

Can illegal be legal within the European Union?

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The U.S. “Lacey Act (16 USC 3371–3378)” is in effect since the year 1900. It is a conservation law which is named according to its initiator, the member of the United States government, congressman JOHN F. LACEY. In the beginning it was aimed at protecting the endogenous species within the US. However over time, it has been amended several times in order to achieve its actual objectives. Actually, already in 1935, one detail had been implemented (ANDERSON 1995), which was revolutionary in its

day but which is now in effect for 80 years: the obligation to act in compliance with the species protection laws of foreign countries.

In its actual version this part of the Lacey Act reads:

“It is unlawful to import, export, sell, acquire, or purchase fish, wildlife or plants that are taken, possessed, transported, or sold: 1) in violation of U.S. or Indian law, or 2) in interstate or foreign commerce involving any fish, wildlife, or plants taken possessed or sold in violation of State or foreign law.” (Fig. 1)

This means that within the U.S. all transfers of animals and plants will be illegal if these species have been taken out of their country of origin by violating the currently effective species conservation laws of that country. Actually, this is a clear cut instruction which is truly in accordance with a solid sense of justice, since it is impossible that illegal acts become legalized in the case where the animals (or plants) have simply been transferred across some borders. It therefore seems a great pity that this is not always the case elsewhere, at least not within the European Union.



Fig. 1

The Lacey Act accepts and supports the national conservation regulations of the countries of origin: “It is unlawful to import, export, sell, acquire, or purchase fish, wildlife or plants that are taken, possessed, transported, or sold: 1) in violation of U.S. or Indian law, or 2) in interstate or foreign commerce involving any fish, wildlife, or plants taken possessed or sold in violation of State or foreign law.”

Hardcopy of the homepage of U.S. Fish & Wildlife Service about the Lacey Act: www.fws.gov/international/laws-treaties-agreements/us-conservation-laws/lacey-act.html.

The legal situation within the EU

Within the EU, all animals and plants can be traded legally as long as the trade does not violate European law or the law of that member state of the EU in which the trading takes place.

For Germany, the legal situation is dictated by the following rules: The “Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein” and the “German Federal Nature Conservation Act” (Bundesnaturschutzgesetz, BNatSchG) as well as to their implementing and suspensions regulations ([EC] No. 750/2013 and the “German Federal Ordinance on the Conservation of Species“, (Bundesartenschutzverordnung, BArtSchV). The scope of these regulations is mainly relating to animals and plants protected by the “Convention on International Trade

in Endangered Species of Wild Fauna and Flora” (CITES) as well as species naturally occurring within Germany and/or Europe or to so called invasive species which represent a threat for the European flora and fauna and for which the import has been banned.

Threatened but not listed by CITES?

Even today, CITES still is a valuable instrument for species conservation. However, in an environment where international trade is currently increasing, CITES is too slow to react in time, especially regarding newly described or very rare species, as well as when sudden trading trends occur. One of the best known examples for this slowness within its procedures is McCords side-neck turtle, *Chelodina mccordi* (Fig. 2). In the year 1992 it has been described and already in the year 2000 it was ranked in the IUCN Red List of Threatened Species as “Critically Endangered (CR)” and especially also named as “Commercially Extinct“ (ASIAN TURTLE TRADE WORKING Group 2000). However it took until the



Fig. 2 Non-CITES species can also be threatened; inclusion at the appendices of CITES can be approved during the Conference of the Parties only, taking place every three years – in the case of *Chelodina mccordi* maybe already too late. Photo: Wim Fontijne

year 2005 to list the species in Appendix II of CITES, and consequentially in Appendix B of the European Regulation.

This imbalance between the slowness of species protection and rapidly increasing trade is nowadays a reason for many scientists not to include anymore exact geographic location data (compare STUART et al. 2006). However, even this effort is not always successful. Just recently

a new publication created furore, in which the locality of an extremely cryptic species, the earless monitor lizard, *Lanthanotus borneensis* had been described (YAAP et al. 2012) (Fig. 3a). The authors had declined to provide the exact GPS-Data for the locality, however the publication contained sufficient mention and information of the district within Borneo and a table referring to four regions listing the percentage of people with-

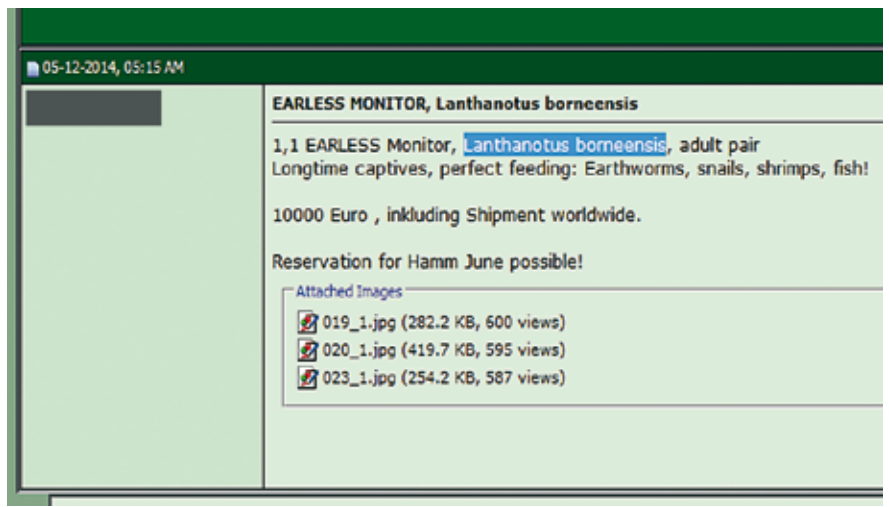


Fig. 3a-b Exportation of the earless monitor *Lanthanotus borneensis* (a), an endemic species of Borneo, is strictly prohibited. But just shortly after the publication of the spectacular re-finding it was present in trade (b). Although their exportation is illegal, the animals are traded legally within the EU. Photo: Indraneil Das (a), Hardcopy: www.faunaclassifieds.com/forums/showthread.php?t=472456 (b)

in the local communities who were aware of the that rare reptile species. Unfortunately this information was sufficient to bring that species into the international pet trade within a short period of time. The expected financial upside of 10,000 Euro was sufficient incentive for smuggling the animals out of the country (Fig. 3b). Currently the trade with earless monitor lizards has increased to such an unsustainable point that NIJMAN & STONER (2014) argue for a fast inclusion of the species into Appendix I of CITES.

This recent and very spectacular case has also led to discussions outside of the more specialized press and the story has been published by several different national and international media. This unfortunately may give the false impression that this is a single case which has been picked up on by the media. However, in reality this is certainly not the case.

National protection is not always efficient

In analogy to the case of the Malayan and Indonesian part of Borneo where the endemic Earless Monitor lizard is highly protected, this species shows frequently up in the international trade, which should be legally impossible given the current laws in their country of origin. ALTHERR (2014) provides solidly documented case studies for over 30 species of reptiles from 10 countries which are not listed by CITES, but for which the export out of their countries of origin is illegal and which however do appear in the international trade. Also for “modern” countries that value and legislate the protection of their endemic natural resources, substantiated data are available for that type of illegal trade.

Anybody familiar with the reptile scene should stop and just con-

sider all the Australian reptiles which have left their continent encased in video cassettes by mail. This presents almost certainly just the tip of the iceberg. Also Japan apparently does not see a way how to stop the illegal trade. Although the Japanese leaf turtle, *Geoemyda japonica* (Abb. 4a) lives restricted to the Ryukyu-islands and has been protected as a national monument as early as 1975, this species appeared frequently in the international trade and illegal harvesters had been convicted. That was the reason why in 2013 Japan applied to list the endemic species in CITES Appendix II and instantly establish a zero-quotation for trade in order to force the other countries to take responsibility for that illegal trade (CITES 2013).

In its application Japan specified these problems in detail: Even with strong efforts it will be in actuality impossible to stop the smuggling of individuals. However it would be very helpful to put a halt to the open trade with these smuggled goods. The market would severely shrink because in many cases it is not the passion of turtle collectors which leads to sky rocketing prices for rare species, instead it will be the expectation for a good deal if one could breed a rare species and sell it exclusively. However such a calculation will be impossible if the animals have to be considered as illegal because the same pertains to their offspring (Abb. 4b).

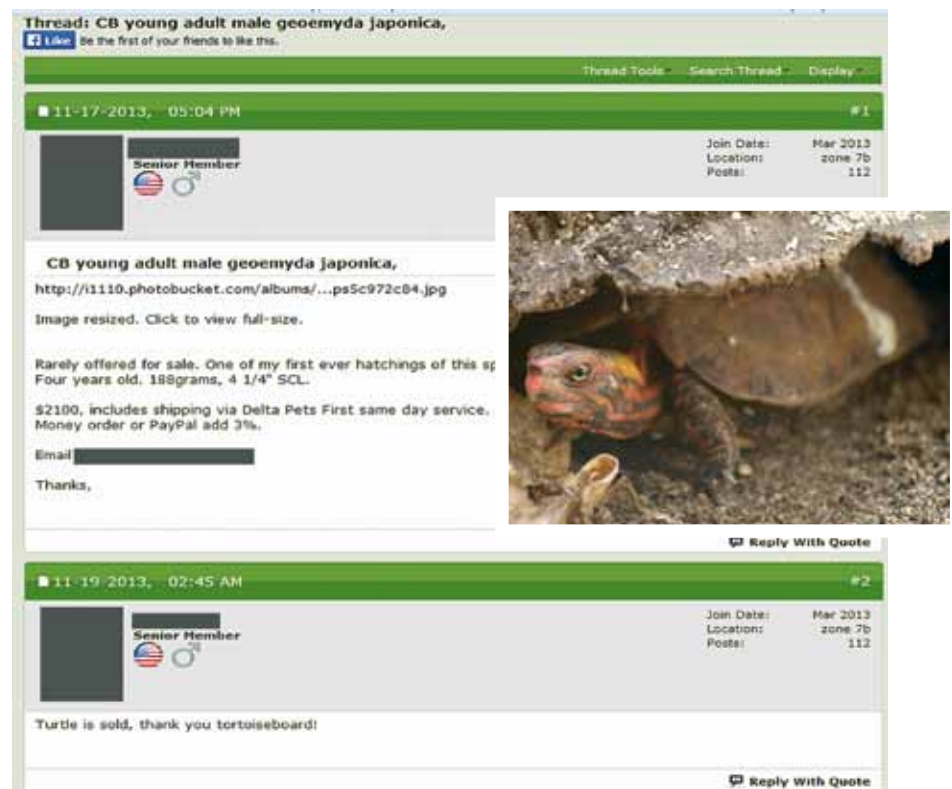


Fig. 4a–b

The Ryukyu leaf turtle *Geoemyda japonica* (a) is endemic to the Ryukyu Islands. Despite Japan's intense efforts, illegal collection could not be precluded. Due to some legal exports before 1975, it cannot be excluded that some animals are kept legally. Therefore this species can be traded in the U.S. (b). In 2013, the species was added to Appendix II of CITES.

Foto: Open Cage (a)

Hardcopy: www.tortoiseboard.com/showthread.php?1630-CB-young-adult-male-geoemyda-japonica

Limitations and chances for a European “Lacey Act”

In 2008, illegal wood and its products were included in the Lacey Act and one famous guitar producer in the US paid a total penalty of 350.000 US\$ for using illegal wood from

Madagascar and India after a long lasting lawsuit (BLACK 2012). Although it will be hard to monitor and document the import for unprotected species, despite the difficulties with obtaining evidence for violations against foreign rules of protection,

the above case shows that this law can be put in action.

As mentioned above, not all endangered species are currently included in CITES and according to the biological classification (taxa), the listings are very different. This is

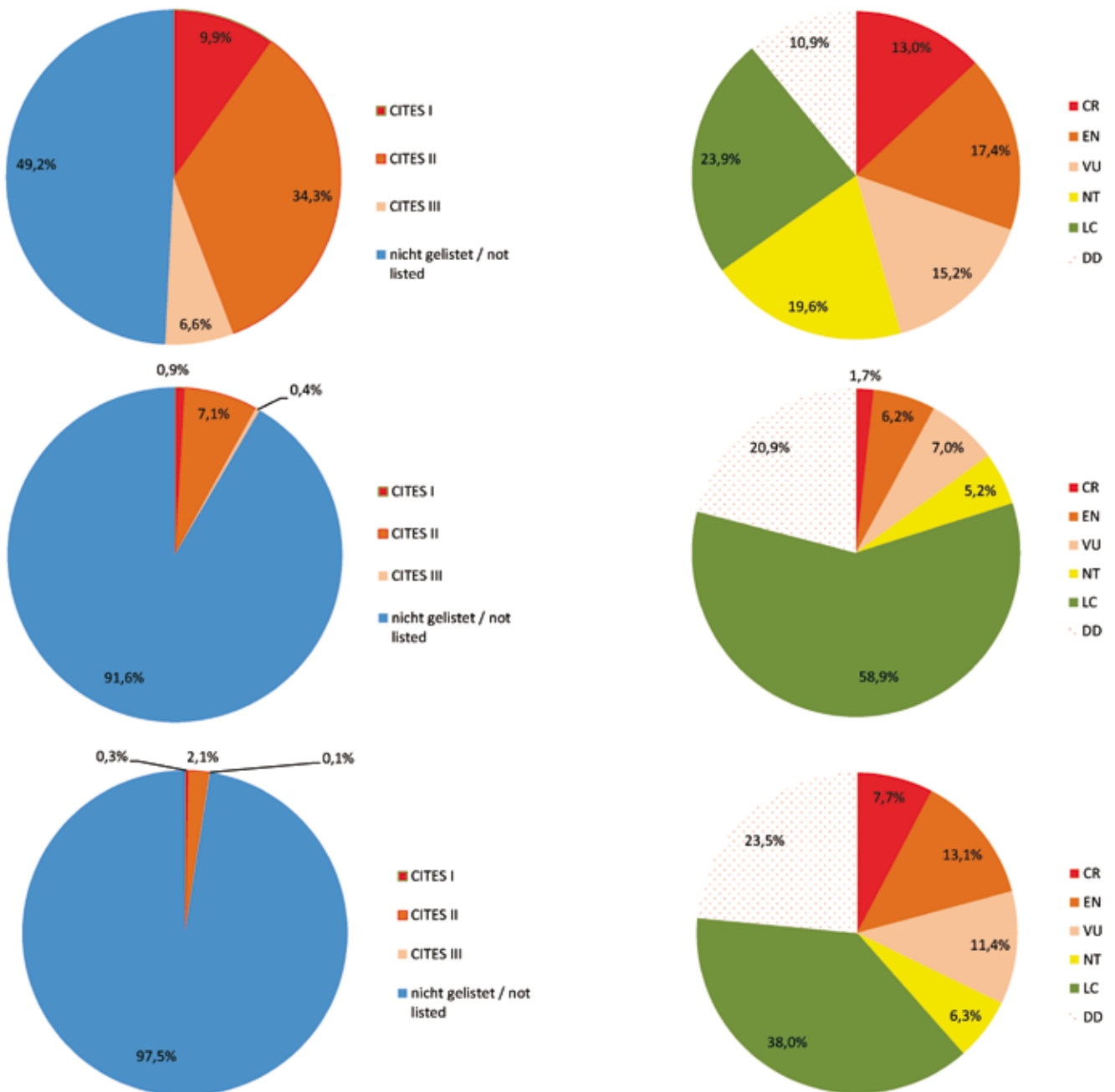


Fig. 5a–c Comparison of the percentage of the level of threat to percentage of CITES-listed species (a = chelonians, b = all reptiles, c = amphibians). The nomenclature follows the IUCN categories and criteria (IUCN 2012): DD = Data Deficient, LC = Least Concern, NT = Near Threatened, VU = Vulnerable, EN = Endangered, CR = Critically Endangered), the latter three building “Threatened Categories”. Percentages regarding chelonians (a) and reptiles (b) are calculated using data of BOEHM et al (2013), based on randomly chosen 46 of 323 chelonian species (14.2 %) and 1,500 of 9,413 reptile species (15.9 %). Data of Amphibia (c) are from CHANSON et al. (2008) who assessed all known 5,880 species.

demonstrated by placing the endangered species listed according to the rules of the IUCN in relationship with the species listed under CITES (Fig. 5). In the case of chelonians for which 51.2 % are considered endangered (BOEHM et al. 2013) compared to 50.76 % of the species listed under CITES, this relationship between the two seems to be quite balanced. However, when at the relationship for all reptile species, the relationship seems to be much more skewed. Only 8.42 % of all reptile species appear under the CITES-Appendices but approximately 18.9 % of all species are endangered (BOEHM et al. 2013). According to the Species survey by the "IUCN Global Amphibian Assessment" for amphibians, this is even more dramatic since 1.928 amphibian species (32.6 %) are globally endangered (CHANSON et al. 2008) but only 146 amphibian species (2.48 %) are listed in CITES. It is obvious that there is a clear need for change.

However, also the Lacey Act cannot be seen as a cure for all problems. All species which occur in multiple countries and which are exported from one of these countries will be not protected by European laws which are implemented in accordance with the Lacey Act at the moment when the species are within the EU. In the same way, this law offers no protection for otherwise protected long living species for which breeding has been documented and which have been protected at a determined time point. This would only be the case if there are rules implemented to provide a legalisation for those individuals which are already within the EU, as it is the case when a species is listed under CITES for the first time. In spite of all these limitations, it would be a considerable step forward towards consequent international species conservation

rules if a European regulation, comparable to the Lacey Act, would be implemented.

Especially, in our opinion, this would be a strong signal towards the sovereignty and self-determination for those countries from which the species in question originate. For example, consider the case of the European pond turtle, *Emys orbicularis*, which is also not listed under CITES, but is nevertheless protected across the EU (Fig. 6). If for example *E. orbicularis* should become a high priced delicacy on the Asiatic food markets leading to an illegal extirpation of our populations in the wild, one could expect that those countries which import this species would take appropriate measures. Therefore those countries could expect reciprocal actions from Europe. Otherwise, this would be reminiscent of a long

distant period when nations, people and resources on different continents were considered as easily exploitable resources without rights by the European colonialists and colonial policy.

The initiative and intention to change this seems to be at least considered by Germany. In the German statement on the consultation of the EU-Commission towards a strategy for the control of the illegal trade of species from February 07, 2014 (BMU 2014), the following passage is included in the answer to the first of the 10 questions (Suitability of the existing regulations): "*In addition it should be checked whether the Council Regulation on the protection of species ([EC] No. 338/97) has to be extended in order to include import bans for species and products from countries in which national export bans are in*



Fig. 6

*Imagine that the European pond turtle, *Emys orbicularis* was collected on a large scale for the Asian food markets. Would we not expect that the authorities of the destination countries should react at the importing process?* Photo: Thomas & Sabine Vinke

effect. As a standard may serve the Lacey Act which is in effect within the USA since the year 1900 and in its extended version since 2008” (translated from German).

We can only hope that the actions match the words!

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Further Information and the complete Lacey Act (16 U.S.C. §§ 3371–3378) are to be found on the web page of the U.S. Fish and Wildlife Service: <http://www.fws.gov/international/laws-treaties-agreements/us-conservation-laws/lacey-act.html>.

Acknowledgements

We want to thank Hans-Jürgen Bidmon for translating the German manuscript and Declan Nolan for language editing and long-distance friendship.

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Abstract

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Abstract

Here we present a discussion considering the U.S. Lacey Act, its implementation since the year 1900, and its 1935 amendment that makes unlawful any violation of foreign conservation laws. Further we evaluate the resulting consequences for the international trade of wild species, as well as the consequences for their conservation within their countries of origin. We also address a fundamental question on how to protect global biodiversity on an international basis. We refer to recent and well documented examples for the illegal trade with endangered and nationally protected species. We particularly take into account how the trade is practiced within the European Union where no effective protection law regarding the countries of origin are in force. Finally we focus on the current actions taken by the EU in order to take into account the implementation of new regulations for the international trade with nationally protected and/or endangered species. Our hope is that our readers gain a comprehensive insight into this problem, since these insights currently seem to be lost in the ongoing discussion that is mainly dominated by trade lobbyists and those who provide their more commercialized views on these important issues for conserving our biodiversity globally.

Key words

U.S. Lacey Act, EC regulation of protection of flora and fauna, wildlife trade, illegal trade, Conservation.