

## *International instruments*

# Overview of selected international agreements related to alien species in aquatic ecosystems

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*Treatment of alien species in aquatic ecosystems in global multilateral agreements is uneven, with marine ecosystems currently faring somewhat better than freshwater ecosystems*

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## Abstract

Over 40 binding international agreements – not all of them yet in force – refer either directly or indirectly to alien species. Of those, less than a dozen are specifically related to aquatic environments. Treatment of alien species in aquatic ecosystems in global multilateral agreements is neither comprehensive nor entirely consistent. Marine ecosystems currently have somewhat better coverage than freshwater ecosystems. The scope of each instrument discussed in this paper is limited in some way. None of them covers all aspects of alien species regulation: intentional introductions, unintentional introductions, precaution, prevention, eradication, containment or long-term control, and restoration of ecosystems damaged by invasive alien species. It is the global trade agreements that potentially will have the greatest impact on how alien species can be managed in the future. Efforts to control transboundary movement of alien species will inevitably be caught in the trade/development/environment triangle. While the issues of the interactions of MEAs with other MEAs and with the WTO are being resolved, productive work can be done at the field and site level, setting aside political issues and focusing on concrete actions to manage invasive alien species in aquatic ecosystems.

## Introduction

This paper reviews selected binding international agreements that directly or indirectly govern alien species. It does not discuss the Convention on Biological Diversity (CBD), the Cartagena Protocol on Biosafety, or river basin management agreements, nor does it address guidelines, codes of conduct, or other non-binding instruments as these are covered elsewhere in the proceedings.



International law began to address alien species more than 50 years ago. There are now over 40 binding international agreements – not all of them yet in force – that refer either directly or indirectly to alien species.<sup>1</sup> Of those, less than a dozen are specifically related to aquatic environments. Three of those are globally applicable instruments: the Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar); the Law of the Sea; and the Convention on the Law of the Non-Navigable Uses of International Watercourses, which is not yet in force. The others are regional agreements, none of which apply in Asia. There are two Asia-specific agreements related to alien species, neither of which specifically deals with aquatic ecosystems: the 1956 Plant Protection Agreement for the Asia and Pacific Region, which is a supplementary agreement under the International Plant Protection Convention; and the 1985 ASEAN Agreement on the Conservation of Nature, which is not yet in force. There is no regional or global legal instrument that comprehensively governs alien species.

The international regime governing alien species developed over time through various processes in response to different needs. Treatment of alien species in international law is neither comprehensive nor entirely consistent. Some of the international instruments are multilateral environmental agreements (MEAs) that treat alien species in the context of their potential impact on native species and ecosystems. Others are trade-related agreements on sanitary and phytosanitary measures that address alien species as pests and potential vectors for human, plant and animal diseases. Because there are few international agreements dealing with alien species in aquatic ecosystems, there are correspondingly few tools and guidelines for managing them. Terrestrial ecosystems tend to have better coverage because of the phytosanitary, quarantine and other measures developed for agriculture and animal husbandry.<sup>2</sup>

The scope of each instrument discussed in this paper is limited in some way; none of them cover all aspects of alien species regulation such as: intentional introductions, unintentional introductions, precaution, prevention, eradication, containment or long-term control, and restoration of ecosystems damaged by invasive alien species. Prevention includes sanitary and phytosanitary controls for intentional introductions and pathways and vectors for unintentional introductions. Most international agreements provide generally for preventing introductions, but cover the other aspects of alien species management incompletely, if at all.<sup>3</sup>

The conservation treaties address alien species in the context of species and ecosystem health and function, but tend to be weak on issues such as early warning, monitoring, and transboundary cooperation. Where such provisions exist, they are general ones that are not alien-specific. Sanitary/phytosanitary agreements generally have stronger provisions for notification and monitoring, but their standards are focused on food safety and animal, plant and human health, and do not address ecosystems.<sup>4</sup>

<sup>1</sup> Shine, Clare, Nattley Williams and Lothar Gündling. 2000. *A Guide to Designing Legal and Institutional Frameworks on Alien Invasive Species*. IUCN: Gland, Switzerland, Cambridge, and Bonn. Available on-line as UNEP/CBD/SBSTTA/6/INF/8. <http://www.biodiv.org/doc/meetings/sbstta/sbstta-06/information/sbstta-06-inf-08-en.pdf>

<sup>2</sup> See generally, Convention on Biological Diversity. Subsidiary Body on Scientific, Technical and Technological Advice. *Invasive Alien Species, Comprehensive Review on the efficiency and efficacy of existing measures for their prevention, early detection, eradication and control*. 20 December 2000. pp. 1-2. UNEP/CBD/SBSTTA/6/7. <http://www.biodiv.org/doc/meetings/sbstta/sbstta-06/official/sbstta-06-07-en.pdf>

<sup>3</sup> See generally, Convention on Biological Diversity. Subsidiary Body on Scientific, Technical and Technological Advice. *Invasive Alien Species, Review of the efficiency and efficacy of existing legal instruments applicable to alien species*. 26 February 2001. p. 4. UNEP/CBD/SBSTTA/6/INF/5. <http://www.biodiv.org/doc/meetings/sbstta/sbstta-06/information/sbstta-06-inf-05-en.pdf>

<sup>4</sup> *Ibid.*

The way terms are defined varies from agreement to agreement. The earlier conservation agreements refer to “exotic” and “non-native” species. The more recent agreements refer to “alien” or “invasive alien” species, while the sanitary/phytosanitary agreements generally refer to “pests”. Some agreements define a few key terms, but not others.

## Agreements related to aquatic ecosystems

### GLOBAL

#### Law of the Sea (1982)

The only global agreement in force for aquatic ecosystems with a specific provision on alien species is the Law of the Sea.<sup>5</sup> The Law of the Sea covers both intentional and unintentional introductions of alien species into the marine environment: States shall take all measures necessary to prevent, reduce and control pollution of the marine environment resulting from the use of technologies under their jurisdiction or control, or the intentional or accidental introduction of species, alien or new, to a particular part of the marine environment, which may cause significant and harmful changes. (Article 196)

It does not provide for eradication or control of alien species, nor does it provide for restoration of damaged marine ecosystems. There is a general provision for liability under international law for non-compliance with obligations to protect and preserve the marine environment (Article 235).

The Law of the Sea provides for assessment of potential risks of activities that may cause harmful changes to the marine environment (Article 206), for monitoring (Article 204), and for immediate notification of actual or imminent damage to the marine environment. These provisions refer to “pollution” and are not alien-specific, but “pollution” is defined in such a way that it may be interpreted to include introductions of alien species.

#### Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar, 1971)<sup>6</sup>

The Ramsar Convention was the first of the biodiversity-related MEAs and is the only one that deals with one particular ecosystem – wetlands.<sup>7</sup> Over three decades, Ramsar has evolved from an agreement rather narrowly focused on waterfowl habitat to an organization that is contributing actively to the sustainable development agenda related to wetlands generally and has established working relationships with the other principal international organizations working in the field of wetlands conservation.<sup>8</sup> Ramsar remains, however, a convention that focuses on site-based action.<sup>9</sup>

<sup>5</sup> <http://www.un.org/Depts/los/losconv1.htm>

<sup>6</sup> [http://www.ramsar.org/key\\_conv\\_e.htm](http://www.ramsar.org/key_conv_e.htm)

<sup>7</sup> International Institute for Sustainable Development (IISD). 2002. Earth Negotiations Bulletin (ENB). Summary of the Eighth Meeting of the Conference of the Contracting Parties to the Ramsar Convention on Wetlands: 18-26 November 2002. Vol. 17, No. 18, Friday, 29 November 2002. p. 1.

<sup>8</sup> *Ibid.* p. 15.

<sup>9</sup> Davidson, Nick. 2001. Case Study: invasive alien species, Multilateral Environmental Agreements and site management. Statement by Ramsar’s STRP to CBD’s Subsidiary Body for Scientific, Technical and Technological Advice. March. [http://www.ramsar.org/speech\\_sbستا6\\_nick1.htm](http://www.ramsar.org/speech_sbستا6_nick1.htm) and IISD/ENB, *supra.*, p. 16.

As of 19 August 2003, Ramsar has 138 Contracting Parties and 1 308 sites designated for the List of Wetlands of International Importance, with a total surface area of 110 102 681 hectares.<sup>10</sup> There are 14 Ramsar Contracting Parties in Asia, with 103 designated Ramsar sites among them. Of the Lower Mekong countries, Cambodia, Thailand and Viet Nam are Ramsar Contracting Parties, with 14 sites; Lao People's Democratic Republic is actively considering becoming a Party.

The Convention itself does not have a provision dealing with alien species. Ramsar Contracting Parties have an obligation to promote the wise use of wetlands in their territories (Article 3.1). The Convention has developed the concept of "wise use" over the years and in 1990 first issued *Guidelines for the Implementation of the Wise Use Concept*<sup>11</sup>, which did not refer to alien species. In 1993, the Guidelines were revised. They now recommend that national legislation should include obligations to refrain from intentional introductions of invasive alien species, take preventive measures to minimize the risk of unintentional introductions, make efforts to eradicate introduced species, and provide for civil liability for those responsible for unlawful introductions<sup>12</sup>. The same year, *Guidelines on management planning for Ramsar sites and other wetlands* were adopted that have been superseded by a new version issued in 2002. Both versions of the management guidelines incorporate references to invasive alien species similar to those in the wise use guidelines.

In 1999, at its 7<sup>th</sup> Meeting, the Conference of the Contracting Parties to Ramsar adopted the first Resolution on invasive species and wetlands<sup>13</sup>. A background document for COP7 offered a definition of invasive alien species, described the effect of invasives on wetlands, listed organisms that can become invasive in wetlands, described methods of control, and outlined solutions<sup>14</sup>. The Resolution urged Contracting Parties to: address the environmental, economic and social impact of the movement and transport of alien species; inventory alien species in wetlands in their jurisdictions; target invasive alien species for eradication or control; adopt legislation to prevent the introduction and spread of invasive alien species; and build capacity to identify alien species and enforce legislation. It directed the Ramsar Bureau to give priority to addressing invasives in its cooperation with other international organizations working on wetlands, to develop a data base on invasive species that threaten wetlands, and to prepare case studies where invasives have had a negative impact on wetlands, and Ramsar sites in particular. The Scientific and Technical Review Panel (STRP) was directed to prepare guidelines for managing invasive alien species in wetlands and to collaborate on guidance for legislation and other best practice approaches. In support of this Resolution, the Ramsar Bureau produced *Guidelines for reviewing laws and institutions to promote the conservation and wise use of wetlands*<sup>15</sup> and IUCN-The World Conservation Union (IUCN) in 2000 published *A Guide to Designing Legal and Institutional Frameworks on Alien Invasive Species*<sup>16</sup>.

<sup>10</sup> [http://www.ramsar.org/key\\_cp\\_e.htm](http://www.ramsar.org/key_cp_e.htm)

<sup>11</sup> Ramsar Convention. 1990. *Guidelines for the Implementation of the Wise Use Concept*. First adopted as an annex to Recommendation 4.10 of the 4th Meeting of the Conference of the Contracting Parties. [http://www.ramsar.org/key\\_guide\\_wiseuse\\_e.htm](http://www.ramsar.org/key_guide_wiseuse_e.htm)

<sup>12</sup> Ramsar Convention. 1993. *Additional guidance on the implementation of the wise use concept*. [http://www.ramsar.org/key\\_guide\\_wiseuse\\_add\\_e.htm](http://www.ramsar.org/key_guide_wiseuse_add_e.htm)

<sup>13</sup> Ramsar Convention. 1999. 7th Meeting of the Conference of the Contracting Parties. *Invasive species and wetlands*. Resolution 7.14. [http://www.ramsar.org/key\\_res\\_vii.14e.htm](http://www.ramsar.org/key_res_vii.14e.htm)

<sup>14</sup> Howard, Geoffrey. 1999. *Invasive species and wetlands*. Background Document. Ramsar COP7 DOC. 24.

<sup>15</sup> Ramsar Convention. 1999. *Guidelines for reviewing laws and institutions to promote the conservation and wise use of wetlands*. [http://www.ramsar.org/key\\_guide\\_laws\\_e.htm](http://www.ramsar.org/key_guide_laws_e.htm)

<sup>16</sup> Shine, Clare et al. 2000. *supra*. See also, Shine, Clare and Cyrille de Klemm. 1999. *Wetlands, Water and the Law*. Using law to advance wetland conservation and wise use. IUCN Environmental Policy and Law Paper No. 38. IUCN: Gland, Switzerland, Cambridge, UK, and Bonn.

The following Conference of the Contracting Parties, CoP8, adopted another Resolution on invasive species and wetlands<sup>17</sup>. Resolution VIII.18 urged Contracting Parties to identify alien species in Ramsar sites and other wetlands in their territory and carry out risk assessments. It noted that invasives can spread quickly in wetland ecosystems, that eradication in one place may not prevent future invasions, and that Contracting Parties with shared wetland ecosystems should cooperate in all aspects of managing alien species, following the *Guidelines for international cooperation under the Ramsar Convention*<sup>18</sup>. The Resolution reminded Contracting Parties that terrestrial invasions of alien species can affect water flows, that transfers of water between river basins can transfer alien species as well, and urged them to take measures to manage such situations. There are several references to the need for Ramsar to continue and expand collaboration with a range of international organization partners, including the CBD, the International Maritime Organization (IMO), the UNESCO Man and the Biosphere Programme (MAB), the Global Invasive Species Programme (GISP), the World Conservation Monitoring Centre (UNEP-WCMC), and IUCN.

COP8 and Resolution VIII.18 provided an example of the impact Ramsar's working relationships with other conventions and organizations can have on its own internal decision-making processes. Following the directive of Resolution 7.14 to prepare guidelines on managing invasive alien species in wetlands, the Ramsar STRP decided to prepare for Ramsar Parties a guide to each of the elements being developed under the CBD and GISP, rather than duplicating efforts. "Guidance on invasive species and wetlands: a guide for Ramsar managers" was drafted and prepared as a background document to be adopted by COP8<sup>19</sup>. The adoption of the CBD's Guiding Principles at its COP6 became controversial, for both substantive and procedural reasons – a Party raised a trade-related objection to an element of the contents and for procedural reasons still disputes whether the Decision containing the Guiding Principles was actually adopted. Because the Ramsar Guide was linked to the CBD Guiding Principles, a similar controversy arose at Ramsar COP8.<sup>20</sup> Ramsar decided not to submit its Guide for consideration by COP8, and compromise language omitting a reference to the CBD Guiding Principles was substituted in Resolution VIII.18<sup>21</sup>.

Trade-related issues affected a Ramsar Resolution on agriculture, wetlands and water management as well. The COP agreed to include text requesting Parties to ensure that measures implementing Ramsar do not support agricultural policies that conflict with international trade obligations. Some Asian delegates and others argued that World Trade Organization (WTO) negotiations and MEA negotiations should not be mixed.<sup>22</sup> The final versions of Resolutions on climate change and wetlands, and on the report of the World Commission on Dams also reflected compromises related to controversies carried over from other fora<sup>23</sup>.

<sup>17</sup> Ramsar Convention. 2002. 8th Meeting of the Conference of the Contracting Parties. Invasive species and wetlands. Resolution VIII.18. [http://www.ramsar.org/key\\_res\\_viii\\_18\\_eIAS.htm](http://www.ramsar.org/key_res_viii_18_eIAS.htm)

<sup>18</sup> Ramsar Convention. 1999. Guidelines for international cooperation under the Ramsar Convention. [http://www.ramsar.org/key\\_guide\\_cooperate.htm](http://www.ramsar.org/key_guide_cooperate.htm)

<sup>19</sup> Ramsar COP8 Doc. 4: Report of the Chair of the Scientific and Technical Review Panel. paras. 59-60. [http://www.ramsar.org/cop8\\_doc\\_04\\_e.htm](http://www.ramsar.org/cop8_doc_04_e.htm)

<sup>20</sup> IISD/ENB, *supra.*, p. 15.

<sup>21</sup> Ramsar COP8 Doc. 4, *supra.*, para. 61.

<sup>22</sup> International Centre for Trade and Sustainable Development (ICTSD). 2002. Bridges. Trade Issues Spilling over into Wetland Negotiations. Vol. 2, No. 19. 11 December.

<sup>23</sup> IISD/ENB, *supra.*, pp. 5-6 and 16.



The Ramsar Strategic Plan 2003-2008 refers several times to invasive alien species and dedicates Operational Objective 5 to developing guidance and promoting protocols and actions to prevent, control or eradicate invasive alien species in wetland systems<sup>24</sup>.

Ramsar and the CBD have agreed on the third in a series of joint work plans, for the period 2002-2006. The workplan includes invasive alien species as a crosscutting issue. It particularly commits Ramsar and the CBD to working with GISP, IUCN, and UNEP-WCMC to develop a programme of work focused on aquatic invasive species<sup>25</sup>.

The World Bank and the WorldWide Fund for Nature (WWF) collaborated on a study of Ramsar's effectiveness in conserving wetlands. The report, presented at COP8, concluded that designating wetlands as Ramsar sites is likely to have improved their conservation prospects due to various factors, including increased awareness of their importance, increased conservation funding (both domestic and international), increased participation by local stakeholders in conservation, and reduction of threats<sup>26</sup>.

#### Convention on the Law of the Non-navigational Uses of International Watercourses, 1997<sup>27</sup>

This international agreement, not yet in force, applies to the protection, preservation and management of international watercourses, which are defined as systems of surface and ground waters that constitute a unitary whole and of which parts are situated in different States (Articles 1 and 2). It recognizes a watercourse State's right equitably and reasonably to use the watercourse and the duty to cooperate to protect and preserve the ecosystems of international watercourses and to develop them sustainably (Articles 5 and 20). There is a specific provision on alien species, which addresses only prevention:

Watercourse States shall take all measures necessary to prevent the introduction of species, alien or new, into an international watercourse which may have effects detrimental to the ecosystem of the watercourse resulting in significant harm to other watercourse States (Article 22).

Watercourse States are also obliged to protect the marine environment into which the international watercourse feeds (Article 23).

The Convention does have a general obligation not to cause significant harm that requires a State causing significant harm to eliminate or mitigate the harm and to discuss compensation, where applicable (Article 7). There is a general obligation on Parties to cooperate and to exchange information (Articles 8, 9, 30 and 31). Detailed provisions cover notification for planned and emergency situations (Articles 11-19 and 28). None of these provisions are alien-specific, but apply generally to all obligations under the Convention. Risk assessment is not mentioned *per se*, but is implied in the purpose of notification – to allow potentially affected States to evaluate the possible effects of any planned measures (Article 12).

<sup>24</sup> Ramsar Strategic Plan 2003-2008. [http://www.ramsar.org/key\\_strat\\_plan\\_2003\\_e.htm](http://www.ramsar.org/key_strat_plan_2003_e.htm)

<sup>25</sup> Third Joint Work Plan (2002-2006) of the Convention on Biological Diversity and the Convention on Wetlands (Ramsar, Iran, 1971). [http://www.ramsar.org/key\\_cbd\\_jwp3\\_e.htm](http://www.ramsar.org/key_cbd_jwp3_e.htm)

<sup>26</sup> Castro, Gonzalo, Kenneth Chomitz, and Timothy S. Thomas. The Ramsar Convention: Measuring its Effectiveness for Conserving Wetlands of International Importance. Ramsar COP8 DOC. 37, p. 6. [http://www.ramsar.org/cop8\\_docs\\_index\\_e.htm](http://www.ramsar.org/cop8_docs_index_e.htm)

<sup>27</sup> U.N. Doc.A/51/869. <http://srch1.un.org/law/ilc/texts/nonnav.htm>

## Draft International Convention for the Control and Management of Ships' Ballast Water and Sediments<sup>28</sup>

The World Summit on Sustainable Development called for faster action to deal with invasive alien species in ballast water and urged the International Maritime Organization (IMO) to finalize this Draft Convention.<sup>29</sup> The IMO developed this agreement to provide globally applicable regulations for controlling "harmful aquatic organisms and pathogens". By definition, it applies to freshwater as well as marine environments (Article 1).

The main body of the Draft Convention contains general provisions on control, monitoring, inspection, notification, and cooperation. Detailed regulations are included in the Annex. They apply to ships of 400 gross tonnage and above, and do not apply to floating platforms (Regulation E-1). The regulations cover ballast water and sediment standards, and survey, certification and management (Regulations B, D, and E). Parties may designate special areas where additional measures are required to prevent, reduce or eliminate the transfer of harmful aquatic organisms and pathogens through ballast water and sediment (Regulation C).

The Draft Convention has been submitted to the International Conference on Ballast Water Management for Ships for review and adoption.

## REGIONAL

### Antarctica

Two of the international legal instruments governing Antarctica deal with aquatic ecosystems – the 1980 Convention on the Conservation of Antarctic Marine Living Resources<sup>30</sup> and the 1991 Protocol on Environmental Protection to the Antarctic Treaty<sup>31</sup>.

The 1980 Convention is primarily concerned with harvesting marine species in the Antarctic region. It provides that harvesting may only be done in accordance with three conservation principles. One of those principles calls for preventing changes or minimizing the risk of changes in the marine ecosystem which are not potentially reversible over two or three decades, taking into account the effect of the introduction of alien species, among other things (Article II.3.(c)).

The 1991 Protocol (also referred to as "the Madrid Protocol") prohibits the introduction of animal or plant species not native to the Antarctic Treaty area onto land or ice shelves, or into water, except in accordance with a permit (Article 4). For intentional introductions, permits must specify the precautions to be taken to prevent escape or contact with native fauna and flora, and the obligation to remove or dispose of the introduced species before the expiration of the permit (Article 4.3 and 4.4). Unintentional introductions must be removed, disposed of, or sterilized, unless it is determined that they pose no threat to native species (Article 4.4). Parties are to take precautions to prevent the introduction of micro organisms not present in the native fauna and flora (Article 4.6).

<sup>28</sup> <http://globallast.imo.org/> The IMO previously adopted non-binding technical Guidelines for the control and management of ships' ballast water to minimize the transfer of harmful aquatic organisms and pathogens. Annex to Resolution A.868(20), 20<sup>th</sup> IMO Assembly, 1997.

<sup>29</sup> United Nations. 2002. Report of the World Summit on Sustainable Development. A/CONF.199/20\*. Annex. Plan of Implementation of the World Summit on Sustainable Development. para. 34(b), p. 26.

<sup>30</sup> <http://fletcher.tufts.edu/multi/texts/BH779.txt>

<sup>31</sup> <http://fletcher.tufts.edu/multi/texts/BH992.txt>

## Europe

### **European Union (EU) – Aquaculture and Integrated Coastal Zone Management (ICZM)**

The revised EU Common Policy on Fisheries (CPF) took effect on 1 January 2003.<sup>32</sup> The CPF includes a strategy for aquaculture that notes that there is no coherent and specific EU legislation on aquaculture because many aquaculture issues are regulated by national legislation.<sup>33</sup> Although new legislation has yet to be enacted to implement it, the Strategy identifies escaped aquaculture species, alien species and transgenic fish as challenges to be addressed, and among the actions it proposes calls for developing instruments to tackle the impact of escapees, alien species and GMOs<sup>34</sup>. The Strategy also notes that the European Commission considers that all Member States should adhere to the ICES Code of Practice on the Introduction and Transfer of Marine Organisms<sup>35</sup>. The EU Strategy for ICZM notes that introduction of exotic species through ballast water is a problem to be tackled at the international level<sup>36</sup>.

### **EU Habitats Directive<sup>37</sup>**

The Habitats Directive by definition covers aquatic habitats (Article 1.b). EU Member States must ensure that intentional introductions of alien species are regulated so as not to cause harm to natural habitats or wild native fauna and flora, and they have the discretion to prohibit intentional introductions (Article 22.b).

### **United Nations Economic Commission for Europe (UNECE) Convention on the Protection and Use of Transboundary Watercourses and International Lakes (1992)**

This agreement is primarily concerned with water quality and pollution control. It does not mention alien species, but does provide that “the Parties shall take all appropriate measures to prevent, control and reduce any transboundary impact” (Article 2.1). Transboundary impact is defined as meaning “any significant adverse effect on the environment resulting from a change in the conditions of transboundary waters caused by a human activity... Such effects on the environment include effects on human health and safety, flora, fauna, soil, air, water, climate, landscape and historical monuments or other physical structures or the interaction among these factors...” (Article 1.2).

### **Convention on Fishing in the Waters of the Danube (1958)**

The Convention prohibits acclimatization and breeding of fish, animal and plant species without permission from the Commission established under the Convention (Annex Part V Article 10).

### **Selected Agreements from other Regions**

Agreements related to aquatic ecosystems and alien species are adopted and in force in Africa, the Caribbean, Europe, the South East Pacific, and the United States and Canada. They include:<sup>38</sup>

<sup>32</sup> See [http://europa.eu.int/comm/fisheries/reform/index\\_en.htm](http://europa.eu.int/comm/fisheries/reform/index_en.htm)

<sup>33</sup> European Union 2002. Communication From The Commission To The Council And The European Parliament. A Strategy For The Sustainable Development Of European Aquaculture. COM(2002) 511 final. Brussels, 19.9.2002, p. 9. [http://europa.eu.int/comm/fisheries/doc\\_et\\_publ/factsheets/legal\\_texts/docscom/en/com\\_02\\_511\\_en.pdf](http://europa.eu.int/comm/fisheries/doc_et_publ/factsheets/legal_texts/docscom/en/com_02_511_en.pdf)

<sup>34</sup> *Ibid.*, p. 18.

<sup>35</sup> *Ibid.*, p. 19.

<sup>36</sup> Communication from the Commission to the Council and the European Parliament on Integrated Coastal Zone Management: A Strategy for Europe. COM(2000) 547 final. Brussels, 27.09.2000, p. 18.

<sup>37</sup> European Union. 1992. COUNCIL DIRECTIVE 92/43/EEC (1) of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora. <http://europa.eu.int/comm/environment/nature/habdir.htm>

<sup>38</sup> Shine, Clare, *supra*. pp. 87-103.



Agreement on the Conservation of African-Eurasian Migratory Waterbirds (1995) – prohibit intentional introductions, take all measures to prevent unintentional introductions, and take all appropriate measures to ensure that non-native species already introduced do not become a threat to indigenous species (Article III(2)(g) and Annex 3 Action Plan 2.5);

Convention for the Establishment of the Lake Victoria Fisheries Organization (1994) – prohibit the introduction of non-indigenous species other than in accordance with a decision of the Council of Ministers (Article XII);

Agreement on the Preparation of a Tripartite Environmental Management Programme for Lake Victoria (1994) – control water hyacinth;

Protocol Concerning Specially Protected Areas and Wildlife to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (1990) – regulate or prohibit the introduction of non-indigenous species (Articles 5 and 12);

Protocol for the Conservation and Management of Protected Marine and Coastal Areas of the South East Pacific (1989) – prevent, reduce and control to the extent possible the introduction of exotic species of flora and fauna into protected areas (Article VII);

Convention on Great Lakes Fisheries Between the United States and Canada (1954) – control and eradicate the Atlantic sea lamprey (Article 1).

## General Conservation Agreements

### GLOBAL

#### Convention on the Conservation of Migratory Species of Wild Animals (CMS)

The Convention on the Conservation of Migratory Species explicitly refers to alien species. By definition the range of a migratory species means “all the areas of land or water that a migratory species inhabits, stays in temporarily, crosses or overflies at any time on its normal migration route” (Article I.1.f.). Obligations under the CMS, therefore, may apply to aquatic ecosystems.

Under CMS, Range States have a general obligation to take action to conserve migratory species, “whenever possible and appropriate” (Article II.1). Specific obligations related to alien species are in the context of endangered migratory species, which are listed in Appendix I to the Convention, and migratory species that have unfavorable conservation status and are listed in Appendix II.

For endangered migratory species listed in Appendix I, Range State Parties to CMS must endeavor to strictly control the introduction of exotic species, or to control or eliminate exotic species that have already been introduced. Parties are to do this in order to prevent, reduce or control factors that are endangering or are likely to further endanger the species.

Migratory species listed in Appendix II to CMS may be the subject of international agreements for their conservation and management (Article IV.1). CMS provides guidelines for such agreements, which should include an obligation to protect the habitats of migratory species with unfavorable conservation status “from disturbances, including strict control of the introduction of, or control of already introduced, exotic species detrimental to the migratory species” (Article V.5.e.).

Although obligations to manage alien species are limited under CMS to migratory species, any measures taken to implement them would also serve the broader purpose of controlling alien species generally.

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*It is the global trade agreements that potentially will have the greatest impact on how alien species can be managed in the future*

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## REGIONAL

### Association of South East Asian Nations (ASEAN)

#### **Agreement on the Conservation of Nature and Natural Resources, 1985**

Although adopted almost 20 years ago, this ASEAN Agreement is not yet in force. This is unfortunate because the Agreement contains obligations related to alien species along with many other general obligations for transboundary cooperation that could be applied to movements of alien species. The ASEAN Agreement has a general obligation to regulate or prohibit the introduction of exotic species, in the context of conserving marine and freshwater species genetic diversity (Article 3.3.c). Introductions of exotic species are specifically prohibited in protected areas (Article 13.5(a)). There is a general requirement for prior assessment of the consequences of any activity that may significantly affect the natural environment both domestically and in other countries (Articles 14 and 20.3(a)). Parties have a general obligation to take no action that may significantly affect the environment or natural resources of other countries, particularly wildlife habitat (Article 20). Prior notification of actions likely to have significant impact beyond national boundaries and notification of emergency situations is also required (Article 20) and there is a general obligation to cooperate in monitoring activities (Article 18).

### Other Regions

More than a dozen general conservation agreements with provisions related to alien species are in force in Africa, Central America, Europe, the Near East, and the South Pacific<sup>39</sup>. All of them provide for varying levels of preventing introductions – some strictly, some generally, some on the basis of a permit, and some only in protected areas. One requires Parties to “carefully consider” introductions. Only a few differentiate between intentional and unintentional introductions, provide for eradication, or provide for containing the spread of alien species once introduced. Fewer still provide for risk assessment either before or after introduction.

<sup>39</sup> Ibid. In addition, one of the objectives of the European Union’s Sixth Community Environment Action Programme is to prevent and mitigate the impacts of alien species. Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme. Article 6.

## Trade Agreements

### GLOBAL

#### World Trade Organization (WTO)

The WTO agreements deal with environmental measures indirectly – to the extent that they might affect trade – and seek to ensure that any environment-based trade measures are no more restrictive than necessary to achieve the purpose for which they are adopted.<sup>40</sup> Article XX of the General Agreement on Tariffs and Trade (GATT) provides two exceptions to GATT rules that could be applied in the case of alien species: Article XX(b) for the protection of human, plant or animal life or health; and Article XX(g) for the conservation of exhaustible natural resources.

To date, WTO disputes have not dealt with a situation involving alien species. The best-known environment-related case decided under the WTO, however, popularly known as the “US Shrimp/Turtle” case, dealt with conservation of endangered marine species. The 1989 Endangered Species Act (Section 609) requires the United States government to certify that all shrimp imported into the country are caught with methods that protect sea turtles from drowning in shrimp trawling nets. In 1996, the embargo was extended to all shrimp-exporting countries, approximately 40. Four Asian countries – India, Malaysia, Pakistan and Thailand – challenged the U.S. measure. The U.S. defended it on the basis of GATT Article XX(b) and (g). The WTO dispute settlement Panel ruled against the U.S. shrimp embargo, and the Appellate Body upheld the ruling. The Appellate Body decided that the GATT Article XX(g) exception applied to sea turtles, but that the United States had discriminated in implementing the shrimp embargo, partly because an alternative was available – the United States had entered into an agreement with Latin American countries to resolve the shrimp/turtle issue, but had not done so with the Asian countries.<sup>41</sup>

The WTO’s binding dispute resolution system seeks to either remove or amend any trade-related measure that is inconsistent with WTO rules.<sup>42</sup> The Appellate Body’s decision is read by some commentators as a narrow interpretation of WTO rules that will make it difficult for all WTO Members to defend their trade-related environmental measures through the GATT’s Article XX exceptions.<sup>43</sup> To defend an exception for the protection of human, plant or animal life or health (Article XX(b)), a WTO Member must show that the policy objective behind its measure falls within the range of policies for that purpose, that the measure is necessary to meet the policy objective, and that there are no reasonably available alternatives

<sup>40</sup> Mackenzie, Ruth et al. 2003. *An Explanatory Guide to the Cartagena Protocol on Biosafety*. IUCN: Gland, Switzerland and Cambridge, UK. p. 226.

<sup>41</sup> See: Center for International Environmental Law. *An Introduction: The Shrimp - Turtle Dispute and CIEL’s Amicus Brief*. <http://www.ciel.org/Tae/shrimpturtle.html> and International Centre for Trade and Sustainable Development (ICTSD). *WTO Shrimp-Turtle Dispute*. [http://www.ictsd.org/html/shrimp\\_turtle.htm](http://www.ictsd.org/html/shrimp_turtle.htm) and Sakmar, Susan L. *Free Trade and Sea Turtles: The International and Domestic Implications of the Shrimp-Turtles Case*. *Colorado Journal of International Environmental Law and Policy*. <http://www.colorado.edu/Law/CJIELP-10/Sakmar1.htm>

<sup>42</sup> Mackenzie, *supra*.

<sup>43</sup> See, for example Wold, Chris and Glenn Fullilove. 2000. *Analysis of the WTO Appellate Body’s Decision in Shrimp/Turtle*. <http://www.lclark.edu/org/ielp/turtlebriefing.html>

that are consistent with WTO rules. An exception for the conservation of exhaustible natural resources must fall within the range of related policies, be related to the conservation policy objective, and be made in conjunction with restrictions on domestic production or consumption. To qualify for either of these exemptions, a WTO Member must also show that its measure is being applied in a way that is neither arbitrary, unjustifiable, nor a disguised restriction on trade.<sup>44</sup>

The interpretations the WTO Appellate Body has used to resolve cases based on GATT Article XX indicate what a WTO Member would have to do to justify a measure under the 1995 Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), which, like GATT Article XX(b), deals with human, plant and animal life and health.

WTO agreements do not address alien species per se, but the SPS Agreement covers measures to prevent or limit damage from the entry, establishment or spread of pests (Annex A, Article 1). The scope of this trade provision is substantial, given that it applies not only to measures dealing with the import/entry of pests, but also to measures to control their establishment or spread. The SPS Agreement defines “pests” only to the extent of specifying that the term includes weeds. Aquatic ecosystems are not specifically covered, but the term “animal” includes fish and “plant” includes wild flora (Annex A, fn. 4).

WTO Members have the right to take any measures to protect human, plant and animal life or health in their jurisdictions, as long as those measures are:

- consistent with the SPS Agreement;
- are applied only to the extent necessary to protect human, plant and animal life or health;
- are based and maintained on scientific principles; and
- do not constitute open or disguised restrictions on trade or discrimination against other Members with identical or similar conditions (Article 2.1-3).

Sanitary and phytosanitary measures that are consistent with the SPS Agreement are presumed to conform to the similar provision in Article XX(b) of the General Agreement on Tariffs and Trade (SPS Article 2.4).

The SPS Agreement requires WTO members to base their sanitary and phytosanitary measures on international standards and guidelines, particularly those issued by the Codex Alimentarius Commission, the International Office of Epizootics, and the international and regional organizations operating under the International Plant Protection Convention (see C.1.2, below)(Article 3).

To meet the “necessity test”<sup>45</sup> of the GATT and the SPS Agreement, WTO Members must determine the level of protection necessary to protect human, plant and animal life or health on the basis of risk assessment that in turn is based on scientific and economic analysis (Article 5). They must avoid arbitrary or unjustifiable differences in levels of protection that may constitute discrimination or disguised restrictions on trade. The SPS Agreement provides for a precautionary approach, allowing Members to adopt provisional measures when scientific evidence is insufficient, and requiring a risk assessment within “a reasonable period of time” (Article 5.7), usually taken in practice to be 15 months<sup>46</sup>.

<sup>44</sup> Mackenzie, *supra*, p. 235.

<sup>45</sup> *Ibid.*, p. 236.

<sup>46</sup> International Centre for Trade and Sustainable Development (ICTSD). 2002. Bridges. CBD Adopts Guidelines on Access to Genetic Resources and Alien Species. Vol. 6, No. 15. 23 April. <http://www.ictsd.org/weekly/02-04-03/story4.htm>

Developing countries are accorded a degree of special and differential treatment under the SPS Agreement (Article 10). The WTO Committee on Sanitary and Phytosanitary Measures established by the SPS Agreement (Article 12) may grant developing country WTO Members specific and time-limited exceptions from all or some of the obligations of the Agreement.

The current WTO negotiations address the general question of the relationships between the WTO agreements and MEAs. The mandate for the "Doha Round" of negotiations and consultations to be concluded by 1 January 2005, calls for addressing the relationship between existing WTO rules and specific trade obligations in MEAs.<sup>47</sup> The Doha Declaration prescribes that negotiations on this point be compatible with the multilateral trading system, and that they not add to, diminish, or alter the balance of WTO Members' WTO rights and obligations.<sup>48</sup> The Secretariats of the CBD and five other MEAs, along with the United Nations Environment Programme (UNEP), have been invited on an *ad hoc* basis as observers at some negotiating sessions of the WTO's Committee on Trade and Environment (CTE). Their participation so far is limited to discussions on the relationship between existing WTO rules and specific trade obligations in MEAs. This situation reflects the primary restriction, as of mid-2003, on attempts to resolve the issues involved in the relationships between MEAs and the WTO. Discussions were only taking place in the context of the WTO, which limits the participation of MEA Secretariats and does not address non-specific trade measures and measures aimed at non-Parties to MEAs<sup>49</sup>.

#### International Plant Protection Convention (IPPC)<sup>50</sup>

The IPPC came into force in 1952. Amendments adopted in 1979 came into force in 1991. Amendments adopted in 1997 substantially brought the IPPC in line with the 1995 WTO SPS Agreement but have not yet come into force. The IPPC does not explicitly apply to aquatic plants or plant pests, but neither are they excluded from coverage.

The governing body of the IPPC is one of three international organizations recognized under the WTO SPS Agreement as a standard-setting body, which gives IPPC standards effect beyond the Convention's own Parties. WTO Member States, whether IPPC Parties or not, must pattern their phytosanitary standards on those set by the IPPC<sup>51</sup>.

The IPPC began setting International Standards for Phytosanitary Measures in the mid-1990s<sup>52</sup>; there are currently 19 approved standards<sup>53</sup>. The Interim Commission on Phytosanitary Measures (ICPM), which functions as the IPPC's governing body until the 1997 amendments come into force, in 2001 adopted new standards, including ones for pest risk analysis that provide for dealing with uncertainties<sup>54</sup>. Like the other two organizations recognized by the SPS Agreement, however, the IPPC focuses on human, plant and animal health and safety, rather than on ecosystem integrity.

<sup>47</sup> World Trade Organization. 2001. Fourth Ministerial Conference. Ministerial Declaration, para. 31. Doha, Qatar, November. <http://www.wto.org>

<sup>48</sup> Doha Ministerial Declaration, para. 32. (On-line). Available: <http://www.wto.org>

<sup>49</sup> IUCN. 2003. Multilateral Environmental Agreements Need to Become More Proactive. (On-line). Available: <http://www.iucn.org>

<sup>50</sup> <http://www.ippc.int/IPP/En/default.htm>

<sup>51</sup> ICTSD. 2001. Bridges. FAO Plant Health Commission to Build Bridges between WTO and CBD. Vol. 5, No. 13. 10 April 2001. <http://www.ictsd.org/html/weekly/10-04-01/story5.htm>

<sup>52</sup> <http://www.nri.org/NRET/PWB/Inter.html>

<sup>53</sup> <http://www.ippc.int/IPP/En/standards.htm>

<sup>54</sup> *Ibid.*



The Convention “applies mainly to quarantine pests involved with international trade” (1991 text, Article II.4). The 1997 amendments expand coverage to include “regulated non-quarantine pests” that an importing Party may regulate because they have an economically unacceptable collateral impact (1997 text, Article II.1). Under both the 1991 text and 1997 amendments, “pests” are any form of plant or animal life or any pathogen that could potentially harm plants. A quarantine pest is one that has not yet been introduced in a country, or is present but controlled, and that has potential economic danger if released (1991 text, Article II.2; 1997 text, Article II.1).

At the heart of the IPPC are the requirements related to imports (1991 text, Article VI; 1997 text, Article VII). The IPPC has a “necessity test” similar to the SPS Agreement – Parties may not take any measures unless they are necessary for phytosanitary reasons. The IPPC text currently in force does not require risk assessment; the text amended in 1997 does. Even though the current text of the IPPC does not require risk analysis, the ICPM has issued standards for it that must be followed by WTO Members (see above).

IPPC Parties may prohibit or restrict the import of plants and plant products and list pests whose import is prohibited or restricted. They may inspect, detain, treat, destroy or refuse entry to consignments that do not meet their prescribed requirements. These provisions are to be carried out so that they minimize interference with international trade. If ports of entry are specified, they must be selected so as not to impede international trade unnecessarily. Inspections are to be carried out promptly and certification requirements are to be kept to a minimum, particularly for plant products not intended to be planted.

The Convention provides for establishing National and Regional Plant Protection Organizations (NPPOs/RPPOs) and for supplementary agreements to facilitate implementation and cooperation among Parties. The Plant Protection Agreement for the Asia and Pacific Region<sup>55</sup> was adopted in 1956. Each of the Lower Mekong countries has designated a National Plant Protection Organization. The RPPO for Asia is the Asia and Pacific Plant Protection Commission, based in the FAO Regional Office in Bangkok, Thailand<sup>56</sup>.

The 1991 text provides that notification of restrictions or prohibitions on imports is to be communicated directly (Article VI), while information on outbreaks or spread of pests, which could affect ecosystems, is to be done indirectly and periodically, rather than immediately (Article VII). This anomaly is corrected in the 1997 amendment (Article VII.6).

In contrast to the Cartagena Protocol on Biosafety to the CBD, which covers all living modified organisms (LMOs) in international trade, the IPPC covers LMOs only if they are categorized as plant pests. Collaboration between the ICPM and the CBD Secretariat will include defining when LMOs become pests to facilitate harmonizing phytosanitary and biosafety regulations<sup>57</sup>.

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)<sup>58</sup>

CITES is the multilateral environmental agreement that specifically deals with international species trade. It does require reciprocal control between exporting and importing countries, but its objectives are to protect rare and endangered species against unsustainable trade,

<sup>55</sup> <http://sedac.ciesin.org/pidb/texts/plant.protection.south-east.asia.pacific.1956.html>

<sup>56</sup> <http://www.ippc.int/servlet/>

<sup>57</sup> ICTSD. 2001. Bridges. *supra*

<sup>58</sup> <http://www.cites.org/>

rather than to monitor or prevent introductions of species alien to the importing State.<sup>59</sup> CITES is unlikely to be applicable in cases of introductions of alien species unless a species protected in an exporting State is considered potentially invasive in the importing State.<sup>60</sup>

## REGIONAL

### ASEAN

In the early 1980s, ASEAN adopted several agreements on quarantine and phytosanitary issues<sup>61</sup>: These include the 1981 ASEAN Declaration on Specific Animal Disease Free Zone; 1982 ASEAN Ministerial Understanding on Plant Quarantine Ring; 1982 ASEAN Ministerial Understanding on the Standardization of Import and Quarantine Regulation on Animal and Animal Products; and the 1984 ASEAN Ministerial Understanding on Plant Pest Free Zone. None of them specifically address aquatic species or ecosystems.

In 2000, ASEAN adopted Protocol 8<sup>62</sup> on sanitary and phytosanitary measures to the 1998 ASEAN Framework Agreement on the Facilitation of Goods in Transit. Protocol 8 defines “goods” to include plants, plant products, and aquatic animals capable of harboring or spreading plant pests or animal diseases (Article 1.1.a). As with the WTO SPS Agreement, Protocol 8 defines sanitary and phytosanitary measures to include not only measures dealing with the import/entry of pests, but also to measures to control their establishment or spread (Article 1.1.b). Protocol 8 recognizes the same standard-setting bodies as the WTO SPS Agreement (Article 3.1) and provides for information sharing, consultation and emergency measures, which are to be immediately notified among ASEAN Member States (Article 3.2., 3., 4).

### North American Free Trade Agreement (NAFTA)<sup>63</sup>

NAFTA’s sanitary and phytosanitary provisions do not explicitly refer to aquatic ecosystems or organisms, nor are they excluded. Like the WTO SPS Agreement, NAFTA defines a phytosanitary measure to include preventing or limiting damage from the introduction, establishment or spread of a pest, in addition to protecting human, plant and animal health and safety (Article 724). NAFTA also requires that sanitary and phytosanitary measures be based on scientific principles and risk assessment to determine the appropriate level of protection (Article 712), and sets out parameters for assessing risk (Article 715). For standards, NAFTA relies on the same three international organizations specified in the WTO SPS Agreement (Article 713). NAFTA’s provisions for control, inspection and notification are more detailed than similar provisions in the SPS Agreement (Articles 717, 718).

<sup>59</sup> UNEP/CBD/SBSTTA/6/INF/5, p. 10, fn. 18.

<sup>60</sup> *Ibid.*, p. 15, fn. 45.

<sup>61</sup> <http://www.aseansec.org/>

<sup>62</sup> Association of South East Asian Nations (ASEAN). 2000. Protocol 8 Sanitary and Phytosanitary Measures to Implement the ASEAN Framework Agreement on the Facilitation of Goods in Transit. [http://www.aseansec.org/transport/protocol\\_8.htm](http://www.aseansec.org/transport/protocol_8.htm)

<sup>63</sup> <http://www.nafta-sec-alena.org/english/nafta/chap-074.htm>

## European Union (EU)

The European Union has a Directive on protective measures against the introduction into the Community of organisms harmful to plants or plant products, and against their spread within the Community<sup>64</sup> whose provisions are similar to, but much broader in scope than, those of the IPPC. The Directive does not explicitly refer to aquatic species, nor does it exclude them. The Directive defines “harmful organisms” to mean plant, animal or pathogen pests of plants or of plant products (Article 2(e)). It provides for prohibiting introductions of harmful organisms listed in its Annexes (Articles 3-5), and for eradicating them or for at least containing their spread (Article 16). The phytosanitary certificate required under the IPPC is provided for (Articles 7- 9) and there are detailed provisions for inspections (Articles 13 and 21) and for notification (Articles 15-19). The Directive also provides for the possibility of a plant health control financial contribution for Member States that suffer invasions, to cover the direct costs of eradication or containment (Articles 22-25). In the past three years, the European Commission has issued several Decisions authorizing derogations from the plant health Directive and providing for temporary emergency measures to deal with infestations<sup>65</sup>.

The EU also has a Directive that sets out animal health requirements, veterinary certification, and conditions for quarantine for the import of birds other than poultry.<sup>66</sup>

<sup>64</sup> Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community. Commission Directive 2002/36/EC of 29 April 2002 amending certain Annexes to Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community.

Council Directive 2002/89/EC of 28 November 2002 amending Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community. Official Journal L 355, 30/12/2002 P. 0045 – 0060.

<sup>65</sup> 2001/219/EC: Commission Decision of 12 March 2001 on temporary emergency measures in respect of wood packing comprised in whole or in part of non-manufactured coniferous wood originating in Canada, China, Japan and the United States of America (notified under document number C(2001) 694).  
2001/836/EC: Commission Decision of 27 November 2001 authorizing the Member States temporarily to provide for derogations from certain provisions of Council Directive 2000/29/EC in respect of plants of *Vitis L.*, other than fruits, originating in Switzerland (notified under document number C(2001) 3764).  
2001/664/EC: Commission Decision of 16 August 2001 amending Decision 96/301/EC authorising Member States temporarily to take emergency measures against the dissemination of *Pseudomonas solanacearum* (Smith) Smith as regards Egypt (notified under document number C(2001) 2542).  
2002/316/EC: Commission Decision of 29 April 2002 authorising derogations from certain provisions of Council Directive 2000/29/EC in respect of plants of strawberry (*Fragaria L.*), intended for planting, other than seeds, originating in the Republic of Chile (notified under document number C(2002) 1553).  
2002/903/EC: Commission Decision of 14 November 2002 amending Decision 96/301/EC by renewing the Member States' authorisation to take emergency measures against the dissemination of *Pseudomonas solanacearum* (Smith) Smith as regards Egypt (notified under document number C(2002) 4416) Official Journal L 312, 15/11/2002 P. 0028 – 0029.  
2002/887/EC: Commission Decision of 8 November 2002 authorising derogations from certain provisions of Council Directive 2000/29/EC in respect of naturally or artificially dwarfed plants of *Chamaecyparis Spach*, *Juniperus L.* and *Pinus L.*, originating in Japan (notified under document number C(2002) 4348).  
2002/947/EC: Commission Decision of 2 December 2002 amending Decision 93/467/EEC authorising Member States to provide for derogations from certain provisions of Council Directive 2000/29/EC, in respect of oak (*Quercus L.*) logs with bark attached, originating in Canada or the United States of America (notified under document number C(2002) 4761). Official Journal L 328, 05/12/2002 P. 0019 – 0020.

<sup>66</sup> 2000/666/EC: Commission Decision of 16 October 2000 laying down the animal health requirements and the veterinary certification for the import of birds, other than poultry and the conditions for quarantine (notified under document number C(2000) 3012).

For more than a decade the EU has regulated the release of genetically modified organisms (GMOs)<sup>67</sup> and there is currently a proposal for a Regulation on transboundary movement of GMOs.<sup>68</sup>

The Convention Establishing the European Free Trade Association (EFTA) provides that the WTO SPS Agreement governs sanitary and phytosanitary measures for its Parties, which are Iceland, Liechtenstein, Norway and Switzerland (Article 12, Annex G).<sup>69</sup> Sanitary and phytosanitary measures as provided under Annex 1 to the EFTA European Economic Area (EEA) Agreement focus only on food products and do not address pests.

## Summary

Treatment of alien species in aquatic ecosystems in global multilateral agreements is uneven, with marine ecosystems currently faring somewhat better than freshwater ecosystems. The Law of the Sea provides a good framework for managing alien species in marine ecosystems – the issue is implementing it through national legislation. When the Draft International Convention for the Control and Management of Ships' Ballast Water and Sediments is adopted and comes into force, the legal basis for managing alien species in both freshwater and marine ecosystems will be further strengthened, as it provides for eradication, one of the gaps in the Law of the Sea coverage. Some States have already taken unilateral measures to protect their waters from alien species introduced through ballast water. As with the Law of the Sea, the challenge will be for all Parties to implement the future Ballast Water Convention in national legislation and enforce their measures.

Ramsar, the global MEA that deals with both freshwater and marine wetland ecosystems, contains no provision on alien species and the Convention on the Law of the Non-navigational Uses of International Watercourses, which does have a provision on preventing introduction of alien species, is not yet in force. Using its "wise use" provision as a basis, Ramsar began in the early 1990s to focus on the issue of invasive alien species in wetland ecosystems and by the end of the decade had developed several guidelines that take alien species into account. Through collaboration with the CBD and other international organizations and programmes, Ramsar will intensify its work on alien species over the coming three years, particularly in the context of freshwater ecosystems.

It is the global trade agreements that potentially will have the greatest impact on how alien species can be managed in the future. Efforts to control transboundary movement of alien species will inevitably be caught in the trade/development/environment triangle.

<sup>67</sup> Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC - Commission Declaration. 2002/811/EC: Council Decision of 3 October 2002 establishing guidance notes supplementing Annex VII to Directive 2001/18/EC of the European Parliament and of the Council on the deliberate release into the environment of genetically modified organisms and repealing.

<sup>68</sup> Proposal for a Regulation of the European Parliament and of the Council on the transboundary movement of genetically modified organisms/\* COM/2002/0085 final - COD 2002/0046 \*/. Common Position (EC) No 17/2003 of 4 March 2003 adopted by the Council, acting in accordance with the procedure referred to in Article 251 of the Treaty establishing the European Community, with a view to adopting a Regulation of the European Parliament and of the Council on transboundary movements of genetically modified organisms.

<sup>69</sup> <http://secretariat.efta.int/EFTASec/Web/EFTACConvention/EFTACConventionTexts/EFTACConvention2001.pdf>.

The complex issues of the MEA/WTO relationship have yet to be clarified, but there are indications that trade may be the determining factor. In the context of the CBD's work, the issue is already being raised that a precautionary approach to managing alien invasive species could provide a cover for national protective measures inconsistent with the WTO SPS Agreement. Because Ramsar has closely linked its work on invasive alien species with that of the CBD, a procedural dispute within the CBD framework was sufficient to delay Ramsar's adopting guidance for managing invasive alien species in wetlands. At the same time, decisions of WTO dispute settlement Panels have begun to establish precedents that pose potential obstacles for countries trying to prevent introductions of alien species.

While the issues of the interactions of MEAs with other MEAs and with the WTO are being resolved, productive work can be done at the field and site level, setting aside political issues and focusing on concrete actions to manage invasive alien species in aquatic ecosystems. One example of this is the progress being made under the African-Eurasian Waterbirds Agreement under the Convention on Migratory Species. In spite of the setback in the Ramsar/CBD collaboration, the work these two MEAs have planned with each other and with other international partners has great potential for drawing international and national attention to the urgency of the issues related to invasive alien species in aquatic ecosystems, and to finding solutions.