

IELP White Paper on Export Quotas and Non-Detriment Findings

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I. Introduction

Although the text of Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or the Convention) describes neither the establishment nor the implementation of export quotas, Parties have adopted their use as an important operational mechanism. According to a number of Parties, export quotas represent “one of the most effective tools for the regulation of international trade in wild fauna and flora.”¹ The use of export quotas in compliance with CITES can be a useful tool for sustainable management and harvest of wildlife and for detecting and halting illegal trade.²

Export quotas, however, can only be an effective tool for implementing the Convention if the Parties clearly define the relationship between export quotas and the requirement to make non-detriment findings for exports of specimens of species in Appendix I or II and imports of Appendix I species. 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.”³ An export quota can be a valuable implementation tool because it may obviate the need to make individual non-detriment findings for each shipment of specimens of an Appendix I or II species.⁴ However, it must be clear to all Parties that the quota was set based on a non-detriment finding because trade in specimens subject to quotas must be accompanied by a valid non-detriment finding. Without

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¹ See *Improving the Management of Annual Export Quotas and Amendments of Resolution Conf. 10.2(Rev.) Annex 1 on Permits and Certificates*, COP12 Doc.50.1, para. 2.

² See *Implementation and Monitoring of Nationally Established Export Quotas for Species Listed in Appendix II of the Convention*, COP12 Doc. 50.2, para. 13(a) (quoting SC45 Doc. 11.2 on Enforcement Matters); See also *Nationally Established Export Quotas for Appendix-II Species: The Scientific Basis for Quota Establishment and Implementation*, COP12 Doc. 49, para. 4. As described by the United States, export quotas “can serve as the framework for monitoring and limiting trade within the goals of managed and sustainable off-take from wild populations, and they can serve as deterrent and preventative measure [sic] against the improper issuance of CITES export permits.” *Id.* But, the United States also recognized that “[i]n order to receive the greatest benefits from a quota system, Parties should develop scientifically-based methods for establishing appropriate quotas.” *Id.*

³ 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).

⁴ Articles III and IV set out requirements for trade in specimens of species listed under CITES. Articles III and IV of CITES require that “the export of any specimen of a species in Appendix I [or Appendix II] shall require . . . [that] a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species.” In addition, the import of an Appendix I species requires that “a Scientific Authority of the State of import has advised that the import will be for purposes which are not detrimental to the survival of the species involved.” Convention on International Trade in Endangered Species of Wild Fauna and Flora, art. III(2)(a), signed Mar. 3, 1973, entered into force July 1, 1975, 27 U.N.T.S. 243 (export of Appendix I specimens). See also *id.*, art. IV(2)(a) (export of Appendix II specimens); art. III(3)(a) (import of Appendix I specimens).

a valid non-detriment finding, trade in specimens subject to an export quota is in contravention of the Convention, unless it falls under one of the limited exemptions identified in Article VII.⁵

Despite the clear requirement for non-detriment findings, the Parties have expressed some confusion about the relationship between non-detriment findings and the establishment of export quotas, particularly with regard to nationally-established export quotas. It has been expressed that “[a]t present, there is no common understanding among Parties regarding the scientific basis of nationally established export quotas.”⁶ However, an Export Quota Working Group is currently drafting a resolution that clarifies the relationship of non-detriment findings and nationally established export quotas. The current draft provides that nationally established export quotas “should be set as a result of a non-detriment finding by a Scientific Authority.”⁷ The other means of establishing export quotas, including those for Appendix I species, transfers, and annotations, suggest that the use of these means for establishing an export quota effectively substitutes for the need to make non-detriment findings.⁸ Parties cannot ignore the non-detriment finding requirements, nor can export quotas simply replace the requirement to make non-detriment findings without defined rules for doing so. Instead, the Parties must clearly define the role of non-detriment findings in the export quota processes to facilitate proper administration and implementation of CITES, as they are striving to do for nationally established export quotas. The clear understanding that nationally established export quotas should be set with a non-detriment finding is applicable to all export quota regimes.

This memorandum explains in more detail the various export quota mechanisms and clarifies the relationship between export quotas and non-detriment findings. Section II describes the different mechanisms for establishing export quotas and highlights the need for further definition of the relationship between export quotas and non-detriment findings. Section III concludes that a resolution is necessary to ensure that trade pursuant to export quotas is not undertaken in contravention of CITES. Appendix I suggests amendments to Resolution Conf. 9.21 (Rev. CoP13) that help clarify the relationship of non-detriment findings to Appendix I export quotas. Appendix II clarifies the relationship between export quotas set pursuant to Resolution 9.24 (Rev. CoP13) and non-detriment findings, and Appendix III proposes changes to Resolution 11.21 (Rev. CoP13) to maintain consistency and avoid confusion regarding annotations applicable to Appendix I species.

⁵ The exemptions include when a specimen is under the control of Customs officials, when a specimen was acquired before CITES took effect, when the specimens are personal or household effects, when the specimen was either bred in captivity or artificially propagated, when the specimens are non-commercially loaned, donated, or exchanged between scientists, and, finally, when the Management Authority of State waives the requirements to allow the movements of a traveling zoo, a circus, a menagerie, or plant exhibition. *See id.* art VII.

⁶ *See Nationally Established Export Quotas for Appendix-II Species: The Scientific Basis for Quota Establishment and Implementation*, CoP12 Doc. 49, para. 9.

⁷ Export Quota Working Group of the Standing Committee, *Working Document on Management of Nationally Established Export Quotas*, para. 2(c) (Dec. 2005).

⁸ *See e.g.*, Resolution Conf. 9.21 (Rev. CoP13), *The Interpretation and Application of Quotas for Species Included in Appendix I*, preamble (“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.”).

II. Current Export Quota Regimes

The Parties have established or recognized the following different mechanisms for establishing export quotas:

- export quotas for Appendix I species, such as leopards and markhor (Resolution Conf. 9.21 (Rev. CoP13);
- export quotas when transferring a species from Appendix I to Appendix II (Resolution Conf. 9.24 (Rev. CoP13);
- export quotas set using an annotation, such (Resolution Conf. 11.21 (Rev. CoP13); and
- nationally established export quotas.

As explained below, some of these export quota mechanisms are well-defined, such as Appendix I quotas, while others, such as nationally established export quotas, are not. Even where well-defined, the differences between the mechanisms may create ambiguity and confusion, particularly with respect to the relationship between non-detriment findings and the export quota.

A. Export Quotas for Appendix I Species

A number of resolutions currently govern export quotas for Appendix I specimens:

- Resolution Conf. 9.21 (Rev. CoP13), *The Interpretation and Application of Quotas for Species Included in Appendix I*;
- Resolution Conf. 10.14 (Rev. CoP13), *Quotas for leopard hunting trophies and skins for personal use*; and
- Resolution Conf. 10.15 (Rev. CoP12), *Establishment of quotas for markhor hunting trophies*;
- Resolution Conf. 13.5, *Establishment of export quotas for black rhinoceros hunting trophies*; and
- Resolution Conf. 2.11 (Rev.), *Trade in hunting trophies of species listed in Appendix I*.

Resolution Conf. 9.21 (Rev. CoP13) provides general guidelines for the establishment and application of export quotas for species included in Appendix I. According to Resolution Conf. 9.21 (Rev. CoP13), the Parties agree 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. Such an export quota also 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.”⁹

In Resolution Conf. 9.21 (Rev. CoP13), the Parties seem to state that a non-detriment is not required for the export and, in most circumstances, for the import of an Appendix I specimen subject to an export quota set by the Conference of the Parties. In other words, the COP-

⁹ *Id.* para. (b)(ii).

established export quota effectively substitutes for the non-detriment finding that is otherwise required for the import and export of an Appendix I specimen.¹⁰

However, Resolution Conf. 9.21 (Rev. CoP13) does not specifically require that the information presented to the COP be the same type of information that would typically support a non-detriment finding. Although a Party must submit a proposal for export quotas for Appendix I species “with supporting information including details of the scientific basis for the proposed quota” at least 150 days prior to the meeting of the Conference of the Parties,¹¹ Resolution 9.21 (Rev. CoP13) does not indicate that this information should actually satisfy the non-detriment finding requirements. Presumably, the Parties’ Scientific Authorities review the information presented in a proposal for such an export quota with a mind toward whether the information does in fact “satisfy” the requirements for making non-detriment findings. But to make that clear, Resolution Conf. 9.21 (Rev. CoP13) should direct the Conference of the Parties to approve export quotas for Appendix I species when the Party proposing the export quota has provided the scientific and management information required for adequate non-detriment findings.

To make Resolution Conf. 9.21 (Rev. CoP13) clear, IELP proposes the addition of a few words to paragraph a:

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

The full text of the amended Resolution Conf. 9.21 (Rev. CoP13) is included in Appendix I of this memo.

These small but significant changes should help parties understand their obligations with respect to several high profile species because other resolutions relating to export quotas for hunting trophies of Appendix I species reflect the presumptions and information requirements of Resolution Conf. 9.21 (Rev. CoP13). For example, Resolution Conf. 10.14 (Rev. CoP13) on exports of leopards trophies and skins recommends that the importing country approve an import permit and consider the non-detriment finding to have been made if the trophy or skin is from a

¹⁰ See Resolution Conf. 13.5, *Establishment of Export Quotas for Black Rhinoceros Hunting Trophies*. The preamble describes this understanding:

[W]ith Resolution Conf. 9.21 . . . the Conference of the Parties agreed that the establishment of an export quota by the Conference of the Parties for a species included in Appendix I satisfies the requirements of Article III, paragraphs 2(a) and 3(a), of the Convention that the export and the purpose of the import will not be detrimental to the survival of the species provided that the quota is not exceeded and that 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.

¹¹ Resolution Conf. 9.21 (Rev. CoP13), *The Interpretation and Application of Quotas for Species Included in Appendix I*, para. (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 basis for the proposed quota, at least 150 days before a meeting of the Conference of the Parties.”).

country with a quota approved by the parties.¹² A Party that seeks the approval of the COP to increase a quota or to add a new quota (i.e. for a State not previously having one) must submit a proposal in accordance with Resolution Conf. 9.21 (Rev. CoP13).¹³ The quota systems for markhor¹⁴ and black rhinos¹⁵ are identical to that of the leopard quota system with respect to non-detriment findings and the information necessary for approving increases in a quota or a new quota. By clarifying the scientific requirements for establishing quotas under Resolution Conf. 9.21 (Rev. CoP13), the Parties will make clear that a non-detriment finding has been made for these species.

B. Transferring Species from Appendix I to Appendix II, Resolution Conf. 9.24

Resolution Conf. 9.24 (Rev. CoP13) describes the criteria for amending Appendices I and II and was adopted to ensure that such amendments are in accordance with the precautionary principle. Annex 4 of Resolution Conf. 9.24 (Rev. CoP13) articulates precautionary measures that the Parties must observe when considering proposals to amend Appendix I and II. The Parties list the use of export quotas as one of the precautionary safeguards for a transfer of an Appendix I species to Appendix II.¹⁶ 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.¹⁷

Resolution Conf. 9.24 (Rev. CoP13), however, does not explain the relationship between these quotas and the non-detriment finding required under Article IV of the Convention. Because Resolution Conf. 9.21 and other export quota resolutions specifically include language concerning non-detriment findings, the absence of such language in Resolution Conf. 9.24 (Rev. CoP13) suggests that the exporting Party must make individual non-detriment findings for all trade in specimens of species subject to quotas established under Resolution Conf. 9.24 (Rev. CoP13).

Clarification of this issue is important, especially in light of the Parties' intent to incorporate the precautionary principle when transferring species from Appendix I to Appendix II. While the precautionary principle does not prevent the adoption of a quota, it does suggest that safeguards should be in place to ensure that any trade is in fact sustainable and not detrimental to the survival of the species. A requirement to make a non-detriment finding for an export quota approved pursuant to Resolution Conf. 9.24 (Rev. CoP13) provides that safeguard.

¹² The following countries have quotas for leopard skins and trophies (quota in parentheses): Botswana (130), Central African Republic (40), Ethiopia (500), Kenya (80), Malawi (50), Mozambique (60), Namibia (250), South Africa (150), United Republic of Tanzania (500), Zambia (300), Zimbabwe (500). Resolution Conf. 10.14 (Rev. CoP13), *Quotas for leopard hunting trophies and skins for personal use*.

¹³ *Id.* at para. (e) of "RECOMMENDS."

¹⁴ Resolution Conf. 10.15 (Rev. CoP12), *Establishment of quotas for markhor hunting trophies*. Only Pakistan maintains a quota (12 hunting trophies) for markhor.

¹⁵ Resolution Conf. 13.5, *Establishment of export quotas for black rhinoceros hunting trophies*.

¹⁶ See Resolution Conf. 9.24 (Rev. CoP13), *Criteria for Amendment of Appendices I and II*, Annex 4, para. (A)(2)(c) ("Species included in Appendix I should only be transferred to Appendix II if they do not satisfy the relevant criteria in Annex I and . . . an integral part of the amendment proposal is an export quota . . .").

¹⁷ *Id.* at Annex 4, paras. (C)(1), (2).

In this way, the non-detriment finding confirms that the export quota and transfer from Appendix I to Appendix II is biologically justified and that the species is appropriately managed.

To clarify Resolution Conf. 9.24 (Rev. CoP13), IELP proposes the following change to Annex 4, para. c:

- a) 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**

The full text of the amended Annex 4 of Resolution Conf. 9.24 (Rev. CoP13) is included in Appendix II.

C. Annotations, Resolution Conf. 11.21 (Rev. CoP13)

Resolution Conf. 11.21 (Rev. CoP13) recognizes the use of export quotas as a means of establishing substantive annotations to species listings. When the Parties approve an annotation that transfers a species from Appendix I to Appendix II and that annotation sets an export quota, it must be established in accordance with Resolution 9.24 (Rev. CoP13). Whether Resolution Conf. 11.21 (Rev. CoP13) establishes a separate means to establish quotas is unclear. In any event, it is silent on the question of whether non-detriment findings must be made when an annotation establishes an export quota.

Resolution Conf. 11.21 (Rev. CoP13) needs clarification. The Parties should ensure that any annotation employing an export quota satisfies the non-detriment finding requirements. Moreover, like transferring species from Appendix I to Appendix II, annotations substantively alter a species' listing and must be biologically justified. Thus, Resolution Conf. 11.21 (Rev. CoP13) should be amended to clarify that annotations using export quotas that apply to Appendix I species must also comply with Resolution Conf. 9.21 (Rev. CoP13).

IELP suggests the following addition to Resolution Conf. 11.21 (Rev. CoP13):

- 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);**

The full text of amended Resolution 11.21 (Rev. CoP13) is included in Appendix III.

D. Nationally Established Export Quotas

In addition to the various means for obtaining a COP-approved quota, the Parties also recognize nationally established export quotas. Unlike COP-approved quota mechanisms, however, the Parties have not adopted a resolution for introducing, amending, or deleting

nationally established export quotas.¹⁸ Because some Parties are unsure whether nationally established export quotas satisfy the requirements for making non-detriment findings, the Parties created an Export Quota Working Group (EQWG) to develop guidelines for nationally established export quotas (a draft resolution will be submitted to COP14).

The EQWG's current draft suggests, like Resolution 9.21 (Rev. CoP13), that the establishment of an export quota satisfies the requirements of Article IV and that an export quota is, in other words, an effective substitute for the non-detriment finding requirement. However, the language also indicates that this is true only when the export quota is established with a non-detriment finding. Paragraph 2(c) of the working group's draft states that "[w]hen export quotas are established, they should be set as a result of a non-detriment finding by a Scientific Authority, in accordance with . . . the Convention."¹⁹ This understanding best reflects the relationship between export quotas and non-detriment findings and should guide clarification of the other export quota regimes.

In certain instances, nationally established export quotas may be set pursuant to a recommendation of the Conference of the Parties or the Standing Committee. For example, the Conference of the Parties recommended, in Resolution Conf. 10.10 that "each State that has a population of African elephants . . . [that] wishes to authorize export of raw ivory establish . . . an annual export quota for raw ivory expressed as a maximum number of tusks."²⁰ Although Resolution Conf. 10.10 (Rev. CoP12) describes the need to collect data on population distribution and abundance in other sections, it does not incorporate this need into the section recommending export quotas. Nor does the export quota section mention the need to make a non-detriment finding. The Conference of the Parties also recommended, in Resolution Conf. 12.7 (Rev. CoP13), that range states of sturgeon and paddlefish establish export quotas.²¹ Although the Resolution calls for the range states to set export quotas according to agreed-upon catch quotas, it, like Resolution 10.10 (Rev. CoP12) on elephant trade, does not mention non-detriment findings. The Standing Committee's authority to recommend export quotas derives from Resolution Conf. 8.9 [now Resolution Conf. 12.8 (Rev. CoP13)] or Resolution Conf. 11.1 (Rev. CoP13).²² A specific resolution for nationally established export quotas, like working group's draft, should address these concerns.

¹⁸ Resolution Conf. 12.3 (Rev. CoP13) describes the need to inform the Secretariat of nationally established export quotas, and it describes a method of tracking total exports subject to the quota on the permit. Resolution Conf. 12.3 (Rev. COP13), *Permits and Certificates*, sec. VIII, para. (a)–(c). It does not address issues relating to non-detriment findings.

¹⁹ Export Quota Working Group of the Standing Committee, *Working Document on Management of Nationally Established Export Quotas*, para. 2(c) (Dec. 2005).

²⁰ Resolution Conf. 10.10 (Rev. CoP12), *Trade in Elephant Specimens*, in section titled *Regarding Quotas For and Trade in Raw Ivory*, para. (a).

²¹ Resolution Conf. 12.7 (Rev. CoP13), *Conservation of and Trade in Sturgeons and Paddlefish* (recommending that Parties not accept imports of any specimen of *Acipenseriformes* species from range states unless the range state has established an export quota).

²² See generally Resolution Conf. 8.9 (Rev. COP11), *Trade in Specimens of Appendix-II Species Taken from the Wild*; Resolution Conf. 11.1 (Rev. CoP13), *Establishment of Committees*. Parties have set nationally established quotas for Malagasy chameleons, day geckos, and pancake tortoises pursuant to Standing Committee recommendations. See *Implementation and Monitoring of Nationally Established Export Quotas for Species Listed in Appendix II of the Convention*, COP12 Doc. 50.2 (noting that the quotas for these species are properly regarded as nationally established export quotas, even if set according to Standing Committee recommendations).

III. Conclusion

Because the Convention text requires non-detriment findings, it is important that the Parties clarify the relationship between export quotas and non-detriment findings. First, the Parties need to clearly state an understanding that if a Party intends that individual exports subject to an export quota do not require individual non-detriment findings, then a non-detriment finding for the entire export quota must be made at the time the Party establishes the export quota. This understanding best implements the requirements of Articles III and IV, and in most circumstances, Parties should prefer to make a single non-detriment finding because the scientific data and management information needed to do so is likely the same as is needed to establish a sustainable export quota. The few simple revisions aforementioned would bring clarity to the relationship between export quotas and non-detriment findings—a relationship that many Parties and CITES administrators have stated needs clarification.

Although the preamble to Resolution Conf. 9.21 (Rev. CoP13) suggests that any export quota established under Resolution Conf. 9.21 (Rev. CoP13) satisfies the need to make non-detriment findings, this is not an accurate interpretation of the Convention text unless non-detriment findings actually are made, as is suggested by the working group's draft text for nationally established quotas. Clarification would not present any further or undue administrative burden to Parties. Resolution Conf. 9.21 (Rev. CoP13) requires that export quotas are set on the basis of scientific data, so Parties would not be further burdened if the resolution made clear that the scientific information should actually support a non-detriment finding for the export of a specimen of a species. In fact, the non-detriment finding would likely require the same scientific data as Resolution Conf. 9.21 (Rev. CoP13) already requires, but clarifying that a non-detriment finding is required better implements Convention text than merely suggesting that establishing an export quota satisfies the non-detriment finding requirements. Similarly, by including in Resolution 9.21 (Rev. CoP13) the general requirement that non-detriment findings must be made, the Parties recognize that the non-detriment finding for the import of a specimen of a species is separate from the export non-detriment finding. When proposing an export quota for an Appendix I species, the Conference of the Parties should have adequate information on which to make the import non-detriment finding.

Clarifying Resolution Conf. 9.24 (Rev. CoP13) and Resolution Conf. 11.21 (Rev. CoP13) would also not present any further or undue administrative burden and such clarification could greatly improve implementation of the Convention. Resolution Conf. 9.24 requires biological justification of any change in a species' status in the Appendices and also requires that appropriate management measures are in place,²³ so clarifying that a non-detriment finding must be made should only ease implementation. The same holds true for Resolution Conf. 11.21 (Rev. CoP13) since it only references other means of setting export quotas.

²³ See Resolution Conf. 9.24(Rev. CoP13), *Criteria for Amendment of Appendices I and II*, Annex 1 (biological data); and *id.* at Annex 4, para. (c) (management measures).

Appendix I

Proposed Amendments to Resolution Conf. 9.21

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.

Appendix II
Proposed Amendments to Resolution Conf. 9.24, Annex 4

Resolution 9.24, Annex 4
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.
3. 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.
- 4. 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 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'.

Appendix III

Proposed Amendments to Resolution 11.21

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.