

## 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 diversify and expand 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. In addition, 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. While it is the intention of this profile to address some of these issues, collectors should personally investigate all pertinent federal, state, or local laws before the first plant or plant part is collected.

### Endangered Species Act

Some plant species fall under



CUMBERLAND ROSEMARY (*Conradina verticillata*) IS A NATIVE KENTUCKY LOW-GROWING SHRUB PROTECTED BY THE ENDANGERED SPECIES ACT.

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. 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, collectors who transport, sell, or trade a threatened or endangered species may be subject to federal prosecution, 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 endangered plants growing on the property will come under the protection of the ESA. Contact the U.S. Fish

and Wildlife Service Office of Law Enforcement with questions pertaining to these issues.

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.

### **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 for wildcrafting.

### **Lacey Act**

The Lacey Act of 1900 and Lacey Act Amendments of 1981 make it illegal to sell, purchase, acquire, or transport wildlife that has been taken or possessed in violation of state, federal, or tribal law. This 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.

### **State Regulated Plant Material**

Some plant species may be protected by state laws. For example, the harvest and sale of ginseng is strictly regulated in Kentucky. All wild 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. Wild ginseng diggers are required to sign a "Ginseng Purchase Record" at the time they sell their roots to the dealer. Diggers must also be able to provide information regarding the date and location of harvest. Permits are required for digging wild ginseng in national forests; ginseng harvest is not allowed on other federally owned or state-owned lands. Digging on private property does not require a permit; however, permission must be obtained from the landowner. Contact the Kentucky Department of Agriculture or the U.S. Department of Fish and Wildlife for additional information.

### **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. Plant material may require inspection before it can be shipped inside or outside of the Commonwealth. Contact the Office of the State Entomologist regarding the specific requirements.

### **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 and 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 Various Public Lands**

Public lands are those owned and managed by a federal, state, county, or city government agency. Wildcrafting on these lands may not be permitted, depending on which agency has jurisdiction over the area. Each agency needs to be contacted regarding their policies and laws pertaining to collection.

#### *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.

#### *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 52 state parks have been designated as wildlife sanctuaries. State law forbids the collection of any plant or other wildlife at these parks.

#### *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.

#### *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. A Forest Service permit is required to collect or harvest any forest product from the Daniel Boone National Forest (DBNF) in Kentucky. Depending on the type of resource, 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 a district office 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 Parks System, an agency of the U.S. Department of the Interior. Collecting plant materials is generally

prohibited in national parks, such as Mammoth Cave National Park. However, in some cases, a 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 additional 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 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.

#### *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.

### **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 government 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.

### **Additional Information**

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

- American Ginseng Program (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>

- The Lacey Act: America's Premier Weapon in the Fight Against Unlawful Wildlife Trafficking (Public Land Law Review, 1995)

<http://www.animallaw.info/articles/arus16publlr27.htm>

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

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

#### *Protected species plant lists*

- Kentucky Rare Plant Database (Kentucky State Nature Preserves Commission, 2006)

<http://eppcapps.ky.gov/nprareplants/>

- Threatened and Endangered Species (Kentucky Department of Fish and Wildlife Resources, 2006)

<http://fw.ky.gov/navigation.asp?cid=338>

- Threatened and Endangered Species in Kentucky Organized by County (U.S. Fish and Wildlife Service, 2002)

<http://www.fws.gov/cookeville/docs/endspec/ky/kycty.html>

#### *Protected areas in Kentucky*

- Army Corps of Engineers – Kentucky Projects [http://gorp.away.com/gorp/resource/us\\_nra/ace/ky.htm](http://gorp.away.com/gorp/resource/us_nra/ace/ky.htm)

- Daniel Boone National Forest (U.S. Forest Service)

<http://www.southernregion.fs.fed.us/boone/>

- Kentucky State Forest Program (Kentucky Division of Forestry)

<http://www.forestry.ky.gov/programs/stateforest/>

- Kentucky State Natural Preserves and State Natural Areas (Kentucky State Nature Preserves Commission)

<http://www.naturepreserves.ky.gov/stewardship/preserves.htm>

- Kentucky State Parks

<http://parks.ky.gov/>

- Land Between the Lakes National Recreation Area (U.S. Forest Service)

<http://www.lbl.org/Home.html>

- National Parks in Kentucky (National Park System)

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

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

<http://www.wilderness.net/index.cfm?fuse=NWPS&sec=stateView&state=ky&map=ky>

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

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

- Wild and Scenic Rivers by State (U.S. Forest Service)

<http://www.rivers.gov/wildriverslist.html>

- Wildlife Management Areas (Kentucky Department of Fish and Wildlife Resources)

<http://fw.ky.gov/Navigation.asp?cid=154&NavPath=C151>

#### *Obtaining permits*

- Army Corps of Engineers District Offices <http://www.usace.army.mil/howdoi/where.html#States>

<http://www.usace.army.mil/howdoi/where.html#States>

- Kentucky Division of Forestry – District Offices <http://www.forestry.ky.gov/distoff/>

- 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.fed.us/r8/boone/passes/forest\\_product.shtml](http://www.fs.fed.us/r8/boone/passes/forest_product.shtml)

- U.S. Fish and Wildlife Service Kentucky Field Offices

<http://www.fws.gov/southeast/maps/ky.html>

---

*Photo courtesy of Marc Evans, Kentucky State Nature Preserves Commission*

*Issued November 2008*

---

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