

A Guide to ESA and CITES

by

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Many insectivorous plant horticulturists are very confused about the Federal Regulations under the ESA and CITES. The fact that there are two different sets of rules compounds the issue even more. This confusion and the recent incident in California has resulted in widespread fear of U.S. authorities and general paranoia. The purpose of this article is to alleviate this fear and educate the members of ICPS. I will discuss and outline the procedures mandated by the Endangered Species Act. Then I will elucidate CITES and, finally, talk about a means to import plants into the U.S.

I. U.S. Regulations As Defined in 50 CFR Part 17 Implementing the Endangered Species Act

A. For The Purposes Of These Regulations The Following Plants Are Endangered

This applies equally to live or dead plants, their seed (except in the case of a threatened species), and parts or products derived from them.

Scientific Name*	Common Name*	Status*
Sarracenia S. oreophilla S. rubra ssp. alabamensis S. rubra ssp. jonesii	Green Pitcher Plant Canebrake Pitcher Plant Mountain Sweet Pitcher Plant	Endangered Endangered Endangered
Pinguicula Pinguicula ionantha	Godfrey's Butterwort	Threatened

*adapted from 50 CFR 17.12

B. Prohibited Acts Under 50 CFR 17.61

- Σ Import and export. This includes any shipment in transit through the United States whether or not it has entered the United States for customs purposes.
- Σ Removing plants from their habitats and placing them into collections.
- Σ It is prohibited to deliver, receive, carry, transport or ship an endangered plant in interstate or foreign commerce by any means and in the course of a commercial activity.
- Σ It is prohibited to sell or offer an endangered plant for sale. However, it is permissible to advertise for sale an endangered plant, as long as there is a warning that no sale may be communicated until a permit has been obtained from the U.S. Fish and Wildlife Service (F&WS).

C. Special Permits

1. Permits For Scientific Purposes Or For The Enhancement Of Propagation Or Survival

Permits for scientific purposes or for the enhancement of propagation may be obtained under 50 CFR 17.62. Upon receipt of a complete application a permit may be issued authorizing any activity otherwise prohibited by §17.61.

2. Economic Hardship Permits

Under 50 CFR 17.63, permits for economic hardship may be granted. The exemption will not be granted for the import or export of a species also listed under Appendix I (to be defined later) of the Convention on International Trade in Endangered Species (CITES) of Wild Fauna and Flora, if the species would be used in a commercial activity. An application for this type of permit must be submitted to F&WS by the person allegedly suffering excessive economic hardship if the applicant's desired activity is prohibited under §17.61.

3. Address For The Above Permits

U.S. Department of the Interior
Office of Management Authority
U.S. Fish and Wildlife Service
4401 N. Fairfax Dr., Rm. 420c
Arlington, VA 22203

Phone (800) 358-2104

4. Other Special Permits

In addition to the above permits, there is also a **Native Endangered and Threatened Plant Interstate Commerce Permit**. The underlying message of this commercial permit is the clear emphasis on the enhancement of species survival. When the vendor ships the plants the containers must be plainly marked with accurate descriptions. The scientific name, whether it is artificially propagated or wild collected, and the permit number of the U.S. Fish and Wildlife permit must be plainly visible. The permit also encourages the disbursement of educational information on the particular species being sold. Further, the agency also requires that an annual report be submitted. This report must include, for wild collected plants a complete listing of activities; and for propagated plants, the number of plants produced, the number sold, and the names and addresses of the people who purchased such plants. The application for this permit may be obtained from the following address:

U.S. Department of the Interior
Office of Management Authority
U.S. Fish and Wildlife Service
1875 Century Blvd.
Atlanta, GA 30345

D. Some Additional Notes

According to the literature, the plants stated above are the only plants that are protected under the ESA. The other *Sarraceniaceae*, *Dionaea*, and *Darlingtonia* are not listed as endangered, hence, the rules do not apply - yet. However, a proposal has been submitted to place the following species under protection: *Dionaea muscipula*, *Pinguicula planifolia*, *Sarracenia leucophylla*, and *S. rubra ssp. wherryi*. It should be emphasized that the regulations above pertain only to the United States and its territories. People residing in other countries should consult with their proper authorities for the appropriate permits. The regulations only pertain to species specifically listed in 50 CFR 17.12, and do not apply to such species as *N. rajah* and *N. khasiana*. These are, however, subject to CITES.

As tissue culture is not mentioned in any of the materials that I obtained from the U.S. F&WS, I recommend the rules and regulations mentioned above be followed to avoid any sort of problems.

In addition to these regulations, individual states have their own regulations. Check with the appropriate states if you want to engage in commercial trade and collection of plants in your state.

II. Convention on International Trade on Endangered Species (CITES)

A. For Purposes Of Explaining Regulation The Following Species Are Listed In CITES

Species*	Common Name*	Appendix*	Date Listed*
Family <i>Byblidaceae</i> <i>Byblis</i> ssp. #1	Byblis family Byblis, Rainbowplants	II	6/28/79
Family <i>Cephalotaceae</i> <i>Cephalotus follicularis</i> #1	eustralian pitcher plant family Western Australian pitcher plant	II	6/28/79
Family <i>Droseraceae</i> <i>Dionaea muscipula</i> #1	Sundew family Venus flytrap	II	6/11/92
Family <i>Nepenthaceae</i> <i>N. rajah</i> <i>N. khasiana</i> <i>Nepenthes</i> ssp. (all except those in Appendix I) #1	Old world pitcher plant family Giant tropical pitcher plant Indian tropical pitcher plant Tropical pitcher plants	I I II	6/06/81 10/22/87 10/22/87
Family <i>Sarraceniaceae</i> <i>Darlingtonia californica</i> #1	New World pitcher plant family Cobra lily	II	6/06/81
<i>Sarracenia oreophila</i>	Green Pitcher Plant	I	6/06/81
<i>Sarracenia rubra alabamensis</i>	Canebroke Pitcher Plant	I	6/06/81
<i>Sarracenia rubra jonesii</i>	Mountain Sweet Pitcher Plant	I	6/06/81
<i>Sarracenia</i> sp. (all except those listed in Appendix I) #1	Trumpet pitcher plants	II	10/22/87

*adapted from 50 CFR §23.23

B. Appendix I

Appendix I includes species presently threatened with extinction and, therefore, the Convention's controls are directed at these species. Plants listed as **Appendix I**, intended for importation into the United States, must have two permits - a CITES import permit as well as a CITES export permit from the country of origin. Permits are granted only when the import or export will not be detrimental to the survival of the species.

C. Appendix II

Appendix II species are not presently threatened with extinction but may become so unless their trade is regulated. Plants listed as **Appendix II**, intended for importation into the United States do not require an import permit but do require an export permit of the country of origin.

The symbol #1 placed against the name of a species or higher taxon included in Appendix II indicates that seed, pollen, tissue cultures, and flasked seedling cultures are exempt from CITES under Article I of the Convention.

D. Certificates of Exemption

Several certificates of exemption are available. The Pre-Convention Certificate exempts species that were obtained prior to its date of listing under the Convention. In addition, there is also a Captive-Bred Certificate for Artificially Propagated Plants if the species meets the criteria for bred in captivity or artificially propagated as set forth in CITES Conf. 2.12 or 8.17. Lastly, a Scientific Exchange Certificate may be issued to scientific institutions that are eligible for this certificate which authorizes import and export of museum and herbarium specimens.

E. Address for CITES Permit

United States Department of the Interior
Office of the Management Authority
U.S. Fish and Wildlife Service
4401 N. Fairfax Dr., Rm. 420c
Arlington VA 22203

Phone (800) 358-2104

F. Some Additional Notes

The laws for plants protected under CITES are quite different from the laws under the ESA and care must be taken not to confuse the two, particularly when it comes to the plants each law protects. As it stands today, anyone wishing to engage in international trade of CITES protected plants must wait 90 days to find out if the application was accepted. Further, the individual will have to allow the inspection of the premises where the plants are grown and provide detailed information on all plants.

III. United States Department of Agriculture Import Permit

Regardless of whether or not an individual wishes to import CITES protected plants it is necessary to obtain an import permit from the United States Department of Agriculture before importation. The process of obtaining a U.S.D.A. import permit is much simpler than the process of obtaining a CITES permit or an ESA permit. Listed below are some of the requirements in order to obtain such a permit.

A. Purpose

The purpose of such a permit is to prevent the accidental introduction of injurious plants (weed), insects, and fungi. For this reason, each time an individual wishes to import plants from a foreign country it is necessary to obtain a Phytosanitary Certificate declaring the plants free from pests and diseases.

B. Application Procedure

After the receipt of the an application from the U.S.D.A., the following information must be submitted in the application: Name, address, and telephone number of the importer; approximate quantity and kinds (botanical designation) of articles intended to be imported; countries or localities where grown; intended United States port of arrival; means of transportation, e.g. mail, airmail, express, air express, freight, air freight, or baggage; and expected date of arrival. After receipt and review of the application, a written permit indicating the conditions for importation will be issued. If plants are intended to be imported by mail or air mail Green-and -Yellow Labels will also be issued. These are labels that must be affixed on the outside of the parcel and directs the package to the nearest designated port of entry, such as New York JFK Airport or Miami. There the inspector examines the plants and it is determined if emergency measures need to be taken.

C. Plant Importation Procedures And Responsibilities Of Plant

Importers

There are several basic requirements that must be communicated to the foreign shipper, some of which are listed below:

- Σ **Freedom from Soil.** Plants arriving in, or contaminated with sand, soil, or earth will be refused entry.
- Σ **Packing material.** The following are approved packing materials: ground peat, sphagnum, pulp-free coconut or other vegetable fibers, osmunda fiber, excelsior, wood shavings, sawdust, ground cork, buckwheat hulls, polymer stabilized cellulose, and exfoliated vermiculite.
- Σ **Size-age limitations.** Plants grown from cuttings or seed which are more than two years of age will not be admitted.
- Σ **Labeling.** All material must be clearly labeled with genus, species, and variety.
- Σ **Invoices for importations by mail.** One copy of the invoice must be enclosed within the parcel or within one of the parcels in the event of a lot shipment.

- Σ **Certification for importations by mail.** A copy of the phytosanitary certificate must be attached to the outside of each parcel, and the original certificate must be enclosed within the parcel or within one of the parcels in the event of a lot shipment.
- Σ **Means of importation.** The importer may import material either by mail or freight and should instruct the foreign shipper of the appropriate shipping method. It should be mentioned that mail shipments require the use of a GREEN-AND-YELLOW LABEL (available at the time of application).

There are a few other requirements as well, but the ones listed above are the most important ones. Anyone, wishing to import plant material should read the literature carefully.

D. Address

U.S. Department of Agriculture
APHIS-PPQ
Port Operations Permit Unit
4700 River Road, Unit 136
Riverdale, MD 20737-1236

Phone (301) 734-8645
Fax (301)734-5786

IV. Conclusion

The regulations as they are written are relatively straightforward and easy to understand. However, the bureaucracy of the agencies that implement and enforce these regulations complicates the situation for many reasons. I will detail these problems in another article, since the primary purpose of this article is to educate members of ICPS and not to criticize the agencies involved.

To conclude and reiterate, this article is meant to be a guide to the members of ICPS. If they wish to engage in trading endangered plants or send plants overseas, members need to contact the appropriate agencies.

Acknowledgment

I would like to sincerely thank Rob Sacilotto for telling me about the Native Endangered and Threatened Plant Interstate Commerce Permit. He told me the permit is not well known even in Washington, DC, and now, through his persistence, the opportunity of selling or buying endangered species exists.

One Last Thing...

If anyone has any comments I would be more than happy to hear from you.