

## Wildcrafting Non-Timber Forest Products — Legal Considerations

### Introduction

Non-timber forest products (NTFPs) or special(ty) forest products are plant materials other than timber that are harvested from the forest. The practice of collecting these products from their natural growing sites is referred to as wildcrafting. Although often collected for personal use, many wildcrafted materials also have commercial value. Wood lot owners may choose to harvest NTFPs as a means of providing temporary income while waiting for their timber stand to mature or as a way to supplement their income. NTFPs can provide a means to diversifying and expanding an existing woodland enterprise.

Wildcrafters who want to harvest materials outside their own property lines need to know there are laws that protect other privately owned property and public areas from unauthorized harvesting and trespassing. Poaching, the illegal taking of wild plants or animals, is a serious problem in Kentucky. Not only are there legal ramifications, but poaching is also responsible for the decline in selected native Kentucky plant species, such as lady slipper orchids. Some plant species are protected by state and/or federal laws. Even plant material collected and sold from personally owned property is not without its legal restrictions. Violations to any of these local, state, and/or federal laws can carry hefty fines of thousands of dollars, as



EGGERT'S SUNFLOWER (*Helianthus eggertii*) IS ON KENTUCKY'S THREATENED AND ENDANGERED SPECIES LIST.

well as the possibility of imprisonment. These laws should not be taken lightly; they are being enforced.

The intention of this profile is to offer general information on a number of the legal issues pertaining to wildcrafting; however, collectors should personally investigate all pertinent federal, state, and local laws before the first plant or plant part is collected.

### Federal Laws

#### *Endangered Species Act*

Some plant species fall under the protection of the Endangered Species Act of 1973 (ESA). Kentucky currently has nine plant species on the federal list of threatened and endangered species and one species that is in the process of becoming listed. It is illegal to collect or destroy any of these plants on public lands.

Threatened and endangered plant species growing on private lands are under the



ownership and care of the landowner. However, any collector who transports, sells, or trades a threatened or endangered species may be subject to federal prosecution under The Lacey Act, even if the plant was collected on their own property. Additionally, if federal funds, a federal permit, or a federal license have been used to develop the private land, any impacts to threatened or endangered plants growing on the property will be subject to regulation under the ESA.

The list of Kentucky plants protected by the ESA, along with descriptive information, can be found on the Kentucky Department of Fish and Wildlife Resources, the U.S. Fish and Wildlife Service, and the Kentucky State Nature Preserves Commission Web sites. For more information on federally listed plants, contact the U.S. Fish and Wildlife Service Endangered Species Program.

Severe penalties (fines and/or imprisonment) may be imposed for violations of the Endangered Species Act. Fines can also be levied for unintentional violations. Contact the U.S. Fish and Wildlife Service Office of Law Enforcement with questions pertaining to these issues.

### ***The Lacey Act***

The Lacey Act of 1900 and The Lacey Act Amendments (1981 and later) make it illegal to sell, purchase, acquire, transport, or export wildlife that has been taken, harvested, or possessed in violation of state, federal, or tribal law. The Lacey Act pertains to native plants (including seeds, roots, or other parts) that are on the federal list of endangered species, on the Convention on International Trade in Endangered Species (CITES) of Wild Fauna and Flora list, or listed under a state conservation statute. The details regarding

what constitutes a violation of this law, as well as resulting penalties, can be obtained from the U.S. Fish and Wildlife Service.

## **State Laws**

### ***Kentucky Rare Plant Recognition Act***

The General Assembly passed the Kentucky Rare Plant Recognition Act in 1994, recognizing the importance of preserving the state's rare plant species for "human enjoyment, for scientific purposes, and to ensure their perpetuation" (KRS 146.600). This law cites more than 270 plant species that have been designated by the state as endangered or threatened, including those on the federal list. The Kentucky State Nature Preserves Commission (KSNPC), which is charged with protecting the Commonwealth's natural heritage, maintains the current plant list. Plants on this list should not be harvested or disturbed.

### ***State Regulated Plant Material***

At this time, only ginseng falls under this category; both its harvest and sale are strictly regulated by the state. The harvest season for ginseng in Kentucky begins September 1 and ends December 1; ginseng may only be dug during this period, even on the harvester's own private land.



THE HARVEST AND SALE OF GINSENG (*Panax quinquefolius*) IS REGULATED BY STATE LAW.

Harvesting ginseng on federally owned management areas is not allowed, with the exception of the Daniel Boone National Forest (DBNF), where ginseng can be dug for personal use only; collectors must first pay a fee and obtain a permit. Harvesting on other public lands, such as state parks, is not permitted. Digging ginseng on private property does not

require a permit; however, permission should be obtained from the landowner.

All ginseng harvested in the state can **only** be sold through dealers who have been licensed by the Commonwealth of Kentucky, regardless of

where the ginseng is collected or how it is grown. Fresh or “green” ginseng roots may be sold to dealers starting September 1; dry ginseng may be sold to dealers from September 15 to March 31. Collectors may not take ginseng across state lines nor may they mail ginseng to an out-of-state dealer. Harvesters are required to sign a “Ginseng Purchase Form” at the time they sell their roots to a state-licensed dealer; they must also be able to provide information regarding the date and location of harvest.

Selling or purchasing ginseng outside the parameters of state law is also a violation of The Lacey Act. Contact the Kentucky Department of Agriculture or the U.S. Department of Fish and Wildlife for additional information on ginseng regulations.

### **Wildcrafting on Private Lands**

#### ***Landowner’s own property***

Plants on private property, whether common or rare, belong to the landowner. However, there are several situations in which endangered or threatened species growing on private lands are protected by the Endangered Species Act (ESA). Endangered animals, however, always fall under the protection of the ESA whether on private or public lands. Disturbing or destroying an endangered animal’s habitat can also have legal ramifications. Contact the U.S. Fish and Wildlife Service Endangered Species Program for specific regulations regarding these issues.

#### ***Other private property***

Harvesting on private land without the landowner’s permission is a violation of trespass laws, which are applicable even in the absence of a “no trespassing” sign or fencing on the property. The removal of valuable plant material could be considered an act of theft. Unsanctioned wildcrafting means the collector could be subject to criminal and civil penalties.

Whether the land is owned by an individual, a business, or a corporation, written permission

should be obtained from the owner(s) before entering their land for wildcrafting. In some cases it may be beneficial for the collector and landowner to establish a land-use lease or agreement. Before entering into any type of legal arrangement, both parties should seek the advice of a legal expert.

### **Wildcrafting on Public Lands**

Public lands are those owned and managed by a federal, state, county, or city government agency. Kentucky has a cultural history of collecting plants and plant parts from public lands. However, in almost all cases, wildcrafting on public lands is **not** allowed and it is illegal. The agency that has jurisdiction over the area should be contacted regarding its policies and laws pertaining to wildcrafting.

#### ***City/County Parks and Nature Sanctuaries***

These areas, which are set aside for public recreation and/or education, have restrictions on the types of activities permitted. They generally do not allow the removal of plants or other natural materials. For more information, contact the department managing the property.

#### ***Near Public Roads***

Kentucky state law makes it illegal to remove or injure plants on the right of way of any state highway or county road without first obtaining written permission from the appropriate authority. Prior to collecting near public roads contact the department, agency, division, or engineer in charge of the road or highway.

#### ***State Forests***

The Kentucky Division of Forestry owns and manages seven state forests. “Free use permits” may be granted for the removal of downed or dead woody material, but the amount that can be removed is limited. The collection of any plant material for sale or profit is prohibited. Contact one of the nine Division of Forestry district offices or the state office in Frankfort for more information.

***State Nature Preserves and State Natural Areas***  
Kentucky has more than 50 areas that have been designated as State Nature Preserves or State Natural Areas. These sites, which have been identified for their natural significance, are managed by the Kentucky State Nature Preserves Commission. Nature preserves and natural areas are protected by state law and can only be used for scientific, educational, and non-consumable recreational purposes. Wildcrafting is not permitted on these lands.

### ***State Parks***

Kentucky's 50 state parks have been designated as wildlife sanctuaries. State law forbids the collection of any plant or other wildlife at these parks. The Department of Parks does issue scientific permits for educational purposes. Proposals can be sent to the state naturalist's office in Frankfort.

### ***Army Corps of Engineers Projects***

There are more than 20 Army Corps of Engineer projects in Kentucky. Federal regulations forbid the collecting of any wild plant material from these lands for any purpose. Rare exceptions exist, but generally only in cases of research or other unique situations.

### ***National Forests***

National forests are managed by the U.S. Forest Service and there are two in Kentucky: the Daniel Boone National Forest and the Jefferson National Forest.

A Forest Service permit is required to collect or harvest any forest product from the Daniel Boone National Forest (DBNF) in Kentucky. While ginseng can be harvested from the DBNF for personal use, collectors must pay a fee, as well as obtain a permit. Forest Service permits can be obtained from one of the DBNF district offices or from the Forest Supervisors Office in Winchester. Harvesting fruits, nuts, and berries for personal use may not require a permit; however, collectors should contact one of these offices for confirmation.

The Jefferson National Forest, which has approximately 1,000 acres in eastern Kentucky, also spans portions of Virginia and West Virginia. This area is administered by the U.S. Forest Service in Virginia. Contact the main office in Roanoke or the Clinch Ranger District Office in Wise, Virginia for their wildcrafting policies.

### ***National Parks***

National parks are managed by the National Park Service. Collecting plant materials is generally prohibited in national parks, such as Mammoth Cave National Park. Poaching is such a significant problem in the Cumberland Gap National Historical Park that hidden cameras have been installed to protect some plant populations. Nevertheless, in some cases, a national park will permit the gathering of certain plant materials for personal non-commercial use only, as long as there is no adverse effect to the park's natural resources. Contact the park's superintendent for more information.

### ***National Recreation Areas***

The Land Between the Lakes National Recreation Area in western Kentucky is managed by the U.S. Forest Service. A permit is required to gather or collect any forest product from this area for commercial use or resale. A permit is also required for most forest products gathered for personal use only. There is a minimal fee and a per piece cost for any materials removed from this area. A permit is generally not required for gathering fruits, berries, nuts, and mushrooms for personal use. No permit is required for the collection of dead, fallen branches for firewood that will be used while camping. Harvesting ginseng or river cane is prohibited for any purpose. Contact the Environmental Stewardship Department at Land Between the Lakes for permits and information.

### ***Wild and Scenic Rivers***

A 19.4-mile stretch of the Red River in Kentucky is protected by the Wild and Scenic Rivers Act. This area is located within the Daniel Boone National Forest and managed by the U.S. Forest

Service. Natural materials cannot be removed from areas protected by this federal act.

### ***Wilderness Areas***

Kentucky has two federal wilderness areas that are protected by the National Wilderness Preservation Service. They are both located within the boundaries of the Daniel Boone National Forest and are managed by the U.S. Forest Service. The removal of plant materials from federal wilderness areas is not permitted.

### ***Wildlife Management Areas***

Kentucky Wildlife Management Areas are owned by various agencies of the state or federal government. While these lands have been acquired for public hunting, fishing, and related recreational activities, the collection or removal of plants is prohibited. Contact the Kentucky Department of Fish and Wildlife Resources for more information.

### ***Wildlife Refuge Lands***

National Wildlife Refuge Areas are set aside for conservation purposes and wildcrafting for either personal or commercial uses is prohibited. The Clarks River National Wildlife Refuge and Reelfoot National Wildlife Refuge are both located in western Kentucky and are protected by the U.S. Fish and Wildlife Service (USFWS). Contact one of Kentucky's USFWS field offices or the station's manager for additional information on Clarks River; Reelfoot is managed by the USFWS office in Union City, Tennessee.

### **Shipping Plant Material**

A phytosanitary certificate from the Kentucky State Entomologist's office is required to ship plants or plant parts across state lines or internationally. Failure to do so is a breach of state law and could also constitute a violation of federal law (e.g. The Lacey Act). In addition, plant material may require inspection even if it is shipped only within the Commonwealth. Contact the Office of the State Entomologist regarding the specific requirements.

### **Summary**

Before collecting any plant material, either for personal or commercial use, first identify the owner of the property. Always contact the landowner, whether a government agency or private owner, prior to collecting. Make sure you understand the property owner/government agency's rules and regulations for wildcrafting. If a permit is required, carry it with you whenever you collect on that property. In the case of private land, always obtain written permission from the owner to trespass and collect on their property. Never collect plants that are endangered, threatened, rare, or at risk.

### **Selected Resources**

#### ***State & federal laws/regulations***

- Ginseng Marketing (Kentucky Department of Agriculture)  
<http://www.kyagr.com/marketing/plantmktg/Ginseng.htm>
- Kentucky - Good Stewardship Harvesting of Wild American Ginseng (U.S. Fish and Wildlife Service, American Herbal Products Association, and United Plant Savers, 2006)  
<http://www.ahpa.org/portals/0/pdfs/Kentucky.pdf>
- Kentucky Law (Kentucky Legislature)  
<http://www.lrc.ky.gov/Law.htm>
- Forestry Law Reading Room (National Agricultural Law Center, University of Arkansas, 2010)  
<http://nationalaglawcenter.org/readingrooms/forestry>
- The Lacey Act (U.S. Fish and Wildlife Service)  
<http://www.fws.gov/international/laws-treaties-agreements/us-conservation-laws/lacey-act.html>
- The Lacey Act: America's Premier Weapon in the Fight Against Unlawful Wildlife Trafficking (Public Land Law Review, 1995)  
<http://www.animalaw.info/articles/arus16publlr27.htm>
- Lacey Act: Crimes and Criminal Procedure (U.S. Fish and Wildlife Service Office of Law Enforcement)  
<http://www.fws.gov/le/pdffiles/Lacey.pdf>

- Laws, Regulations, and Treaties (U.S. Fish and Wildlife Service Office of Law Enforcement)

<http://www.fws.gov/le/LawsTreaties/LawsTreatiesIndex.htm>

### ***Protected species plant lists and regulations***

- Kentucky Rare Plant Database (Kentucky State Nature Preserves Commission, 2006)  
<http://eppcapp.ky.gov/nprareplants/index.aspx>
- Threatened and Endangered Species (Kentucky Department of Fish and Wildlife Resources, 2006)  
<http://fw.ky.gov/More/Pages/Kentucky%27s-Threatened-and-Endangered-Species.aspx>
- Threatened and Endangered Species in Kentucky Organized by County (U.S. Fish and Wildlife Service, 2002)  
[http://www.fws.gov/frankfort/pdf/KY\\_te\\_list\\_by\\_county.pdf](http://www.fws.gov/frankfort/pdf/KY_te_list_by_county.pdf)

### ***Protected areas in Kentucky***

- Daniel Boone National Forest (U.S. Forest Service)  
<http://www.fs.usda.gov/dbnf>
- Kentucky State Forests (Kentucky Division of Forestry)  
<http://forestry.ky.gov/Kentuckysstateforests/Pages/default.aspx>
- Kentucky State Natural Preserve and State Natural Area (Kentucky State Nature Preserves Commission)  
<http://naturepreserves.ky.gov/naturepreserves/Pages/preserves.aspx>
- Kentucky State Parks  
<http://parks.ky.gov/>
- Land Between the Lakes National Recreation Area (U.S. Forest Service)  
<http://www.lbl.org/>
- National Parks in Kentucky (National Park System)

<http://www.nps.gov/state/ky/>

- National Wild and Scenic Rivers: Red River (U.S. Forest Service)

<http://www.rivers.gov/rivers/red.php>

- National Wilderness Preservation Areas in Kentucky: Map (Wilderness.net)

<http://www.wilderness.net/NWPS/stateView?state=KY>

- National Wildlife Refuge Area Locator Map for Kentucky (U.S. Fish and Wildlife Service)

<http://www.fws.gov/Refuges/refugeLocatorMaps/Kentucky.html>

- Wildlife Management Areas (Kentucky Department of Fish and Wildlife Resources)  
<http://fw.ky.gov/Hunt/Pages/Public-Land-Hunting.aspx>

### ***Obtaining permits***

- Army Corps of Engineers Headquarters—Locations  
<http://www.usace.army.mil/contact/officelocator.aspx>
- Kentucky Division of Forestry – Division Offices  
<http://forestry.ky.gov/Kentuckysstateforests/Pages/BigRivers.aspx>
- Kentucky Office of the State Entomologist (University of Kentucky)  
<http://www.uky.edu/Ag/NurseryInspection/>
- Land Between the Lakes National Recreation Area – Environmental Stewardship Department  
Phone: 270-924-2000
- Passes and Permits: Non-Timber Forest Products (Daniel Boone National Forest, 2005)  
<http://www.fs.usda.gov/main/dbnf/passes-permits>
- U.S. Fish and Wildlife Service Kentucky Field Offices  
<http://www.fws.gov/southeast/maps/ky.html>

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*Photos by Thomas Barnes, University of Kentucky (pg. 1) and Anna Lucio, KDA (pg. 2)*

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For additional information, contact your local [County Extension](#) agent