

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

Seventh Meeting of the Conference of the Parties

Lausanne (Switzerland), 9 to 20 October 1989

Interpretation and Implementation of the Convention

TRADE IN RANCHED SPECIMENS BETWEEN PARTIES,
NON-PARTIES AND RESERVING PARTIES

This document has been prepared and is submitted by Australia.

INTRODUCTION

At the third meeting of the Conference of the Parties (New Delhi, 1981) the issue of ranching of species included in Appendix I was addressed, and the criteria for ranching proposals documented within Resolution Conf. 3.15.

Ranching was further addressed at the fifth meeting of the Conference of the Parties (Buenos Aires, 1985) through Resolution Conf. 5.16. This Resolution enlarged on Resolution Conf. 3.15 by detailing criteria for:

- marking of ranched specimens;
- changes to the original ranching proposal; and
- requirements to be complied with in relation to export and re-export certificates.

Resolution Conf. 5.16 also inserted a clause [Resolution Conf. 5.16, paragraph j)] prohibiting trade in ranched specimens with non-Parties and reserving Parties.

ISSUES

Prior to adoption of Resolution Conf. 5.16, Australia (at the fifth meeting of the Conference of the Parties) raised concerns that the Resolution should be further examined. The Resolution was, however, adopted.

Australia believes that Resolution Conf. 5.16 is extremely complex both in its wording and application. Such complexity can lead (and has led) to confusion among trading countries, and has the potential to detract from the effective implementation of the Convention.

Resolution Conf. 5.16 was considered at the meeting of the Animals Committee in Uruguay (4-6 April 1989) where specific problems raised by Australia were noted. It was resolved that Australia would prepare a discussion paper on Resolution Conf. 5.16. Although the main issue discussed at the Animals

Committee centred around Resolution Conf. 5.16, paragraph j), Australia perceives additional difficulties with the Resolution. These difficulties are broadly outlined below, and addressed in the attached two draft resolutions for consideration at the seventh meeting of the Conference of the Parties.

RESOLUTION CONF. 5.16 (RECOMMENDATIONS)

Interpretation [Resolution Conf. 5.16, paragraphs a) - d)]

The definition "product of the operation" is considered to be complex, and misleading when read in conjunction with the definition of the term "product unit" [Resolution Conf. 5.16, paragraph b)]. The wording "or part or derivative thereof" in Resolution Conf. 5.16, paragraph a), can be interpreted as either relating to animals, to plants or both. This definition also overlaps with Resolution Conf. 5.16 paragraph b), which defines "product unit" as the "smallest single item of any product of the operation" (i.e., it is not clear whether the term product of the operation includes "product units" as defined).

The proposed draft resolution (Annex 1) attempts to address interpretations of the Resolution by simplifying and clarifying the definitions, consistent with Article I of the Convention.

A major concern with regard to Resolution Conf. 5.16 is that it places severe limitations on Parties who are trading in ranched specimens.

These limitations may be theoretically sound, however the restrictions, in relation to practical implementation are virtually impossible to comply with. For example Resolution Conf. 5.16, paragraph h), requires that products being traded between a number of countries could be required to be marked ad infinitum.

The Resolution Conf. 5.16, paragraph j), is of particular concern, as it would appear that this paragraph overrides the right of Parties to trade with reserving Parties - Articles XXIII and X of the Convention refer.

The proposed draft resolution (Annex 2) addresses this problem by requiring reserving Parties to comply with Resolution Conf. 4.25. Where reserving Parties do not comply, or have notified the Secretariat that they do not intend to comply, the reserving Party will be considered not to conform to Article X of the Convention.

Parties may then take appropriate measures under Article VIII, paragraph 1, of the Convention.

Also Resolution Conf. 3.15 recognized that properly conducted ranching programmes are beneficial to the overall conservation of the species. To suppress trade between a Party with a ranching programme and the reserving Party effectively discriminates against the "ranching Party", as any such embargo would only encourage the reserving Party to trade instead with countries that are not signatories of the Convention, in (Appendix I) populations of the same species. This trade, then, would be unregulated and prone to over-exploitation.

DRAFT RESOLUTION OF THE CONFERENCE OF THE PARTIES

Trade in Ranched Specimens between Parties, Non-Parties and Reserving Parties

ACKNOWLEDGING that Resolution Conf. 3.15, adopted at the third meeting of the Conference of the Parties (New Delhi, 1981), established that any proposal to transfer a population to Appendix II in order to conduct a ranching operation must be primarily beneficial to the conservation of the local population and that products of the operation must be adequately identified and documented to ensure that they can be readily distinguished from products of Appendix I populations;

RECALLING the provisions of Article X of the Convention which make the acceptance of comparable documentation issued by a state not Party to the Convention conditional upon its issuance by the competent authorities in that state and upon substantial conformity with the requirements of the Convention for permits and certificates;

RECALLING that the provisions of Article XXIII, paragraph 3), of the Convention provide for a reserving Party to be treated as a state not Party to the Convention with respect to trade in the particular species or parts or derivatives specified in such reservation;

ACKNOWLEDGING that Resolution Conf. 3.8, adopted at the third meeting of the Conference of the Parties (New Delhi, 1981), addresses the criteria which may be accepted in relation to documents issued by a state not Party to the Convention;

RECOGNIZING that Resolution Conf. 4.25, adopted at the fourth meeting of the Conference of the Parties (Gaborone, 1983), called on Parties having entered reservations to maintain and communicate statistical records on trade in the species concerned in their annual reports;

ACKNOWLEDGING that Resolution Conf. 5.16, adopted at the fifth meeting of the Conference of the Parties (Buenos Aires, 1985), attempted to address and achieve strict regulation of international trade in products derived from approved ranching operations;

BELIEVING that Resolution Conf. 5.16 is extremely complex both in its wording and application, and may lead to confusion among trading countries which could detract from the effective implementation of the Convention;

BELIEVING that, in particular Resolution Conf. 5.16, paragraph j), is ultra vires to the spirit and letter of the Convention as Article XXIII allows Parties to CITES to lodge reservations against specific listings in the appendices to CITES, and be treated as non-Party states for trade in the species on which a reservation has been entered, and Article X provides for trade with non-Party countries;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

RECOMMENDS

- a) that Resolution Conf. 5.16 be rescinded;

- b) that the following interpretation be applied to this Resolution:
- i) the term "rancher specimen" means any live animal or plant, or whole dead animal or plant, produced from a rancher population approved by the Parties, that is intended to be entered into trade;
 - ii) the term "product" means the smallest single item derived from the rancher specimen and deemed by the ranching Party to be readily recognizable and which is practicable to mark in accordance with a uniform marking system;
 - iii) the term "uniform marking system" means a system of marking each rancher specimen or product of a species, in accordance with a system approved by the Parties. This system of marking shall include the International Organization for Standardization code for the country of origin, a unique identification number and the year in which the rancher specimen or product was prepared for entry into trade; and
 - iv) the term "primary container" means any container or packaging used to contain items derived from rancher specimens for the purposes of entry into trade;
- c) that marking of rancher specimens, products or primary containers by the Party having the ranching programme in that specimen be in accordance with a uniform marking system;
- d) that any Party submitting a ranching proposal include in that proposal:
- i) a marking system that meets the minimum requirements of the uniform marking system defined in this Resolution, or previously approved by the Parties for that species;
 - ii) a list of the products of the operation; and
 - iii) an inventory of current stocks of rancher specimens and products of the operation on hand;
- e) that any Party with an approved ranching proposal submit any changes in the information required in paragraph d) of this Resolution to the Secretariat;
- f) that any Party that exports rancher specimens, products or primary containers, or any Party that re-exports rancher specimens, include in its export permit or certificate or re-export permit or certificate (where applicable):
- i) the country of origin of the rancher specimens or products; and
 - ii) reference to the identifying marks on such specimens or primary containers as applicable;
- g) that any Party that re-exports products include in its re-export permit or certificate:
- i) the country of origin of the products; and
 - ii) the export permit or certificate number of the country of origin for those products;

- h) that Parties and reserving Parties strictly comply with the provisions of Article X of the Convention in relation to the export, import or re-export to a non-Party or a reserving Party, in relation to specimens of a ranched population;
- i) that reserving Parties comply with Resolution Conf. 4.25, by maintaining and communicating statistical records on trade in the species concerned, as part of their annual reports, and, if requested by the Secretariat, advise the Secretariat if they intend to comply with Resolution Conf. 4.25;
- j) that reserving Parties who do not comply or do not intend to comply with Resolution Conf. 4.25, be treated as states not conforming with Article X of the Convention, and that in such cases the Secretariat pursue this matter with the reserving Parties; and
- k) in cases where the reserving Party continues to operate, or indicates its intention and continues to operate outside the guidelines established under Resolution Conf. 4.25, that Parties take appropriate measures to prohibit trade in accordance with Article VIII, paragraph 1.

DRAFT RESOLUTION OF THE CONFERENCE OF THE PARTIES

Trade with Reserving Parties

RECALLING that Resolution Conf. 3.15, adopted at the third meeting of the Conference of the Parties (New Delhi, 1981), provides for approval of ranching operations for populations of Appendix I species which are deemed by the Parties to be no longer endangered and to benefit from such ranching operations;

NOTING that Article XXIII of the Convention provides that any Party may enter a specific reservation with regard to any species included in Appendix I, II or III and that until a Party withdraws such a reservation, it shall be treated as a state not a Party to the present Convention with respect to trade in the particular species;

NOTING also that Article X of the Convention allows for export to a state not a Party to the Convention providing that comparable documentation has been issued by the competent authorities in that state;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

RECOMMENDS, where a Party has entered a reservation with respect to a species but has specifically excluded from that reservation certain populations of the species, that any Party having a ranching operation for a population of that species which has been excluded by the reserving Party may conduct trade with the reserving Party in that population of the species.