Cultivating Native Plants: The Legal Pitfalls

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By knowing and observing plant-protection laws and determining the origins of native plants offered for sale, collectors can aid conservation efforts—and avoid the legal and ethical pitfalls of collecting as well.

If you purchase native plants you might break the law and, at the same time unknowingly contribute to the demise of wild plant populations, since collection from the wild is seldom adequately licensed or controlled. By following a few simple rules, however, you can avoid the legal and ethical pitfalls of buying (and collecting) native plants for use in a garden, for scientific research, or for horticultural display.

In the United States, many laws protect species of plants or regulate activities that involve them. The laws range from strict prohibitions of the collection and sale of protected species to local regulations aimed at maintaining scenic beauty. It is important to know what these laws are.

Plant-Protection Laws in the United States

In 1973, the United States Congress passed the Endangered Species Act, which for the first time granted Federal protection to plants under the terms of a major law. Congress directed the Smithsonian Institution to draw up a list of the endangered and threatened plants of the United States. The Smithsonian’s list, which was published in book form (Ayensu and DeFilipps, 1978), included about three thousand plant taxa of the continental United States and Hawaii. This number, which represents one out of every ten native plant taxa, astounded the scientific community.

More than one hundred of the taxa are now protected by the Act, and others currently are proposed for protection. In practical terms this means that the interstate trade or collection of those taxa is prohibited on lands owned by the United States Government, unless one has a permit issued by the United States Fish and Wildlife Service or another appropriate agency, such as the Bureau of Land Management, the Park Service, or the Forest Service.

Some of the endangered and threatened species on the Federal list are available through legitimate sources. Only propagated plants may be sold legally, and their sale must be licensed by the Fish and Wildlife Service. The Tennessee purple coneflower (Echinacea tennesseensis) is an example of a species grown from seed. (According to the Fish and Wildlife Service, only two nurseries were licensed to sell the species in 1985.) Species of Pediocactus, a genus of endangered diminutive cacti, are sometimes propagated by seeds, cuttings, or tissue culture. Chapman’s rhododendron (Rhododendron chapmanii), endangered in the wild, is available as plants raised from seeds or cuttings.

Other Federal laws protecting plants include more-general ones, such as those that prohibit commercial collecting on Park Service lands, and the requirements that permits be obtained for collecting on most other Federal lands.
State Laws
In addition to the Federal laws, many states have laws conserving plant species. About half of the fifty states have passed endangered species laws that help to conserve plants (McMahan, 1980; McMahan, 1984), for example. There are as many types of provisions as there are states; they provide various degrees of protection, from outright prohibitions against collection and sale to the creation of licensing systems. Some states do not regulate collecting at all, but instead, focus on preserving the habitats of rare plants.

Despite the efforts of some states to protect their rare plants, it remains a sad fact that most of the plants at risk of extinction in the United States are not yet protected by either Federal or state laws (see, for example, Manheim and Bean, 1984). Conservation-conscious horticulturists and botanists will learn which native plants are rare and will proceed with extreme caution to purchase only propagated plants. Publications listing plants at risk of extinction can be obtained from the United States Fish and Wildlife Service (e.g., United States Fish and Wildlife Service, 1980, 1981) and from many state-government offices.

The Threats of Trade in Wild Species
Trade in wild plants can affect more-common species as well, among them the Venus's-flytrap (*Dionaea muscipula*), which is native to the Green Swamp of North Carolina and South Carolina. Although it has a restricted habitat, the Venus's-flytrap is locally abundant where conditions are favorable (Sutter, 1985). Its removal from the wild is monitored by the North Carolina Department of Agriculture, but several nurseries and botanical gardens propagate Venus's-flytrap from seeds or by plant divisions. Propagated specimens provide the buyer with a choice, making it unnecessary to remove Venus's-flytraps from wild populations.

Another example, the yellow lady's-slipper (*Cypripedium calceolus*), is commonly offered through mail-order garden catalogs in

*The Venus's flytrap* (*Dionaea muscipula*) being propagated in flats at the North Carolina Botanical Garden. Photograph by the author.
the United States. Unless the company states that they are propagated, the plants are almost certainly of wild origin. One catalog refers to its stock as “specially selected,” perhaps in an effort to mislead the customer about the source of the plants. The Garden in the Woods in Framingham, Massachusetts, the botanical garden of the New England Wild Flower Society, is propagating the yellow lady's-slipper on a limited basis, as are a few others. These sources offer propagated plants that are more likely to survive transplanting to the garden than are most wild-collected plants.

At least the yellow lady's-slipper and some other wildflowers can sometimes survive transplanting from the wild. Others, such as many other species of Cypripedium, are not so lucky. They usually die after one or more years, leaving the gardener or horticulturist wondering what he or she did wrong. For those interested in learning sources of nursery-propagated native plants, the New England Wild Flower Society's small but informative booklet, *Nursery Source List: Wildflowers and Native Plants* (New England Wild Flower Society, 1984), is very useful.

It is important to realize that, with few exceptions, wild collection is not adequately controlled or licensed by either state or Federal agencies. One of a handful of states licensing the removal of wild plants is Arizona. Wildlife officials dubbed “cactus cops” give permits and tags for collecting wild saguaro (*Cereus giganteus*) and other large cacti used in outdoor landscaping. Collecting certain rare species is strictly prohibited unless it is done by the landowner. In this way, the state monitors the removal of wild cacti and can better assess the effect of collecting on the wild population. Whenever possible, state officials encourage collectors to remove plants from lands about to be developed rather than from wild lands.

**The Legal Requirements**

Knowing that what you purchase is both legal and not detrimental to wild populations can
be difficult. It is perhaps safest to purchase only material that you know is of propagated origin. Here are a few simple rules to follow:

- Learn about the laws that protect native plants. Write to a conservation department in a state to which the plants are native to find out about local laws. You are presumed to know what the laws are, in any case.
- Follow all requirements of the state or Federal government, such as obtaining permits if you must use wild plants. Be aware that even the sale of propagated plants of some species is regulated so as to increase protection of the wild resource.

Other Considerations

In addition to being aware of the legal requirements and pitfalls, you should:

- Find out whether the native plants you buy are wild or propagated. The best way to do so is to ask the supplier.
- Find out which species are rare, either in the state or nationally, and be particularly careful when you buy these species to determine that they originated as propagated plants.
- Obtain information about the site from which the plants came if, for scientific reasons, you must purchase plants collected in the wild. The information may be valuable some day.
- Do not, in general, buy wild plants unless their collection and sale are licensed and the wild population is monitored by a government agency.
- Be particularly careful when you buy from mail-order catalogs. Many rare and wild-collected specimens of cacti and insectivorous plants are sold in this way, perhaps illegally.
- Be aware that most "wildflowers" offered for sale in the United States through mail-order catalogs were collected from the wild. These include bloodroot, ferns, and trilliums.
- Never buy lady’s-slipper orchids (Cypripedium spp.) unless you know that they were artificially propagated.

Echinacea tennesseensis, the Tennessee purple coneflower. This species is available legally from nurseries licensed by the United States Fish and Wildlife Service.

A pincushion cactus, Pediocactus peeblesianus var. peeblesianus. Endangered pincushion cacti are popular among cactus collectors. Photograph by the Desert Botanical Garden.
A stand of saguaros (Cereus giganteus) in the Saguaro National Monument, near Tucson, Arizona. Saguaro often are used in outdoor landscaping.

References


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