On the other hand, perhaps it is exactly this mythological status that the tiger and bear hold that has doomed them for 3,000 years to be so valued and attributed with healing powers as to be hunted to near-extinction.

them are not altogether based on meritless myth.⁷⁷ Rather than demand that a country's long-established medicinal and culinary traditions be abolished outright, this integrative plan represents a sort of compromise which must be made between conservationists and consumers in order for the ultimate goal of saving the tigers to be realized.

Whether or not a nation is a Party to CITES, conservation efforts must be taken through voluntary domestic measures. CITES is strictly a voluntary convention that carries no self-executing penalties for violations of its resolutions.⁷⁸ Therefore, the United States must also consider the imposition of sanctions on other nations that may not be consumers of tiger products, but continue to supply the trade with poached tigers. For example, poaching in India still continues at such a rapid rate that experts estimate extinction to be five years away.⁷⁹

Coupled with the ten Asian nations' new resolution to halt the illegal tiger products trade, economic pressure from the United States to follow the above proposed plan may help to slow the rapid decline of the tiger and speed its recovery. The proposal does not apply to Taiwan exclusively but to all nations currently involved in the trade and consumption of illegal tiger products, such as South Korea, China, and Japan.⁸⁰

B. The American Black Bear

The American black bear, on the other hand, is not in immediate danger of extinction, and therefore, need not be bred on farms. Whereas the United States can only perpetuate the recovery of the Asiatic tigers through economic and political pressure on the Asian nations, the American black bears can be directly protected through immediate legislation that carries with it the force of criminal penalty. Therefore, the American Black Bear Protection Act should be passed to combat poaching and exportation of American black bears by both domestic and foreign hunters.

By outlawing the export of bear viscera, the Act attempts to remove the channels by which the poachers gain the fruits of their labor. Strict enforcement at the borders will make it more costly and difficult for illegal traders to trade in American black bear parts and will act as

⁷⁷ Naughton, *supra* note 5.

⁷⁸ *Asian Nations Pledge to Save Wild Tigers*, *supra* note 20.

⁷⁹ See Day, *supra* note 8.

⁸⁰ See *supra* notes 10-13.

a deterrent. Strong domestic laws that carry the penalty of imprisonment along with the provision directing the United States Trade Representative discuss issues of black bear protection make the Act a necessary step toward preventing further endangerment of the black bear. The Act's requirement of a report from the Secretary of the Interior on the progress of the effects of the Act should be reinforced by further requirements of annual progress reports tracking on a continuous basis the progress and effect of the Act in decreasing poaching and smuggling activities.

One of the major arguments against the Act is that it is premature and over-regulates the hunting of an animal that really is not endangered.⁸¹ It is true that the American black bear is not yet in danger of extinction or unhealthily low populations.⁸² However, the Act is a preventive measure geared against poaching and illegal export. It should not affect current standards or practices of legal, seasonal hunting of black bears. Much of the regulation deals with stopping attempts by international dealers to export bear viscera.

Legislators can look to the Migratory Bird Treaty Act as an example of an act that helps to conserve a natural resource without infringing on the rights of hunters. The Migratory Bird Treaty Act prohibited the capturing or killing of "any migratory bird with the intent to sell, offer to sell, barter or offer to barter" under penalty of fine or imprisonment.⁸³ The key issue is the intent of the hunter. The Act did not necessarily obstruct hunting of birds, but rather the hunting with intent to sell.

Similarly, the American Black Bear Protection Act does not interfere with the actual hunting of bears as regulated by present state laws. Instead, it prohibits only the exporting of the bears' viscera. As long as eight states allow such export, there will be eight channels through which poachers can sell and traders can buy bear parts for consumption in Asia. A uniform, national law such as the Protection Act is needed to combat this trade.

Aside from stricter border controls to stop illegal exports, a more thorough campaign of enforcement must be launched to combat the consumption of bear gallbladders within the United States. Throughout the nation, in cities with relatively large Asian and Asian-American populations, the bear viscera market thrives.⁸⁴ Harsher penalties

⁸¹ See *supra* note 26.

⁸² See Rappaport, *supra* note 22.

⁸³ 16 U.S.C. § 707 (1994).

⁸⁴ See Rappaport, *supra* note 22 and *supra* notes 26 & 27.

of imprisonment or heavy fines for the sale of bear parts should be enforced through detailed registration and tracking of the destinations of hunted bears. Note that the actual use of the bear viscera should not be outlawed, but rather the sale and transport. Implementing a more effective fight against the illegal sale of bear viscera and parts would have to involve more education of the community and police force regarding the problems such activity poses as well as increasing the resources and manpower of the U.S. Fish & Wildlife Service.

In addition to domestic measures, the United States government should undertake a campaign of imposing limited sanctions on countries that passively condone imports of American black bear parts. As long as there is a voracious international market, there will be incentive for some poaching despite domestic measures to deter and punish such activities. The United States must enlist the cooperation of other nations and convince them of the importance of attacking the problem now.

In exploring the need and the ways to protect the black bear, we could also look to the present status of the tiger as a lesson against waiting until the problem has become severe. A strong domestic policy against poaching and export of viscera demonstrates an awareness of the potential harm such commercial practices can do. The hunting and over-exploitation of the tiger has gone unchecked until recent conservationists' efforts to bring brought the desperate situation of the tigers to the attention of the Parties to CITES.⁸⁵ In contrast, the plight of the American Black Bear can be improved and secured to a healthy status by recognizing and preventing the threat of extinction before national populations have dwindled to an alarming number. Passing the American Black Bear Protection Act now will prevent further harm and the need to resort to such drastic measures as captive breeding.

V. CONCLUSION

The Asiatic tiger and the American black bear are only two of many animals that are or will be threatened with extinction due to the culinary, medical, and social traditions of various cultures. Unless immediate legislation is passed and international diplomatic and economic pressures are applied, however, they will be two of many animals that *are* extinct. The proposals mentioned in this Comment are by no means guaranteed or foolproof solutions to problems that

⁸⁵ See *supra* notes 8, 13 & 20.

inevitably occur when man clashes with nature. But they can be a first step toward recognizing the immediacy of the threats to these two animals and offer currently viable attempts to stop the threats.