

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

Thirteenth meeting of the Conference of the Parties
Bangkok (Thailand), 2-14 October 2004

Interpretation and implementation of the Convention

Trade control and marking issues

INTRODUCTION FROM THE SEA: INTERPRETATION AND IMPLEMENTATION
OF ARTICLE I, ARTICLE III, PARAGRAPH 5, AND ARTICLE IV, PARAGRAPHS 6 AND 7

1. This document has been submitted by the United States of America.

Introduction

2. The Convention contains special provisions relating to the international trade in specimens of species introduced from the sea. Article I, paragraph (e), defines 'introduction from the sea' to mean "transportation into a State of specimens of any species which were taken in the marine environment not under the jurisdiction of any State".
3. It is important for Parties to have a common understanding of CITES provisions relating to introduction from the sea so as to facilitate standard implementation of trade controls and improve the accuracy of CITES trade data.
4. At the 11th meeting of the Conference of the Parties (CoP11, Gigiri, 2000), Australia proposed a draft resolution pertaining to certain aspects of introduction from the sea (document Doc. 11.18, Annex 2). Although the discussion did not result in the adoption of a new resolution, it did start an important dialogue. This proposal draws upon Australia's earlier work.
5. The Food and Agriculture Organization of the United Nations (FAO) convened two Expert Consultations in May and June of 2004 to consider introduction from the sea and other issues related to marine species covered by CITES. It will be important for CITES Parties to consider the reports of these Expert Consultations and evaluate how they may inform and complement the approaches put forth in this document, as well as advance the discussions on introductions from the sea in CITES.

Scope and purpose of the proposal

6. This proposal addresses key elements of 'introduction from the sea' in Articles I, III and IV to promote the practical and effective regulation of international trade in specimens of Appendix-I or Appendix-II species. The proposal is not intended to address all aspects of introduction from the sea. It is recognized that the implementation of trade controls may vary in some respects for different species, depending on existing international management regimes.
7. The proposal is to amend Resolution Conf. 12.3 (Permits and certificates) to add a section on the issuance of certificates for introductions from the sea, and to adopt a resolution on the meaning of "in the marine environment not under the jurisdiction of any State" and to advocate that Parties give due regard to management controls adopted by any relevant international organization when determining whether the introduction will be detrimental to the survival of the species involved.

Issuing certificates for introductions from the sea

8. Article III, paragraph 5, and Article IV, paragraph 6, of the Convention state that the introduction from the sea of any specimen of a species included in Appendix I or Appendix II shall require the prior grant of a certificate from a Management Authority of the State of introduction.
9. Recognizing the unique circumstances presented by introduction from the sea and current fisheries management practice regarding flag State control and responsibility, it is proposed that the Parties agree that an introduction from the sea certificate may be issued by either the Management Authority of the State into which the specimens are first landed (State of first landing) or, for specimens included in Appendix II, the Management Authority of the flag State of the vessel that caught the specimens, if the Management Authority of the State of first landing has agreed with the Management Authority of the flag State that the flag State may issue the certificate. In the absence of any such agreement with a flag State, the State of first landing would issue the certificate under Article IV, paragraph 6.
10. This proposal would facilitate implementation of CITES. The State of first landing may lack information regarding the fishing vessel or the fishery from which the specimen was harvested. It may not know, for example, whether the fishing vessel is authorized to fish for that species, whether the flag State of the vessel is a member of a relevant regional fisheries management organization that may manage the species, or what management controls may be in place for the fishery.
11. The flag State, however, is able to determine whether a vessel flying its flag is complying with its laws and regulations. Under various international agreements¹, authorization of vessels flying its flag to fish on the high seas is to be given only where the flag State is able to exercise its responsibilities effectively in respect of such vessels such as, *inter alia*, imposing controls through licenses, authorizations or permits.
12. Agreements between the Management Authorities of flag States and the Management Authorities of States of first landing may be facilitated by existing cooperative mechanisms, such as international management organizations or arrangements (e.g., regional fisheries management organizations).
13. To facilitate transparent implementation, this proposal recommends that Parties inform the Secretariat of any agreements with flag States and that the Secretariat make this information available to all Parties.

[During consultations prior to submission of this document some Parties raised concerns about allowing flag States to issue introduction from the sea certificates. We look forward to further dialogue on this at CoP13.]

Completion of certificates for introductions from the sea of Appendix-II specimens

14. Article IV, paragraph 6, provides that "the introduction from the sea of any specimen of a species included in Appendix II shall require the prior grant of a certificate". Requiring that a fully completed certificate be issued before the fishing vessel lands the specimen would be impractical and fail to make allowances for the dynamics of fishing operations.
15. This proposal recommends that the Parties agree that the Management Authority grants an introduction from the sea certificate in advance of landing, in accordance with Article IV, paragraphs 6 (a) and 6 (b), and, upon landing, the number and/or weight of the specimens actually harvested is entered on the certificate and validated.
16. This proposal also recommends that the Parties agree that a certificate should contain, where appropriate, the international management control measure to monitor total take (such as total allowable catch or quota) in place for each species at the time of issuance.

¹ See the 1993 FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas and the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.

Interpretation of “in the marine environment not under the jurisdiction of any State”

17. This proposal recommends that the Parties agree that the phrase “in the marine environment not under the jurisdiction of any State” in Article I, paragraph (e), of the Convention be interpreted in a manner consistent with customary international law of the sea as reflected in the 1982 United Nations Convention on the Law of the Sea (UNCLOS).

Basis for determining whether the introduction will be detrimental to the survival of the species

18. Article III, paragraph 5 (a), and Article IV, paragraph 6 (a), provide that a Scientific Authority must advise that “the introduction will not be detrimental to the survival of the species involved” before a certificate of introduction may be granted. Furthermore, for specimens of Appendix-II species, Article IV, paragraph 7, provides that Scientific Authorities may consult with other national scientific authorities or, when appropriate, international scientific authorities.

19. Certain marine species are conserved and managed internationally via international management organizations or arrangements (such as regional fisheries management organizations). These multilateral conservation and management organizations collect scientific data from members and, where possible, non-members on the harvest level of the stocks under their jurisdiction. These data are then used by the organization or arrangement’s scientific committee or body to assess the status of the stocks. The organization typically bases its management decisions, such as setting an annual or seasonal quota or total allowable catch (TAC) levels, on the advice and recommendations of its scientific committee or body.

20. The existing scientific mechanisms of international management organizations or arrangements, as well as other scientific bodies or groups, are an important source of information on stock assessments, current management controls to monitor total take levels, and other data for the use of Scientific Authorities when making non-detriment findings.

21. This proposal recommends that for specimens of Appendix-II species introduced from the sea, the relevant Scientific Authority take into account the quota, TAC or other management controls adopted by the appropriate international organization or arrangement with competence for conserving and managing that species when determining whether a particular introduction is detrimental, in accordance with Article IV, paragraph 6.

COMMENTS FROM THE SECRETARIAT

A. The Secretariat supports in principle the proposal to clarify key elements of the term ‘introduction from the sea’ by revising Resolution Conf. 12.3 and adopting a new resolution. Such clarification should help to achieve effective implementation of the Convention, while taking into account relevant international legal instruments and practice.

B. The Secretariat agrees that the reports of the FAO expert consultations mentioned in paragraph 5 should assist Parties in their deliberations on these matters.

C. With regard to the revisions proposed to Resolution Conf. 12.3 (contained in Annex 1), the Secretariat recommends the following amendments.

1. The word ‘introduction’ should replace ‘introductions’ in the preambular paragraph.
2. The section ‘Regarding introduction from the sea certificates’ should become the new section IV rather than X.
3. In paragraph b) under ‘AGREES’ the text should read, ‘for specimens of Appendix-I or Appendix-II species, upon landing, the number and/or weight of the specimens actually harvested should be checked against the specimens originally authorized, entered in section 14 of the standard CITES form in Annex 2 and validated’.
4. A new paragraph c) should be added under ‘AGREES’ which should read ‘a Management Authority granting a certificate in accordance with Article IV, paragraph 7, should clearly indicate

the period covered and total number of specimens to be introduced during that period and, upon every landing, the number and/or weight of specimens actually harvested should be checked against the specimens originally authorized, entered in section 14 of the standard CITES form in Annex 2 and validated'.

5. The current paragraph c) should become paragraph d).
 6. Under 'DIRECTS' the words 'the CITES' should replace 'its'.
- D. With regard to the new resolution that is proposed (contained in Annex 2), the Secretariat recommends the following amendments.
1. Under NOTING, the text should read 'other international treaties and agreements or management organizations and arrangements'.
 2. Under NOTING FURTHER, the text after 'agreements' should read 'contain mechanisms to assess the status of the species they cover and adopt management measures and controls for such species'.
 3. The paragraph beginning with 'URGES' should be moved to the beginning of the operative part of the draft resolution.
 4. The paragraph beginning with 'AGREES' should be amended to read "AGREES that the phrase 'in the marine environment not under the jurisdiction of any State' in Article 1, paragraph (e), of the Convention, should be understood in the light of international law in force at the time of application or interpretation of the Convention. At present, this means all parts of the marine environment excluding the exclusive economic zone, or equivalent zones of national jurisdiction over fisheries, the continental shelf, the territorial sea, or the internal waters of a State, or the archipelagic waters of an archipelagic State."

DRAFT RESOLUTION OF THE CONFERENCE OF THE PARTIES

Introduction from the sea: interpretation and implementation
of Article I, Article III, paragraph 5, and Article IV, paragraphs 6 and 7

Amendments to Resolution Conf. 12.3 on Permits and certificates

The following paragraph is to be inserted in the preamble of Resolution Conf. 12.3:

RECALLING further the provisions of Article III and Article IV of the Convention regarding introductions from the sea;

Add a new section No. X under ESTABLISHES in the operative part of Resolution Conf. 12.3:

X. Regarding introduction from the sea certificates

AGREES that:

- a) the certificate of introduction from the sea may be issued by:
 - i) the State in which the specimens are first landed; or
 - ii) for specimens of Appendix-II species, the flag State of the vessel that caught the specimens, if the Management Authority of the State of first landing has agreed with the Management Authority of the flag State that the flag State may issue the certificate;
- b) for specimens of Appendix-II species, a Management Authority, in accordance with Section X, paragraph a) of this Resolution, grants a certificate in advance of landing, in accordance with Article IV, paragraphs 6 (a) and 6 (b), and, upon landing, the number and/or weight of the specimens actually harvested is entered on the certificate and validated; and
- c) an introduction from the sea certificate should contain, where appropriate, any international management control measure to monitor total take (such as total allowable catch or quota) in place for each species at the time of issuance;

RECOMMENDS that Parties inform the Secretariat of flag States with which they have agreements, in accordance with Section X, paragraph a) of this Resolution;

DIRECTS the Secretariat to make available to all Parties information regarding such agreements with flag States through regular Notifications to the Parties and also make it available on its website;

DRAFT RESOLUTION OF THE CONFERENCE OF THE PARTIES

Introduction from the sea: interpretation and implementation
of Article I, Article III, paragraph 5, and Article IV, paragraphs 6 and 7

RECALLING that Article III, paragraph 5, and Article IV, paragraphs 6 and 7, of the Convention provide a framework to regulate the introduction from the sea of specimens of species included in Appendices I and II, respectively;

RECOGNIZING the need for a common understanding of the provisions of the Convention relating to introduction from the sea in order to facilitate the standard implementation of trade controls for specimens introduced from the sea and improve the accuracy of CITES trade data;

NOTING that the conservation and management of some marine species is provided for under other international management organizations and arrangements or treaties and agreements;

NOTING FURTHER that international management organizations and agreements contain mechanisms to assess the status of the stocks they cover and adopt management measures and controls for such stocks;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

URGES Scientific Authorities, in accordance with Article IV, paragraph 7, of the Convention, to

communicate and consult with the scientific bodies of appropriate regional and international management organizations, other national scientific authorities, and other institutions that can offer the most accurate scientific advice, whether proposed introductions from the sea of specimens of a given Appendix-II species will be detrimental to the survival of the species involved;

AGREES that, consistent with international law as reflected in the 1982 United Nations Convention on the Law of the Sea (UNCLOS), the phrase "in the marine environment not under the jurisdiction of any State" in Article I of the Convention is understood to mean:

- a) the waters not within the territorial sea or the internal waters of a State or in the archipelagic waters of an archipelagic State, or Exclusive Economic Zone of a State (that is, the High Seas as defined in Article 86 of UNCLOS) or equivalent zones of national jurisdiction over fisheries; and
- b) the seabed and subsoil thereof beyond the limits of the Continental Shelf of any State as determined in accordance with Article 76 of UNCLOS (that is the Area as defined in Article 1.1(1) of UNCLOS);
and

RECOMMENDS that, for Appendix-II species, Scientific Authorities, when determining whether proposed introductions from the sea will be detrimental to the survival of the species involved, take into account the quota, total allowable catch or other management controls adopted for those species by the relevant international organization with competence for conserving and managing that species.