

UNITED STATES COURT OF INTERNATIONAL TRADE

NATIVE FEDERATION OF THE MADRE)	
DE DIOS RIVER AND TRIBUTARIES;)	
RACIMOS DE UNGURAHUI WORKING)	
GROUP; and NATURAL RESOURCES)	
DEFENSE COUNCIL, INC.,)	
)	
Plaintiffs,)	
)	
v.)	Co. No. 06-00181
)	
BOZOVICH TIMBER PRODUCTS, INC.;)	
TBM HARDWOODS, INC.; T. BAIRD)	
MCILVAIN INTERNATIONAL CO.;)	
UNITED STATES DEPARTMENT OF)	
INTERIOR; UNITED STATES FISH AND)	
WILDLIFE SERVICE; UNITED STATES)	
DEPARTMENT OF AGRICULTURE;)	
ANIMAL AND PLANT HEALTH)	
INSPECTION SERVICE; UNITED STATES)	
DEPARTMENT OF HOMELAND SECURITY;)	
UNITED STATES CUSTOMS AND BORDER)	
PROTECTION; SECRETARY OF THE)	
INTERIOR; DIRECTOR OF THE UNITED)	
STATES FISH AND WILDLIFE SERVICE;)	
SECRETARY OF AGRICULTURE;)	
ADMINISTRATOR OF ANIMAL AND PLANT)	
HEALTH INSPECTION SERVICE;)	
SECRETARY OF HOMELAND SECURITY;)	
and COMMISSIONER OF UNITED STATES)	
CUSTOMS AND BORDER PROTECTION,)	
)	
Defendants.)	
)	

**PLAINTIFFS’ FIRST AMENDED COMPLAINT FOR DECLATORY AND
INJUNCTIVE RELIEF**

Introduction

1. Representatives of indigenous peoples and a national environmental group bring this suit to enjoin the unlawful import and trade of bigleaf mahogany (or “mahogany”)

(Swietenia macrophylla). International demand for this tree's dense, valuable wood has threatened the species with commercial extinction and rendered it incapable of carrying out its ecological function throughout much of its natural range. Each year, thousands of cubic meters of bigleaf mahogany are illegally harvested and imported into the United States from Peru, one of the few remaining countries with a commercially viable bigleaf mahogany population. Experts estimate that bigleaf mahogany will be virtually extinct in Peru within the next five to ten years unless action is taken under laws designed to preserve the species.

2. The illegal pursuit of mahogany threatens regeneration of the species and imperils the larger forest ecosystem. Loggers enter pristine, often protected areas and fell old-growth mahogany trees, causing collateral damage to vegetation, soils, and animals. Nomadic indigenous peoples who live in voluntary isolation and migrate throughout the rainforest face bloodshed, forced labor, and death at the hands of illegal loggers.

3. Because of the precarious state of the species, trade in bigleaf mahogany is subject to strict U.S. and international regulation. Under the Endangered Species Act ("ESA") and the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES") – to which both Peru and the United States are signatories – it is unlawful to buy and sell bigleaf mahogany absent legitimate non-detriment and lawful acquisition determinations by CITES authorities in the country of origin. Peruvian CITES authorities have not made either of these findings for bigleaf mahogany. Nonetheless, the United States government agencies responsible for enforcing the ESA and CITES continue to authorize mahogany imports in violation of these laws, and private timber companies continue to profit from the illicit trade.

4. Plaintiffs Native Federation of the Madre de Dios River and Tributaries ("FENAMAD"), Racimos de Ungurahui Working Group ("Racimos"), and Natural Resources

Defense Council, Inc. (“NRDC”) seek declaratory and injunctive relief against defendants Bozovich Timber Products, Inc., TBM Hardwoods, Inc., and T. Baird McIlvain International Co. (“Private Defendants”) for importing, possessing, and trading Peruvian bigleaf mahogany in violation of section 9 of the ESA, 16 U.S.C. § 1538. Plaintiffs seek declaratory and injunctive relief against the United States Department of Interior (“DOI”), United States Fish and Wildlife Service (“USFWS”), United States Department of Agriculture (“USDA”), Animal and Plant Health Inspection Service (“APHIS”), United States Department of Homeland Security (“DHS”), and United States Customs and Border Protection (“CBP”), and their secretaries, directors, or administrators (“Government Defendants”), for permitting and failing to enjoin importing, possession of, and trading in Peruvian bigleaf mahogany in violation of section 9 of the ESA, 16 U.S.C. § 1538, and the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 500, *et seq.*

Jurisdiction and Venue

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1581(i)(3) & (4) (civil actions arising out of embargoes), 28 U.S.C. § 1585 (Court of International Trade has all the powers in law and equity of a United States district court), and 28 U.S.C. § 1367 (supplemental jurisdiction).

6. Venue is proper under 16 U.S.C. § 1540(g)(3)(A) (a citizen suit may be brought in the judicial district in which the violation occurs).

7. Pursuant to 16 U.S.C. § 1540(g), plaintiffs provided both Government Defendants and Private Defendants with notice of the violations embodied in this complaint. *See* Attachment 1. The notice was received by all defendants on or before March 20, 2006.

Parties

Plaintiffs

8. Plaintiff FENAMAD is a not-for-profit organization that represents 27 native communities, as well as indigenous families who live in voluntary isolation in the Madre de Dios region of Peru. The government of Peru has recognized FENAMAD as the representative of these indigenous communities. Through advocacy, legislation, and litigation, FENAMAD works to protect indigenous territory, human rights, culture, education, and health in Peru.

9. FENAMAD brings this action on its own behalf and on behalf of its members, including inhabitants of areas invaded or damaged by illegal loggers of bigleaf mahogany. Unlawful destruction of bigleaf mahogany stands and the surrounding ecosystem deprives FENAMAD members of their homes, resources, and safety. FENAMAD members have a right to, and derive substantial benefit from, the presence and conservation of bigleaf mahogany and the larger rainforest ecosystem in the Madre de Dios region of Peru.

10. FENAMAD has limited resources to support its mission. FENAMAD must divert resources to combat the illegal logging of mahogany and resolve social and legal problems caused by loggers. The resulting drain on the organization's resources impairs FENAMAD's capacity to fully carry out its mission.

11. Plaintiff Racimos is a Lima-based not-for-profit organization that provides legal services and technical assistance to Amazonian indigenous peoples of Peru seeking to exercise territorial, social, economic, political, and cultural rights. Racimos's work focuses on isolated indigenous peoples, property rights and territorial planning, social and environmental impact of extractive industries, and alternative economic development.

12. Racimos brings this action on its own behalf. Racimos must marshal a significant portion of its limited resources to assist those indigenous peoples who are adversely affected by illicit logging. This burden on organizational resources reduces Racimos's capacity to fully implement its charter.

13. Plaintiff NRDC is a not-for-profit, environmental membership organization with headquarters in New York, New York and more than 550,000 members nationwide. NRDC's membership and staff of lawyers, scientists, and other environmental specialists have a long-standing interest in protecting endangered species and indigenous peoples. NRDC has been at the forefront of national and international efforts to protect bigleaf mahogany. In 1992, NRDC submitted to the USFWS a recommendation to list mahogany under Appendix II of CITES, along with a comprehensive scientific analysis of the impact of the timber trade.

14. In January 2001, NRDC placed the Tahuamanu rainforest in the Madre de Dios region of the Peruvian Amazon on its "BioGems" list of threatened ecosystems, due to the effects of illegal mahogany logging. In letters, emails, and meetings, NRDC staff and members have urged the Peruvian and U.S. governments to stop illegal mahogany logging and to institute stronger import protections for the species. NRDC urged the U.S. government to support the listing of mahogany under Appendix II at the Twelfth Conference of the Parties to CITES, and distributed a brochure supporting the listing to all Conference delegates. NRDC devotes considerable institutional resources to campaigns against illicit commerce in bigleaf mahogany.

15. NRDC brings this action on its own behalf, and on behalf of its members. NRDC members, including students and specialists in forestry, have visited and plan to visit Peru to study and view bigleaf mahogany and/or to enjoy the larger forest ecosystem that includes bigleaf mahogany. In addition, NRDC's members derive scientific, vocational, recreational,

aesthetic, educational, and other benefits from the existence and vitality of bigleaf mahogany and the larger forest ecosystem in Peru.

16. The interests and efforts of plaintiffs and their members have been, are, and will be directly and adversely affected by the defendants' actions in trading, possessing, or permitting trade, possession, and import of illegal bigleaf mahogany. The requested declaratory and injunctive relief mandating that defendants comply with the ESA will redress plaintiffs' injuries.

Private Defendants

17. On information and belief, defendant Bozovich Timber Products, Inc. is or was incorporated in Florida but has its principal place of business in Alabama. Bozovich Timber Products, Inc. imports Peruvian bigleaf mahogany through, among others, the New York/New Jersey, Mobile, Alabama, and Los Angeles, California ports of entry.

18. On information and belief, defendant TBM Hardwoods, Inc. is or was incorporated in Pennsylvania and has its principal place of business in Hanover, Pennsylvania. TBM Hardwoods, Inc. imports Peruvian bigleaf mahogany through the Baltimore, Maryland port of entry.

19. On information and belief, defendant T. Baird McIlvain International Co. is or was incorporated in Pennsylvania and has its principal place of business in King of Prussia, Pennsylvania. T. Baird McIlvain International Co. imports Peruvian bigleaf mahogany via the Baltimore, Maryland and Philadelphia, Pennsylvania ports of entry.

20. On information and belief, Bozovich Timber Products, Inc., TBM Hardwoods, Inc., and T. Baird International McIlvain Co. trade in Peruvian bigleaf mahogany in, to, and from locations throughout the United States.

Government Defendants

21. Defendant USDOJ is an agency of the United States government. Among other functions, USDOJ is charged with responsibility for implementation and administration of the ESA and CITES.

22. Defendant USFWS is the part of USDOJ that implements and enforces CITES, including by investigating and taking enforcement action against unlawful shipments, importers, and traders of bigleaf mahogany.

23. Defendant USDA is an agency of the United States government, and includes defendant Animal and Plant Health Inspection Service (“APHIS”). USDA is responsible for enforcement of the ESA and CITES as to terrestrial plants.

24. Defendant APHIS is the part of the USDA that is responsible or shares responsibility for inspection, authorization, seizure, and forfeiture of CITES-listed plant material, including bigleaf mahogany.

25. Defendant DHS is an agency of the United States government that includes defendant CBP. DHS and CBP are responsible, in whole or in part, for agriculture import and entry inspection, and enforcement of the ESA for imports of CITES-listed plant material, including bigleaf mahogany.

26. Defendants Secretary of the Interior, Director of USFWS, Secretary of Agriculture, Administrator of APHIS, Secretary of Homeland Security, and Commissioner of CBP are heads of and direct their respective agencies. Each is legally responsible for his or her agency’s acts and omissions relevant to the ESA and CITES. Each is sued in his or her official capacity.

Legal Framework

27. Congress enacted the ESA in part to implement United States obligations to conserve “fish or wildlife and plants facing extinction, pursuant to . . . [CITES].” 16 U.S.C. §§ 1531(a)(4)(F) & (b).

28. CITES establishes three categories of protected species in Appendices I, II, and III, and provides that “[t]he Parties shall not allow trade in specimens of species included in [the] Appendices . . . except in accordance with the provisions of the present Convention.” CITES, art. II § 4.

29. CITES defines “trade” to include both exports and imports. CITES, art. I(c).

30. Appendix II encompasses “all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival.” *Id.*, art. II § 2(a). Bigleaf mahogany is listed as an Appendix II species.

31. USFWS is the designated Scientific and Management Authority of the United States under CITES. 16 U.S.C. § 1537a(a). Pursuant to this designation, the USFWS “shall do all things necessary and appropriate to carry out the functions of the Management Authority” and “the Scientific Authority under the Convention.” *Id.* § 1537a(b) & (c).

32. These functions include permitting, making scientific and management findings, monitoring trade and trade impacts, communicating with the CITES Secretariat and other countries, evaluating species status and trade, <http://www.fws.gov/citestimber/timber/timberimpexpreq.html> (last visited Oct. 13, 2006); prohibiting trade that does not comply with CITES, CITES, art. II § 4; subjecting noncompliant specimens to forfeiture to the United States,

16 U.S.C. § 1540(e)(4)(A); and refusing imports of specimens it has “reason to believe [were] not legally acquired.” CITES, Resolutions 12.3 § XIV(d) (2002), 11.3 (2000).

33. Pursuant to 7 C.F.R. § 355.1, the Secretary of Agriculture is responsible for the enforcement of ESA and CITES provisions that pertain to the importation, exportation, or re-exportation of terrestrial plants. This responsibility has been further delegated to APHIS, 7 C.F.R. § 2.80(a)(17), and includes inspecting, authorizing, and seizing CITES-regulated plants. *See, e.g.*, 7 C.F.R. § 355.22(a) (Imported terrestrial plants listed in Appendix II “must be validated by an inspector prior to the movement of such plant from the Customs inspection area of the port of entry.”); 7 C.F.R. § 355.22(c) (“Documentation for a plant shall be validated ... upon endorsement of the documentation by an inspector when he or she determines that the plant was apparently eligible for importation, exportation, or reexportation in accordance with provisions of 50 C.F.R. Chapter I relating to the Act and [CITES].”).

34. Section 421 of the Homeland Security Act of 2002 transferred to DHS some of the functions formerly performed by APHIS with respect to agricultural import and entry inspection. 6 U.S.C. § 231(b)(7). Pursuant to a Memorandum of Agreement between DHS and USDA, DHS and CBP agents “review CITES permits accompanying non-living CITES shipments,” “seize shipments arriving without proper documents,” and may refer “regulated non-living CITES articles (e.g. mahogany, ramin wood, ginseng, etc.)” to APHIS. *See* Appendix II Memorandum of Agreement between DHS and USDA, Articles 2 & 3, Separation of Function, at 5 (July 2, 2003).

35. United States regulations implementing CITES and the ESA provide that “[i]n order to import into the United States any wildlife or plant listed in Appendix II from any foreign country, a valid export permit used by the country of origin ... must be obtained prior to such

importation.” 50 C.F.R. § 23.12(a)(2)(i). *See* CITES, art. IV § 4 (“The import of any specimen of a species included in Appendix II shall require the prior presentation of either an export permit or a re-export certificate.”).

36. Under the Convention, a valid export permit for an Appendix II-listed species may “only be granted” when:

- a. a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of the species; [and]
- b. a Management Authority of the State of export is satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora[.]

Id., art. IV § 2.

37. The Convention further requires that the Scientific Authority of both importing and exporting Parties monitor the trade of Appendix II species to determine if trade should be limited in order to “maintain that species throughout its range at a level consistent with its role in the ecosystems in which it occurs and well above the level at which that species might become eligible for inclusion in Appendix I.” *Id.*, art. IV § 3.

38. Under the ESA, it is “unlawful for any person subject to the jurisdiction of the United States to engage in any trade in any specimens contrary to the provisions of [CITES] or to possess any specimens traded contrary to the provisions of [CITES]” 16 U.S.C. § 1538(c)(1).

39. The ESA further prohibits “any person” from “caus[ing] to be committed[] any offense defined in [Section 1538].” 16 U.S.C. § 1538(g). *See* 50 C.F.R. § 23.11(a) & (b)(1) (it is unlawful to “cause” the import of an Appendix II species absent a valid export permit). The term

“person” includes “any officer, employee, agent, department, or instrumentality of the Federal Government.” 16 U.S.C. § 1532(13).

40. Government Defendants have interpreted the ESA and CITES to require them to impose embargoes on imports of CITES-regulated species that they have reason to believe are being traded in violation of CITES. For example, in 2003, Government Defendants imposed an embargo on imports of the queen conch – which, like bigleaf mahogany, is a species listed in Appendix II of CITES – from seven Caribbean nations, after receiving notice that those nations had not made non-detriment findings as required by CITES. In announcing the imposition of that embargo, Government Defendants gave the following explanation of the applicable law:

The Endangered Species Act prohibits trade in specimens contrary to the CITES Convention. Articles II and VIII of CITES require that we take appropriate measures to enforce the provisions of the treaty and to prohibit trade in specimens that are in violation of the treaty. Article III of CITES requires that we consider permits and certificates to be valid only when the exporting country has made the required determination that trade in the specimens will not be detrimental to the wild population.

Trade Restrictions on Live and Dead Queen Conch (*Strombus gigas*), Parts and Products, USFWS News Release, Sept. 29, 2003, *available at* <http://www.fws.gov/le/PubBulletins/PBQueenConchTradeRestrictions.htm>.

Factual Background

Steady Depletion of Mahogany in the Americas

41. In the forest, a bigleaf mahogany tree can grow to more than 150 feet tall and six feet wide over the course of hundreds of years. Its slow growth rate creates a dense, hard, high-value wood that has been coveted by traders for centuries. At more than \$1,500 per cubic meter of imported sawn wood, the timber from a single tree can yield more than \$100,000 when fashioned into luxury furniture.

42. Mahogany's occurrence at unusually low densities in Amazonian rainforests in eastern Peru, its slow growth rate, and its long reproductive cycle make it extremely vulnerable to population collapse from the pressures of overexploitation. In the Amazon basin, where mahogany trees can take more than 100 years to reach full reproductive maturity, uncontrolled logging quickly depletes regional populations, leaving little chance for regeneration.

43. Bigleaf mahogany is the last of the three "genuine" mahogany species in the genus *Swietenia* that survives in significant concentrations. The other two species—Caribbean mahogany (*S. mahogani*) and Pacific Coast mahogany (*S. humilis*)—were logged to depletion in country after country in their former range and are now commercially extinct.

44. Commercially viable populations of bigleaf mahogany exist only in parts of Bolivia, Brazil, and Peru, mainly in indigenous territories, natural parks, and other protected areas. Bolivia's mahogany populations were severely reduced in the 1990s, and exports are now strictly controlled by a sustainable forest management system. In 2002, Brazil imposed a moratorium on mahogany exports until a system is in place to track logs to their source and verify their lawful extraction. With depleted stocks in Bolivia and a moratorium still in place in Brazil, the trade in bigleaf mahogany shifted almost entirely to Peru by 2004.

45. Today, Peru is the world's leading exporter of bigleaf mahogany. Peruvian authorities admit that logs are extracted from protected indigenous and natural areas and have estimated that illegal logging accounts for nearly all of the bigleaf mahogany trade. Multisectoral Commission on Illegal Logging in Peru, *Proposal for a National Strategy for the Eradication of the Extraction and Illegal Trade of Timber-Yielding Forest Resources in the Peruvian Amazon* (January 2003).

46. Over the past decade, unregulated or illegal logging has eliminated more than 50 percent of mahogany from its former range in Peru. Assuming the status quo, mahogany will be extinct from a further 28 percent of its range in Peru within the next decade. Roberto F. Kometter, et. al, *Impacts of Unsustainable Mahogany Logging in Bolivia and Peru*, Ecology and Society Vol. 9(1) at 6 (2004).

47. The United States is the largest importer of Peruvian bigleaf mahogany. In 2005, more than 85 percent of Peruvian bigleaf mahogany exports were shipped to the United States. The Peruvian export market for bigleaf mahogany is highly dependent upon and inexorably linked with the United States import market. Without the United States import market for Peruvian mahogany, overall demand for Peruvian mahogany – and with it, incentive to harvest mahogany from Peru – would be substantially reduced.

Harm to Ecosystem, Endangered Species, and Indigenous Peoples

48. Due to its trading value, mahogany is “selectively logged,” meaning that mahogany trees are usually the first trees felled in an intact forest. To reach new stands of mahogany, loggers often must build new logging roads in once pristine forest areas. Such roads provide ready access to the forest interior, facilitating the otherwise infeasible exploitation of lower-value timber species. Loggers are followed by ranchers and settlers, who clear-cut and then burn the remaining forest, converting the land to pasture or agricultural uses, preventing forest regrowth.

49. Selective logging of the larger, more commercially valuable mahogany trees impairs population regeneration. Scientists report that loggers typically remove at least 95 percent of reproductive mahogany trees across Amazonia during an initial harvest, leaving sporadic stands of mostly smaller bigleaf mahogany trees that are incapable of exchanging pollen

over increased inter-tree distances. The scope of seed dispersal is also severely diminished, leaving only a small fraction of the former population range to be regenerated. Decreased population density, both an indicator and result of increasingly slower rates of seedling regeneration, leads to inbreeding, which effectively reduces the genetic variation that normally serves as a buffer against environmental change. In this manner, the ecological sustainability of mahogany populations is severely impaired.

50. Extraction of old-growth stocks also eliminates mahogany's ability to fulfill its ecological role in the forest as a canopy species. Centuries-old mahogany trees constitute a portion of the rainforest's canopy and serve as a persistent habitat and food source for a diverse variety of animals and insects. When a mahogany tree is felled, vine networks pull down up to 30 surrounding trees. Light that enters the hole in the canopy dries out the forest floor, making it more susceptible to burning and altering hydrological and erosion processes for the surrounding vegetation. As debris from selective logging decomposes, it releases carbon dioxide into the atmosphere, contributing to global warming. Mahogany extraction thus sparks a chain reaction causing larger scale harm to ecological processes dependent on canopy species. Due to the sensitive and slow reproductive cycle of a mahogany tree, mahogany saplings – if any exist nearby – rarely regenerate to resume mahogany's role as a canopy species.

51. Logging destroys or damages the habitat of threatened or endangered species such as the black spider monkey (*Ateles paniscus*), the giant river otter (*Pteronura brasiliensis*), the jaguar (*Panthera onca*), the black caiman (*Melanosuchus niger*), the yellow-spotted Amazon River turtle (*Podocnemis unifilis*), and the giant South American turtle (*Podocnemis expansa*). Within the remote sectors of the Amazon, illegal loggers hunt various animal species for food.

In one region, loggers kill an estimated three thousand pounds of wildlife per day, leading to the local extinction of some species.

52. Illegal logging threatens nomadic indigenous peoples of the Mascho Piro, Yora, Matsigenka, and Amahuaca ethnic groups. These communities, sometimes referred to as “uncontacted peoples,” live in voluntary isolation interrupted only by occasional – and often tragic – encounters with outsiders. Although their population numbers are unknown, ten ethnic groups surviving in the Peruvian Amazon are at risk of extinction. The groups live in the most remote parts of the forest, near river sources upstream, and migrate seasonally for food, based on their knowledge of the forest ecosystem.

53. Each year, as more accessible sources of mahogany are depleted, loggers drive further into the forests where they encounter indigenous peoples on their downstream migrations. Clashes between armed loggers and indigenous groups who defend their land with arrows often end in bloodshed and death for indigenous tribal members. Last year, the International Labor Organization reported that illegal logging outfits have enslaved indigenous peoples and forced them to work in mahogany logging operations.

International Response to Mahogany Depletion

54. In November 2002, citing the fact that the species “has been decimated by illegal logging,” the United States and more than two-thirds of the Parties to CITES voted to list bigleaf mahogany in Appendix II of CITES.

55. Exporting countries, including Peru, requested and received a one-year extension on the effective date of the Appendix II listing.

56. In July 2003, President Bush created the “President’s Initiative Against Illegal Logging” to stop illicit trade in mahogany. Secretary of State Colin Powell stated: “We are

pleased that the signatories of the Convention on International Trade in Endangered Species are now committed to even stronger measures to ensure that mahogany trade is legal and sustainable.”

57. The Appendix II listing of bigleaf mahogany became effective on November 15, 2003.

Mahogany Trading in Violation of CITES and the ESA

Invalid Export Permits under CITES

58. In Peru, the National Institute of Natural Resources (“INRENA”) is the designated Management Authority under CITES. The National Agrarian University of La Molina (“La Molina”) is the CITES Scientific Authority. Under CITES, in order to grant a valid export permit, La Molina must “advise[] that such export will not be detrimental to the survival of the species” and INRENA must be “satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora.” CITES, art. IV § 2.

Non-Detriment Finding

59. To date, La Molina has not made a legitimate non-detriment determination.

60. La Molina has stated that it cannot make a valid non-detriment finding without a reliable inventory of the sources and status of mahogany in the country.

61. On information and belief, La Molina has not completed such an inventory.

62. On November 12, 2004, La Molina informed INRENA that “[t]he information submitted [by INRENA] is insufficient to issue a finding of non-detriment to commercial stands of mahogany. As indicated previously, it is very difficult to analyze information after the exports have taken place. The Scientific Authority must issue a finding on the status of stands before the trees are logged.”

63. In 2005 and 2006, Peru enacted export quotas for bigleaf mahogany. On information and belief, the 2005 quota was a provisional measure that INRENA established to maintain the previous year's rate of commercial export, without consideration of the sustainability of that trade. On information and belief, the 2006 quota was premised on, and nearly identical to, the 2005 quota, in that the 2006 quota was set at a level only 1.6% lower than the 2005 quota. On further information and belief, neither quota was based on sound or systematic data on existing mahogany stocks in Peru or on scientific analysis of the steps required to sustain the species.

64. The export quotas do not constitute and cannot serve as a substitute for the non-detriment finding CITES requires.

Lawful Harvest

65. Peruvian law establishes government-granted forestry concessions that must be operated in accordance with a General Forest Management Plan and Annual Operating Plans (POAs) approved by INRENA. The POAs must describe the wood species and quantities to be harvested from a concession each year and the location of these trees within the concession. Wood moved from the concession area must be accompanied by an accurate transport certificate.

66. On information and belief, because INRENA does not verify POAs prior to approving them, concession owners inflate the amount of mahogany reported in their concessions and then extract wood from protected areas. As described in a September 2005 INRENA press release, as well as in May and September 2005 INRENA reports, transporters also falsify transport certificates, passing off mahogany as different species at government checkpoints. A January 2006 INRENA report reveals that industry actors have also infiltrated

and altered, with apparent complicity of local INRENA officials, the national electronic database established to track wood transported between control posts and export ports.

67. Falsifying the amount of wood in a concession, obtaining wood from outside of a concession, harvesting wood from within national parks or protected areas, transporting wood without a valid Forest Transport Certificate, and exporting mahogany obtained outside of concession areas are violations of Peruvian laws enacted for the protection of fauna and flora.

68. In 2003, the Peruvian Multisectoral Commission on Illegal Logging estimated that more than 90% of the total bigleaf mahogany exported from Peru was obtained or transported illegally.

69. Between February 2005 and July 2006, INRENA conducted field inspections of 79 out of 577 timber concessions in Peru in an effort to determine whether mahogany that was purportedly logged from those concessions was acquired illegally. Inspections revealed evidence of unlawful acquisition of mahogany in 56 out of 79 concessions. Of these 56 concessions, INRENA has completed administrative review of the inspections of 23 concessions; and in those 23 concessions, INRENA has concluded that all or substantially all of the wood was in fact acquired illegally. Most often, INRENA's conclusion was based on a determination that the concession from which the mahogany was purportedly obtained was in an area where few, if any, mahogany trees actually exist. INRENA has published a summary of the inspections on the Internet at http://www.inrena.gob.pe/iffs/manejo/conc_forest_mader/situacion/resultados_verificaciones_caoba_DCB_2005-2006.htm. In addition, on September 28, 2006, INRENA published detailed reports on the 23 completed inspections on the Internet at http://www.inrena.gob.pe/osinfor/osinfor_activ.htm.

70. In total, approximately 1,840 cubic meters of illegal wood from the 23 concessions was exported to the U.S. in 2005. This illegal wood was mixed into 81 different CITES-permitted shipments, which constituted a total of 8,086 cubic meters of mahogany or 39% of the approximately 20,844 cubic meters of mahogany that were exported to the United States from Peru that year. An additional 2,507 cubic meters of mahogany were imported into the United States from the 33 concessions where INRENA found some evidence of illegal activity but has not yet completed its administrative review.

71. Data obtained from INRENA on August 18, 2006, as well as copies of CITES export permits obtained on March 21, 2006 and September 18, 2006, were provided to Government Defendants by Plaintiff NRDC on September 29, 2006.

72. INRENA has little if any reliable information to verify that export specimens have been obtained in compliance with Peruvian law. The pertinent information INRENA has gathered demonstrates that illegal mahogany harvesting is rampant in Peru.

Ongoing Import and Trade within the United States

73. Last year, timber importers brought 21,623 cubic meters of bigleaf mahogany into the United States from Peru.

74. On information and belief, illegally mined Peruvian bigleaf mahogany is possessed in and traded to, from, and within the United States.

75. The private defendants are the top U.S. importers of Peruvian bigleaf mahogany, together accounting for approximately 54 percent of mahogany imports from Peru in 2005.

76. The private defendants possess and trade Peruvian bigleaf mahogany within and perhaps beyond the United States.

Defendants' Role in Unlawful Mahogany Commerce

Bozovich Timber Products, Inc.

77. Bozovich Timber Products, Inc. was incorporated in December 2000 by Madereras Bozovich SAC., a Peru-based mahogany trader. Bozovich Timber Products, Inc. is a joint venture between South American Lumber Imports, Inc. and Bozovich Group. CITES permits show that Bozovich Timber Products, Inc. is the main customer for Madereras Bozovich and that Madereras Bozovich is the main supplier for Bozovich Timber Products, Inc.

78. The Peruvian Multisectoral Commission on Illegal Logging has implicated Madereras Bozovich in illegal logging activities since 1999. Multisectoral Commission on Illegal Logging in Peru, *Proposal for a National Strategy for the Eradication of the Extraction and Illegal Trade of Timber-Yielding Forest Resources in the Peruvian Amazon* (January 2003).

79. In 2005, Bozovich Timber Products, Inc. imported 4,740 cubic meters of bigleaf mahogany into the United States, the largest volume of Peruvian bigleaf mahogany imported by any company in the United States.

80. Peruvian transport documents link specific illegal mahogany shipments and/or falsified permits to Madereras Bozovich.

81. Peruvian and United States documents, including CITES export permits and INRENA field inspection reports, link specific shipments of Peruvian mahogany imported into the United States by Bozovich Timber Products, Inc. to timber concessions in Peru where INRENA found evidence of illegal activity.

82. On information and belief, Bozovich Timber Products, Inc. possesses and trades Peruvian bigleaf mahogany in contravention of CITES.

TBM Hardwoods, Inc.

83. In 2005, TBM Hardwoods, Inc. imported into the United States 2,460 cubic meters of bigleaf mahogany from Peru.

84. CITES export permits and INRENA field inspection reports link specific shipments of Peruvian mahogany imported into the United States by TBM Hardwoods, Inc. to timber concessions in Peru where INRENA found evidence of illegal activity.

85. On information and belief, TBM Hardwoods, Inc. possesses and trades Peruvian bigleaf mahogany in contravention of CITES.

T. Baird McIlvain International Co.

86. On information and belief, T. Baird McIlvain International Co. is a subsidiary of TBM Hardwoods, Inc. In 2005, T. Baird McIlvain International Co. imported into the United States 4,576 cubic meters of Peruvian bigleaf mahogany.

87. In 2005, T. Baird McIlvain International Co. was responsible for 21% of all Peruvian bigleaf mahogany imports into the United States. It is the second largest importer of bigleaf mahogany in this country.

88. CITES export permits and INRENA field inspection reports link specific shipments of Peruvian mahogany imported into the United States by T. Baird McIlvain International Co. to timber concessions in Peru where INRENA found evidence of illegal activity.

89. On information and belief, T. Baird McIlvain International Co. possesses and trades Peruvian bigleaf mahogany in contravention of CITES.

USDOJ and USFWS

90. By letter dated December 17, 2003, NRDC and several other organizations alerted USFWS to Peru's failure to regulate the logging sector in a manner consistent with CITES.

91. In response, on December 30, 2003, USDOJ assured NRDC that it would make the appropriate inquiries and take enforcement action when mahogany shipments arrived with questionable CITES documentation.

92. In May 2004, in a report to the International Tropical Timber Organization Workshop on the Implementation of the Appendix II listing, Peru stated that the "Scientific Authority has not yet emitted an opinion about mahogany populations and non-detriment harvest levels." INRENA and La Molina, Republic of Peru, *National Report: Implementation of the Appendix II listing of Mahogany: Peru* (May 2004).

93. By letter dated September 10, 2004, NRDC again urged USFWS to stop permitting the entry of illegally logged mahogany shipments, in particular because Peru had not made a non-detriment finding for mahogany as required by CITES.

94. In December 2004, USFWS sent a letter to INRENA stating "[i]t has now been ... more than one year since the Appendix II listing for bigleaf mahogany became effective. However, it is unclear to us whether the Peruvian Scientific Authority is making non-detriment findings for this species. ... We would appreciate it if you would inform us whether the Scientific Authority of Peru is currently making findings of non-detriment for bigleaf mahogany prior to the Management Authority issuing CITES export permits for the species." Letter from Peter Thomas, Division of Management Authority, USDOJ, USFWS to Leoncio Alvarez Vasquez, Chief, INRENA, dated December 14, 2004 (emphasis in original). This letter from USFWS to

INRENA highlighted Peru's 2004 statement that the "Scientific Authority has not yet emitted an opinion about mahogany populations and non-detrimental harvest levels." *Id.*

95. Peru's response acknowledged USDOJ's request for clarity regarding whether Peru had issued a non-detriment finding but stated "[i]n that regard, we attach here a summary of the actions taken to date to implement Appendix II for said species. We are also requesting the respective report from the Scientific Authority." Letter from Leoncio Alvarez Vasquez to Peter Thomas, dated February 9, 2005.

96. The "summary of action" did not include a non-detriment finding. The requested "report from the Scientific Authority" revealed that La Molina did not have the information necessary to make such a finding, stating that it was gathering information about mahogany populations. The report estimated that "in March there will be as much information as to state on the situation of the populations of said species as we will have new, more reliable elements which would provide such sound ground as to enable the Scientific Authority to give its opinion." La Molina Agrarian University, Summary of Activities Performed by CITES Scientific Authority in Regard to *Swietenia Macrophylla* species (Feb. 2005), ¶ 11.

97. On information and belief, La Molina still does not have the information necessary to make a non-detriment finding concerning bigleaf mahogany.

98. A USFWS email to the U.S. Department of State highlights the fact that in 2005, the European Union found Peru had not completed rudimentary steps towards making non-detriment findings.

99. In September 2005, INRENA advised USFWS that it had completed a field investigation of 27 concessions and found "13 were not in compliance with the POAs with regard to the existence of mahogany trees in relation to the volume of wood being moved."

Email from Rosario Acero, Director of Biodiversity Conservation, INRENA, to Peter Thomas, Division of Management Authority, USFWS, dated September 9, 2005 and attachment thereto. On information and belief, in a limited investigation, INRENA further discovered 53 falsified transport certificates for mahogany, representing nearly half a million tons of sawn wood. *Id.* at press release attached to email.

100. After receiving plaintiffs' notice of intent to sue, on April 12, 2006, USFWS wrote to INRENA asking whether Peru complies with CITES when it exports bigleaf mahogany. While INRENA's response describes certain steps and provisional measures that may help Peru eventually comply with CITES, none of the referenced activities evidences Peru's current compliance with CITES, including a valid non-detriment or legal acquisition determination.

101. More specifically, in its response, INRENA pointed to its inspection of a small percentage of Peru's timber concessions, procedures for the issuance of permits and review of transport certificates, reporting requirements for concessionaires, establishment of an agency to supervise compliance, and implementation of the national electronic database. As addressed in paragraphs 66 and 70 *supra*, INRENA's own investigations demonstrate that these measures are ineffective due to widespread corruption and abuse and that illegal acquisition continues. The results of these investigations are public or have been conveyed by INRENA and/or NRDC to USFWS.

102. INRENA's response admits that La Molina's population evaluation of bigleaf mahogany began only in 2006, but states that the 2005 and the 2006 national mahogany quotas each "received a favorable opinion of [La Molina]." On information and belief, La Molina does not have the information necessary to render such an opinion. On further information and belief, La Molina has issued a single statement about the survival of the species, which was written on

May 2, 2006, in conjunction with INRENA's reply to USFWS's April 12, 2006 inquiry regarding plaintiffs' notice of intent to sue.

103. Despite the fact, and knowledge of the fact, that Peru has not made, and lacks the information necessary to make, a non-detriment determination, USDOJ and USFWS continue to permit imports of bigleaf mahogany from Peru.

104. Despite rampant illicit logging and fraudulent documentation, and information indicating frequent unlawful acquisition, USDOJ and USFWS continue to permit imports of bigleaf mahogany from Peru.

USDA, APHIS, DHS, and CBP

105. Despite the knowledge and fact that Peru has not made, and lacks the information necessary to make, a non-detriment determination, USDOJ and USFWS continue to permit imports of bigleaf mahogany from Peru.

106. Despite the knowledge and fact of invalid lawful acquisition findings based on rampant illegal logging, USDOJ and USFWS continue to authorize and facilitate imports of bigleaf mahogany from Peru.

107. USDA, APHIS, DHS, and CBP personnel continue to inspect, validate, and approve bigleaf mahogany imports arriving from Peru.

108. USDA, APHIS, DHS, and CBP personnel do not seize or prevent imports of bigleaf mahogany even though Peru has not made CITES-compliant non-detriment and legal acquisition determinations that are prerequisites to a valid export permit.

109. USDA, APHIS, DHA, and CBP personnel do not seize or prevent imports of Peruvian bigleaf mahogany despite ample evidence that such imports were acquired illegally and undermine the sustainability of the species.

Recommendation of the CITES Secretariat

110. On August 17, 2006, the CITES Secretariat, an administrative body charged with interpreting CITES and providing information to CITES Parties regarding countries' compliance with CITES, *see* CITES, art. XII, published a recommendation on its web site that CITES Parties, including the United States, “not authorize the import of specimens of bigleaf mahogany from Peru . . . until Peru has taken action to improve its regulation of trade in this species and until such improvement has been assessed by *in situ* verification by the Secretariat.”

Interpretation and Implementation of the Convention, Species Trade and Conservation Issue, Timber Trade: Bigleaf Mahogany, Standing Committee Document 31.1, ¶ 12, Prepared by the CITES Secretariat for the 54th Meeting of the Standing Committee [hereinafter “SC54 Doc. 31.1”] (October 2-6, 2006), *available at* <http://www.cites.org/eng/com/SC/54/E54-31-1.pdf>. The Secretariat based its recommendation on its own investigations, through which the Secretariat found substantial evidence that Peruvian mahogany was being commercially logged at an unsustainable rate, that illegal harvesting of mahogany in Peru was widespread, and that illegally harvested timber from other countries was being smuggled into and “laundered” through Peru using fraudulently obtained CITES export permits. *See id.* The Secretariat found that Peru was “unable to comply” with CITES requirements that it make non-detriment and lawful acquisition findings before issuing CITES export permits, and, “[c]onsequently, . . . that many export permits that have been, and are being, issued are invalid.” *Id.*

111. On September 26, 2006, the European Union’s Scientific Review Group on Trade in Wild Fauna and Flora (“SRG”), withdrew its positive opinion on Peruvian mahogany, which it had earlier issued to allow European Union (“EU”) member nations to import Peruvian mahogany pending an EU mission to Peru in May 2006 to evaluate CITES compliance. In place

of the positive opinion, the SRG announced that it now officially has “no opinion” on whether imports of Peruvian mahogany comply with CITES, and directed that all applications for imports of Peruvian mahogany to EU member nations be referred, on a shipment by shipment basis, to the SRG. Under this new policy, the SRG will only approve imports if it can positively determine that the Peruvian mahogany sought to be imported was both lawfully acquired and sustainably logged.

112. On September 27, 2006, a group of 29 concerned scientists, which included some of the world’s foremost experts on bigleaf mahogany, sent a letter to CITES Parties, including the United States, to express their concern that illegal mahogany harvesting in Peru poses a grave threat to the survival of the species. The scientists urged CITES Parties, including the United States, to impose an immediate moratorium on the Peruvian mahogany trade.

First Claim for Relief (Private Defendants)

113. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

114. Bozovich Timber Products, Inc., TBM Hardwoods, Inc., and T. Baird McIlvain International, Co. have imported, possessed, and traded, and continue to import, possess, and trade bigleaf mahogany without a valid export permit from Peru, in violation of 16 U.S.C. § 1538(c)(1); 50 C.F.R. §§ 23.12(a)(2)(i), 23.11(a) & (b); and CITES, art. IV §§ 2 & 4.

115. Unless enjoined, Bozovich Timber Products, Inc., TBM Hardwoods, Inc., and T. Baird McIlvain International, Co. will continue to trade in bigleaf mahogany in violation of 16 U.S.C. § 1538(c)(1); 50 C.F.R. §§ 23.12(a)(2)(i), 23.11(a) & (b); and CITES, art. IV §§ 2 & 4.

Second Claim for Relief (Government Defendants)

116. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

117. But for Government Defendants' approval, authorization, and failure to act, import into the United States of Peruvian mahogany would not be able to occur. Government Defendants have violated and continue to violate the ESA's prohibition against causing a violation of the ESA, including trade and possession of bigleaf mahogany in contravention of CITES. 16 U.S.C. § 1538(c)(1) and 50 C.F.R. §§ 23.11(a) & (b)(1).

118. Unless enjoined, Government Defendants will continue to authorize, permit, and fail to stop the import, possession, and trade of bigleaf mahogany in the absence of valid export permits under CITES, and cause importers to continue to trade and possess the species in contravention of CITES, art. IV §§ 2 & 4, and in violation of 16 U.S.C. § 1538(c)(1) and 50 C.F.R. §§ 23.11(a) & (b)(1).

Third Claim for Relief (Government Defendants)

119. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein.

120. Government Defendants' continuing authorization and acceptance of Peruvian bigleaf mahogany imports are agency actions that are arbitrary and capricious, abuses of discretion, and otherwise not in accordance with the law, in violation of the APA, 5 U.S.C. § 706(2).

121. Government Defendants' continuing failure to enjoin importation, possession, and trade of mahogany, and failure to seize unlawful mahogany, are agency actions unlawfully

withheld and are arbitrary and capricious, abuses of discretion, and otherwise not in accordance with the law, in violation of the APA, 5 U.S.C. § 706(1) and (2).

Prayer for Relief

WHEREFORE, plaintiffs respectfully request that the Court enter judgment as follows:

(1) Declaring that defendants Bozovich Timber Products, Inc., TBM Hardwoods, Inc., and T. Baird McIlvain International Co. have violated the ESA by importing, trading, and possessing Peruvian bigleaf mahogany;

(2) Declaring that the government defendants have violated the ESA by causing and authorizing import, trade, and possession of Peruvian bigleaf mahogany;

(3) Declaring that Government Defendants have violated the APA by acting arbitrarily, capriciously, and contrary to law, by permitting and failing to enjoin unlawful trade, possession, and import of Peruvian bigleaf mahogany;

(4) Enjoining Bozovich Timber Products, Inc., TBM Hardwoods, Inc., and T. Baird McIlvain International Co. from importing, trading, and possessing Peruvian bigleaf mahogany unless and until they obtain a valid export permit from Peru;

(5) Enjoining Government Defendants to seize, and Private Defendants to forfeit, any and all bigleaf mahogany that was or is imported, traded, or possessed in violation of CITES and the ESA by Bozovich Timber Products, Inc., TBM Hardwoods, Inc., and T. Baird McIlvain International Co.;

(6) Enjoining Government Defendants from permitting import, trade, and possession of Peruvian bigleaf mahogany unless and until bigleaf mahogany specimens from Peru comply with CITES;

(7) Awarding plaintiffs their costs and reasonable attorneys' fees incurred in prosecuting this action; and

(8) Granting such other relief as the Court may deem just and proper.

Dated: New York, New York
October 20, 2006

Respectfully submitted,

NATURAL RESOURCES DEFENSE COUNCIL, INC.



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