

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

Fourteenth Meeting of the Conference of the Parties
The Hague (Netherlands), 3 – 15 June, 2007

Interpretation and implementation of the Convention

EXPORT QUOTAS AND NON-DETRIMENT FINDINGS

Introduction

1. The use of export quotas in compliance with the Convention can be a useful tool for sustainable trade and management of wildlife and for detecting and halting illegal trade.
2. Articles III and IV of the Convention provide that for an export of a specimen of an Appendix I or Appendix II species, the Scientific Authority of the exporting country must be satisfied that the export will not be detrimental to the survival of the species (the “non-detriment finding”).
3. Article III further provides that for the import of a specimen of an Appendix I species, the Scientific Authority of the importing country must be satisfied that the purposes of the import will not be detrimental to the survival of the species (also “non-detriment finding”).
4. The Secretary General has recognized the importance of quota systems but has also made clear that “[t]here are . . . many limitations to quota systems, which are mainly related to the lack of scientific data on which to base safe quota levels.”¹
5. A clear understanding of the relationship between export quotas and non-detriment findings will make export quotas a more useful tool by ensuring that relevant scientific and management data is made available prior to the approval of an export quota.

¹ Willem Wijnstekers, *The Evolution of CITES: A Reference to the Convention on International Trade in Endangered Species of Wild Fauna and Flora* 391 (7th ed. 2003).

Scope and Purpose of this Proposal

6. This proposal addresses the relationship between non-detriment findings and export quotas approved by the Conference of the Parties. This proposal is limited to COP-approved export quotas because a separate proposal addresses nationally established export quotas.
7. The proposal regarding nationally established export quotas clarifies that non-detriment findings must be made when a nationally established export quota is set.²
8. Considering the Secretariat's conclusion that the use of export quotas is hampered by a lack of scientific data and considering the importance of both export quotas and non-detriment findings to the proper implementation of the Convention, this proposal suggests minor changes to Resolution Conf. 9.21 (Rev. CoP13), Annex 4 of Resolution Conf. 9.24 (Rev. CoP13), and Resolution Conf. 11.21 (Rev. CoP13) to clarify that proposals for export quotas to be approved by the COP must be accompanied by information adequate to satisfy the non-detriment finding requirements.
9. A primary purpose of the proposed clarifications is to bring uniformity to all export quota regimes.

Export Quotas for Appendix I Species, Resolution Conf. 9.21 (Rev. CoP13)

10. As it currently reads, Resolution Conf. 9.21 (Rev. CoP13) states that a quota established by the Conference of the Parties "satisfies" the requirements that the export of the specimen will not be detrimental to the survival of the species and states that a Party must submit a proposal for an export quota "with supporting information including details of the scientific basis for the proposed quota."
11. Resolution 9.21 (Rev. CoP13) also provides that the export quota satisfies the requirement that the purposes of the import will not be detrimental to the survival of the species, provided that the quota is not exceeded and "no new scientific or management data have emerged to indicate that the species population in the range State concerned can no longer sustain the agreed quota."
12. However, Resolution 9.21 (Rev. CoP13) does not specifically require that the information presented to the Conference of the Parties be the same type of information that would typically support the non-detriment finding requirements.

² Export Quota Working Group of the Standing Committee, "Working Document on Management of Nationally Established Export Quotas (December 2005).

13. This proposal would facilitate the proper implementation of CITES by recommending that the Parties clarify that proposals for export quotas for Appendix I species must be accompanied by sufficient scientific and management information to satisfy the Convention's non-detriment finding requirements.

Transferring Species from Appendix I to Appendix II, Resolution Conf. 9.24 (Rev. CoP13)

14. Annex 4 of Resolution Conf. 9.24 (Rev. CoP13) lists the use of export quotas as one of the precautionary safeguards for a transfer of an Appendix I species to Appendix II.
15. However, Annex 4 of Resolution Conf. 9.24 (Rev. CoP13) lists only two criteria for establishing this type of export quota: (1) to renew, amend, or deactivate a quota, the Party must submit a proposal to the Conference of the Parties, and (2) when a Party submits a quota for a limited period of time, the quota becomes zero unless the Party establishes a new one.
16. It is not clear whether Annex 4 of Resolution Conf. 9.24 (Rev. CoP13) requires a Party to demonstrate that exports of specimens of species subject to this type of export quota should be accompanied by individual non-detriment findings or whether the export quota should be established based on a single non-detriment finding.
17. Clarifying that the use of an export quota for transferring a species from Appendix I to Appendix II requires that the Party proposing such transfer present the Conference of the Parties with information adequate to satisfy the non-detriment finding requirement ensures that necessary precautionary safeguards have been taken.

Using Annotations in Appendices I and II

18. Resolution Conf. 11.21 (Rev. CoP13) recognizes the use of export quotas as a means of establishing substantive annotations to species listings.
19. It is unclear whether Resolution Conf. 11.21 (Rev. CoP13) creates a separate means of establishing export quotas, but it does provide general guidance regarding annotations. For example, if an annotation is used in the context of transferring a species from Appendix I to Appendix II, Resolution Conf. 11.21 (Rev. CoP13) provides that the annotation should be in compliance with Annex 4 of Resolution Conf. 9.24 (Rev. CoP13).
20. Although Resolution Conf. 11.21 (Rev. CoP13) provides that annotations may be established for Appendix I species, the resolution does not suggest that all

Appendix I annotations establishing export quotas should be in compliance with Resolution Conf. 9.21 (Rev. CoP13).

21. For further clarity and consistency, this proposal recommends that the Parties agree that Resolution Conf. 11.21 (Rev. CoP13) should be amended to include reference to Resolution Conf. 9.21 (Rev. CoP13).

Proposed Revisions

22. The proposed revisions to the various resolutions are as follows:

In Resolution Conf. 9.21 (Rev. CoP13), amend the first AGREES paragraph as follows:

- a) a Party wishing the Conference of the Parties to establish a quota for a species included in Appendix I, or to amend an existing quota, should submit to the Secretariat its proposal, with supporting information including details of the scientific and management basis for the proposed quota and evidence that the requested quota will not be detrimental to the survival of the species, at least 150 days before a meeting of the Conference of the Parties;

In Resolution Conf. 9.24 (Rev. CoP13), Annex 4, amend paragraph A.2.c as follows:

- c) an integral part of the amendment proposal is an export quota set in accordance with the results of a non-detriment finding or other special measure approved by the Conference of the Parties, based on management measures described in the supporting statement of the amendment proposal, provided that effective enforcement controls are in place; or

In Resolution Conf. 11.21 (Rev. CoP13), add paragraph g) under the first AGREES:

- g) substantive annotations establishing export quotas for Appendix I species should be in compliance with the measures contained in Resolution Conf. 9.21 (Rev. CoP13);

23. The full text of the relevant resolutions with the proposed revisions is included in annexes to this document.

Draft Revisions of Resolution Conf. 9.21 (Rev. CoP13)

Additions are underlined>

**The interpretation and application of quotas for species included in
Appendix I**

RECALLING Resolution Conf. 6.7, adopted at the sixth meeting of the Conference of the Parties (Ottawa, 1987), calling on Parties to consult with range States prior to taking stricter domestic measures pursuant to Article XIV which may interfere with trade in wild animals and plants, and Resolution Conf. 8.21, adopted at the eighth meeting of the Conference of the Parties (Kyoto, 1992), requiring consultation between proposing States and range States;

RECALLING Resolution Conf. 8.3 (Rev. CoP13), adopted at the eighth meeting of the Conference of the Parties and revised at the 13th meeting (Bangkok, 2004), recognizing the benefits of the use of wildlife;

RECALLING in particular the Preamble to the Convention which states that peoples and States are and should be the best protectors of their own wild fauna and flora;

RECALLING Resolution Conf. 4.6 (Rev. CoP13), adopted at the fourth meeting of the Conference of the Parties (Gaborone, 1983) and amended at the 10th, 12th and 13th meetings (Harare, 1997; Santiago, 2002; Bangkok, 2004), which recommends that the text of any document submitted for consideration at a meeting of the Conference of the Parties be communicated to the Secretariat at least 150 days before the meeting;

RECOGNIZING the supreme importance of cooperative and mutual action as called for at the United Nations Conference on Environment and Development in 1992 at Rio de Janeiro and as embodied in the Convention on Biological Diversity;

AWARE that the Parties have set quotas for the export of specimens of the leopard (*Panthera pardus*), various crocodilians, and the cheetah (*Acinonyx jubatus*);

AWARE that it is the understanding and practice of the majority of Parties that the establishment of quotas by the Parties satisfies the required findings that the export of a specimen will not be detrimental to the survival of the species and that the import of that specimen will not be for purposes detrimental to the

survival of the species, provided that the export is within the limits set in the quota;

AWARE however that the failure of some Parties to adhere to this majority understanding has had negative consequences on the conservation of species by range States;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

AGREES that:

a) a Party wishing the Conference of the Parties to establish a quota for a species included in Appendix I, or to amend an existing quota, should submit to the Secretariat its proposal, with supporting information including details of the scientific and management basis for the proposed quota and evidence that the requested quota will not be detrimental to the survival of the species, at least 150 days before a meeting of the Conference of the Parties; and

b) whenever the Conference of the Parties has set an export quota for a particular species included in Appendix I, this action by the Parties satisfies the requirements of Article III regarding the findings by the appropriate Scientific Authorities that the export will not be detrimental to the survival of the species and that the purposes of the import will not be detrimental to the survival of the species, provided that:

- i) the quota is not exceeded; and
- ii) no new scientific or management data have emerged to indicate that the species population in the range State concerned can no longer sustain the agreed quota.

Draft Revisions to Resolution Conf. 9.24 (Rev. CoP13), Annex 4

Additions are underlined>

Annex 4

Precautionary measures

When considering proposals to amend Appendix I or II, the Parties shall, by virtue of the precautionary approach and in case of uncertainty either as regards the status of a species or the impact of trade on the conservation of a species, act in the best interest of the conservation of the species concerned and adopt measures that are proportionate to the anticipated risks to the species.

- A. 1. No species listed in Appendix I shall be removed from the Appendices unless it has been first transferred to Appendix II, with monitoring of any impact of trade on the species for at least two intervals between meetings of the Conference of the Parties.
2. Species included in Appendix I should only be transferred to Appendix II if they do not satisfy the relevant criteria in Annex I and only when one of the following precautionary safeguards is met:
 - a) the species is not in demand for international trade, nor is its transfer to Appendix II likely to stimulate trade in, or cause enforcement problems for, any other species included in Appendix I; or
 - b) the species is likely to be in demand for trade, but its management is such that the Conference of the Parties is satisfied with:
 - i.) implementation by the range States of the requirements of the Convention, in particular Article IV; and
 - ii.) appropriate enforcement controls and compliance with the requirements of the Convention; or

- c) an integral part of the amendment proposal is an export quota set in accordance with the results of a non-detriment finding or other special measure approved by the Conference of the Parties, based on management measures described in the supporting statement of the amendment proposal, provided that effective enforcement controls are in place; or
 - d) a ranching proposal is submitted consistent with the applicable Resolutions of the Conference of the Parties and is approved.
- 3. No proposal for transfer of a species from Appendix I to Appendix II shall be considered from a Party that has entered a reservation for the species in
- 4. question, unless that Party agrees to remove the reservation within 90 days of the adoption of the amendment.
- 5. No species should be deleted from Appendix II if such deletion would be likely to result in it qualifying for inclusion in the Appendices in the near future.
- 6. No species should be deleted from Appendix II if, within the last two intervals between meetings of the Conference of the Parties, it has been subject to a recommendation under the provisions of the Review of Significant Trade to improve its conservation status
- B. The following review procedures shall apply when a species is transferred to Appendix II pursuant to paragraph A. 2. c) above.
 - 1. Where the Plants Committee, the Animals Committee or a Party becomes aware of problems in compliance with the management measures and export quotas of another Party, the Secretariat shall be informed and, if the Secretariat fails to resolve the matter satisfactorily, it shall inform the Standing Committee which may, after consultation with the Party concerned, recommend to all Parties that they suspend trade with that Party in specimens of CITES-listed species, and/or request the Depositary Government to prepare a proposal to transfer the population back to Appendix I.
 - 2. If, on review of a quota and its supporting management measures, the Animals or Plants Committee encounters

any problems with compliance or potential detriment to a species, the relevant Committee shall request the Depositary Government to prepare a proposal for appropriate remedial action.

C. With regard to quotas established pursuant to paragraph A. 2. c) above.

1. If a Party wishes to renew, amend or delete such a quota, it shall submit an appropriate proposal for consideration at the next meeting of the Conference of the Parties.
2. When a quota has been established for a limited period of time, after that period the quota will become zero until a new quota has been established.

D. Species that are regarded as possibly extinct should not be deleted from Appendix I if they may be affected by trade in the event of their rediscovery; these species should be annotated in the Appendices as 'possibly extinct'.

Draft Revisions to Resolution Conf. 11.21 (Rev. CoP13)

Additions are underlined

Use of annotations in Appendices I and II

RECOGNIZING that annotations are increasingly used in the Appendices for a number of purposes;

AWARE that certain types of annotations are for reference only, whereas others are substantive and are intended to define the scope of the inclusion of a species;

CONSIDERING that the Parties have developed specific procedures for transfer, reporting and review for certain special cases of amendment of the Appendices, such as those relating to ranching, quotas, certain parts and derivatives, and trade regimes;

AWARE also that certain types of annotations are an integral part of a species listing, and that any proposal to introduce, amend or delete such an annotation must follow the provisions of Resolution Conf. 9.24 (Rev. CoP13), adopted by the Parties at its ninth meeting (Fort Lauderdale, 1994) and amended at its 12th and 13th meetings (Santiago, 2002; Bangkok, 2004);

Further AWARE that the Parties may also desire to establish an annotation for an Appendix I species and that Resolution 9.21 (Rev. CoP13), adopted by the Parties at its ninth meeting (Fort Lauderdale, 1994) and amended at its 13th meeting (Bangkok, 2004), sets out criteria for export quotas of Appendix I species;

CONSCIOUS that criteria for the submission of proposals to amend the Appendices that include annotations, and procedures for reviewing the implementation of such annotations, need to be clearly defined to avoid implementation and enforcement problems;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

AGREES that:

- a) the following are reference annotations and are for information purposes only:

- i) annotations to indicate that one or more geographically separate populations, subspecies or species of the annotated taxon are in another Appendix;
 - ii) the annotations 'possibly extinct'; and
 - iii) annotations relating to nomenclature;
- b) the following are substantive annotations, and are integral parts of species listings:

- i) annotations that specify the inclusion or exclusion of designated geographically separate populations, subspecies, species, groups of species, or higher taxa, which may include export quotas; and
 - ii) annotations that specify the types of specimens or export quotas;
- c) reference annotations may be introduced, amended or deleted by the Conference of the Parties, or by the Secretariat, as required, to facilitate the understanding of the Appendices;
- d) substantive annotations relating to species in Appendix I or II may be introduced, amended or deleted only by the Conference of the Parties in accordance with Article XV of the Convention;
- e) substantive annotations relating to geographically separate populations in Appendix I or II should be in compliance with the split-listing provisions contained in Resolution Conf. 9.24 (Rev. CoP13) Annex 3; and
- f) substantive annotations used in the context of transferring a species from Appendix I to Appendix II should be in compliance with the precautionary measures contained in Resolution Conf. 9.24 (Rev. CoP13) Annex 4;
- g) substantive annotations establishing export quotas for Appendix I species should be in compliance with the measures contained in Resolution Conf. 9.21 (Rev. CoP13);

AGREES that no proposal for transfer of a species from Appendix I to Appendix II subject to an annotation relating to specified types of specimens shall be considered from a Party that has entered a reservation for the species in

question, unless that Party has agreed to remove the reservation within 90 days of the adoption of the amendment;

RECOMMENDS that:

- a) Parties submitting proposals that contain substantive annotations ensure that the text is clear and unambiguous;
- b) two main principles be followed as standard guidance when drafting future annotations for medicinal plants:
 - i) controls should concentrate on those commodities that first appear in international trade as exports from range States; these may range from crude to processed material; and
 - ii) controls should include only those commodities that dominate the trade and the demand for the wild resource;
- c) if a proposed annotation relates to specified types of specimens, the applicable provisions of the Convention for import, export and re-export of each type of specimen should be specified;
- d) as a general rule, Parties avoid making proposals to adopt annotations that include live animals or trophies; and
- e) annotations that specify the types of specimens included in the Appendices should be used sparingly, as their implementation is particularly challenging, especially where there are identification problems or where the purpose of trade has been specified;

DIRECTS:

- a) the Secretariat to report to the Standing Committee, for at least four years following the adoption of a proposal to transfer species from Appendix I to Appendix II subject to a substantive annotation, any credible information it receives indicating a significant increase in the illegal trade in or poaching of such species; and
- b) the Standing Committee to investigate any such reports of illegal trade and to take appropriate action to remedy the situation, which may include calling on the Parties to suspend commercial trade in the affected species, or inviting the Depositary Government to submit a proposal to amend the annotation or to retransfer the species to Appendix I; and

AGREES that, for species transferred from Appendix I to II subject to an annotation that specifies the types of specimen included in the Appendix, specimens that are not specifically included in the annotation shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly.

- ii) controls should include only those commodities that dominate the trade and the demand for the wild resource;
- c) if a proposed annotation relates to specified types of specimens, the applicable provisions of the Convention for import, export and re-export of each type of specimen should be specified;
- d) as a general rule, Parties avoid making proposals to adopt annotations that include live animals or trophies; and
- e) annotations that specify the types of specimens included in the Appendices should be used sparingly, as their implementation is particularly challenging, especially where there are identification problems or where the purpose of trade has been specified;

DIRECTS:

- a) the Secretariat to report to the Standing Committee, for at least four years following the adoption of a proposal to transfer species from Appendix I to Appendix II subject to a substantive annotation, any credible information it receives indicating a significant increase in the illegal trade in or poaching of such species; and
- b) the Standing Committee to investigate any such reports of illegal trade and to take appropriate action to remedy the situation, which may include calling on the Parties to suspend commercial trade in the affected species, or inviting the Depositary Government to submit a proposal to amend the annotation or to retransfer the species to Appendix I; and

AGREES that, for species transferred from Appendix I to II subject to an annotation that specifies the types of specimen included in the Appendix, specimens that are not specifically included in the annotation shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly.