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Clarifications of Working Document 42, and further information on trade in Appendix-I species and the definitions of 'primarily commercial purposes'

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Abstract

Proposal 42 is for an amendment to paragraph 4 of Resolution Conf. 5.10. The current wording of paragraph 4 can be interpreted to mean that only the nature of the use of the specimen in the importing country needs to be taken into account when determining whether trade in specimens of Appendix-I species is for "primarily commercial purposes", but that the nature of the underlying transaction need not be considered. This has created a loophole for commercial trade in specimens of Appendix-I species.

The Annex to this Information Document includes a survey of trade data from the TRAFFIC database showing that there are significant levels of commercial trade in live Appendix-I species occurring among many Parties.

The proposed language will help Parties to limit trade in Appendix-I species to cases with only non-commercial purposes, according to the Convention.

The proposal will have no effect on non-commercial trade in Appendix-I species, such as for scientific, educational or conservation purposes, or on exports from registered breeding operations.

Background

Under Article III of the Convention, permits for the import and export of Appendix-I species may be issued only if certain conditions are met, including that the Management Authority of the State of import is satisfied that the specimen will not be used for primarily commercial purposes.

Resolution Conf. 5.10 lays down a number of general principles and provides examples in order to provide guidance to Parties in making their assessment of whether or not a specimen is to be used for primarily commercial purposes. The importance of defining the term 'primarily commercial purposes' correctly is illustrated when we examine the extent of commercial trade in Appendix-I specimens (see the box to the right). The Annex to this document (pages 4-9) includes an analysis of data taken from the TRAFFIC database, looking at the extent of commercial trade in live Appendix-I species being carried out among many Parties.

On the whole, the general principles and examples laid out in Resolution Conf. 5.10 are clear and provide good guidance for Parties in assessing the commercial aspects of an import of a given specimen. This is exemplified within the first three general principles, which state:

Summary of trade database review (see Annex):

- 93.4% of commercial trade in Appendix-I species involved specimens from non-registered captive breeding facilities.

Trade in Appendix-I species must be subject to particularly strict regulation and authorized only in exceptional circumstances. [Resolution Conf. 5.10, Paragraph 1]

An activity can generally be described as 'commercial' if its purpose is to obtain economic benefit, including profit (whether in cash or in kind) and is directed toward resale, exchange, provision of a service or other form of economic use or benefit. [Resolution Conf. 5.10, Paragraph 2. See also Article II, Paragraph 1]

The term 'commercial purposes' should be defined by the country of import as broadly as possible so that any transaction which is not wholly 'non-commercial' will be regarded as 'commercial'. In transposing this principle to the term 'primarily commercial purposes', it is agreed that all uses whose non-commercial aspects do not clearly predominate shall be considered to be primarily commercial in nature with the result that the importation of specimens of Appendix-I species should not be permitted. The burden of proof for showing that the intended use of specimens of Appendix-I species is clearly non-commercial shall rest with the person or entity seeking to import such specimens. [Resolution Conf. 5.10, Paragraph 3]

However, Resolution Conf. 5.10, Paragraph 4 is problematic, as it states:

Article III, paragraphs 3 (c) and 5 (c), of the Convention concern the intended use of the specimen of an Appendix-I species in the country of importation, not the nature of the transaction between the owner of the specimen in the country of export and the recipient in the country of import. It can be assumed that a commercial transaction underlies many of the transfers of specimens of Appendix-I species from the country of export to the country of import. This does not automatically mean, however, that the specimen is to be used for 'primarily commercial purposes'. [Resolution Conf. 5.10, Paragraph 4]

In accordance with this, Authorities of the State of import seem to be required to consider only how the specimen will be used after importation – and no other phase of the trade need be considered, when assessing whether the importation of a specimen of an Appendix-I species would result in its use for 'primarily commercial purposes'.

However, we suggest that limiting the scope of the importing Management Authority to include only the final use in the country of import contradicts Paragraph 1 of Resolution Conf. 5.10 and the Fundamental Principles of the Convention, which states:

Trade in specimens of these [Appendix-I] species must be subject to particularly strict regulation ... and must only be authorized in exceptional circumstances. [CITES Convention, Article II, Paragraph 1]

Furthermore, limiting the scope of the importing Management Authority to include only the final use in the country of import is not mentioned in Article III of the Convention, which states:

*An import permit [for Appendix-I species] shall only be granted when ... a Management Authority of the State of import is satisfied that the specimen is not to be used for **primarily commercial purposes**.*

The Convention does not direct the Management Authority of the State of import to limit the scope of its assessment exclusively to the intended use in the country of importation. The term 'use' should refer to how the animal is to be used at all stages – including in the country of export and during the transfer itself. Therefore the nature of the transaction between the owner of the specimen in the country of export, the recipient in the country of import and any third party should also be taken into account when assessing whether the commercial aspects of the transfer predominate over the non-commercial aspects. Only by including these aspects will the importing Management Authority be in a position to make a comprehensive assessment of whether the transfer of a given specimen of an Appendix-I species is for 'primarily commercial purposes'.

That is not to say that if there is *any* commercial aspect at all the trade should not be allowed - it simply ensures that all aspects of the trade must be considered by the importing MA when deciding if the commercial aspects predominate over the non-commercial aspects. We acknowledge that there are cases where a specimen is to be used for conservation or education reasons in the country of import and that in some cases professional wildlife dealers may be used to facilitate such a transfer (see example 'f' in Resolution Conf. 5.10). In such cases we accept that trade could be permitted, providing that the commercial aspects of the entire transfer do not predominate over the final non-commercial purpose.

The problem with the current wording of the Paragraph 4 of the Resolution can be seen in the following example:

Mr. John Doe uses his credit card and the internet to order and pay for a specimen of an Appendix-I species from one country and have it shipped to him at home. Even if he intends to keep it for private use as a pet, and not to sell it for commercial purposes, this entire international transaction is clearly of a commercial nature. Yet the current loophole of Resolution Conf. 5.10, Paragraph 4, apparently allows the MA of Mr. Doe's country to look at this transaction as non-commercial and to issue an import permit.

In this example, there does not appear to be grounds for the MA to use a "personal effects" exception according to Article VII. This is because paragraph 3 (a) of Article VII clearly states that Appendix-I "personal effects" acquired outside one's State of usual residence, are not entitled to an exemption, and are subject to all the usual provisions of Article III. In other words, not just the final use of the specimen should be taken into account by the MA.

Accordingly, as a possible amendment to the proposal we originally submitted, we propose that Resolution Conf. 5.10, Paragraph 4 could be more clearly amended as follows:

Article III, paragraphs 3 (c) and 5 (c), of the Convention concern all aspects of the specimens intended use. This includes the final use in the country of importation and the nature of the transaction between the owner of the specimen in the country of export, the recipient in the country of import and any other third party. All phases of the transfer should be considered when assessing whether or not the commercial aspects predominate over non-commercial aspects, thereby determining whether or not the specimen is to be used for 'primarily commercial purposes'.

A survey of commercial trade in Appendix-I species

PURPOSE OF THE STUDY

The importance of defining the term 'primarily commercial purposes' correctly is illustrated when we examine the extent of commercial trade in Appendix-I specimens. In order to see how much commercial trade in Appendix-I species is being carried out, we looked at data provided to us by TRAFFIC from their database of trade in CITES-listed species.

The purpose of this analysis is to illustrate just one aspect of trade in Appendix-I specimens. It reflects just one part of the wider problem of trade in Appendix-I species and serves only as an illustration of how important it is that such trade is closely monitored and regulated. There are other aspects of trade in Appendix-I specimens that may warrant similar analysis, such as:

- Cases of establishments, purporting to be zoos but that have clear commercial objectives, importing Appendix-I specimens.
- Cases where specimens are imported for non-commercial reasons (e.g., personal use, hunting trophies) where a significant commercial aspect may underlie the attainment of such specimens in the country of export.

METHODOLOGY

All exports of live animals for the 5-year period of 1998-2002 where the Purpose Code on the export permit was listed by the exporting Party as "T" (commercial trade) were summarized for fourteen Parties chosen at random. The Parties are referred to in the tables by number only, simply as Party 1, Party 2, etc.

All cases of pre-convention trade and re-exports were excluded. Although both importing and exporting countries must issue permits for trade in Appendix-I species, the data analyzed were for the country of export only.

It is important to note that 3 of the fourteen countries included in the analysis had zero commercial trade in Appendix-I specimens, and therefore do not appear in the Tables.

RESULTS

The tables below summarize the trade data for all exports of live Appendix-I animal species, divided into three categories:

- Table 1 shows the cases where this trade involved export of specimens from CITES-registered captive breeding facilities.
- Table 2 shows cases of exports of species that are listed in the Secretariat's registry of captive breeding operations, from a country where they are *not* registered.
- Table 3 shows cases of exports of species that are not listed in the Secretariat's registry of captive breeding facilities.

DISCUSSION

What does the summary of the trade data tell us?

The data clearly show that there is a large amount of commercial trade in live Appendix-I specimens being carried out among many Parties. (We re-iterate that pre-Convention specimens and re-exports were not included in the analysis.)

Table 1 shows the cases where this trade involved export of specimens from CITES-registered captive breeding facilities. This is apparently commercial trade in Appendix-I species that is being carried out occurring according to Resolution Conf. 12.10 (even though the source code "D" was not always used).

However, the vast majority of trade did not fall into this category. From Tables 2 and 3 we can see the following:

- There was commercial trade involving specimens that were captive bred, but not from registered captive breeding operations (63.2%)
- There was commercial trade involving specimens born in captivity that do not fulfill the definition of 'bred in captivity' as set out in Resolution Conf. 10.16 (Rev) (23.6%).
- There was commercial trade involving wild-caught Appendix-I specimens (5.1%)
- There was commercial trade reported involving specimens reported to be from commercial captive breeding facilities (source code D), that were not from CITES-registered captive breeding facilities (6.6%).

In total, 93.4% of all recorded cases of commercial trade in Appendix-I species involved specimens that originated from non-registered captive breeding facilities, and 5.1% involved specimens taken from the wild.

TABLES

Table 1. Number of animals exported by each Party, with Purpose Code "T" (Commercial trade) as live Appendix-I animal species that *are* listed in the Secretariat's registry of captive breeding operations, from a country where they *are* registered.

Taxon	Source code	Party 4	Party 6	Party 13	Party 7	Party 10	Party 14
<i>Alligator sinensis</i>	D	171					
<i>Crocodylus porosus</i>	C					111	
<i>Crocodylus porosus</i>	D					5	
<i>Falco peregrinus</i>	C		31	69			
<i>Falco peregrinus</i>	D		105				2
<i>Falco peregrinus</i>	F						1
<i>Falco rusticolus</i>	C		26	829			
<i>Falco rusticolus</i>	D		239				
<i>Falco rusticolus</i>	F		1				
<i>Scleropages formosus</i>	D				137,856	70,579	

Table 2. Number of animals exported by each Party, with Purpose Code "T" (Commercial trade) as live Appendix-I animal species that are listed in the Secretariat's registry of captive breeding operations, from a country where they are *not* registered.

Taxon	Source code	Party 6	Party 13	Party 8	Party 9	Party 11	Party 14
<i>Acinonyx jubatus</i>	C	2					
<i>Alligator sinensis</i>	C						6
<i>Alligator sinensis</i>	D				6		
<i>Cacatua moluccensis</i>	C	1				4	
<i>Cacatua moluccensis</i>	F						10
<i>Caloenas nicobarica</i>	C					4	
<i>Crocodylus porosus</i>	C						18
<i>Falco jugger</i>	C		2			1	
<i>Falco pelegrinoides</i>	C	1					
<i>Falco pelegrinoides</i>	D	6					
<i>Falco pelegrinoides</i>	F						2
<i>Falco peregrinus</i>	C			1		1	
<i>Falco rusticolus</i>	C					8	107
<i>Falco rusticolus</i>	D					1	30
<i>Falco rusticolus</i>	F						72
<i>Psephotus dissimilis</i>	C	4				92	

Taxon	Source code	Party 6	Party 13	Party 8	Party 9	Party 11	Party 14
<i>Scleropages formosus</i>	C				29		
<i>Scleropages formosus</i>	D				15		
<i>Tragopan caboti</i>	C					1	29

Table 3. Number of animals exported by each Party, with Purpose Code "T" (Commercial trade) as live Appendix-I animal species that are *not* listed in the Secretariat's registry of captive breeding operations.

Taxon	Source code	Party 4	Party 6	Party 5	Party 13	Party 7	Party 8	Party 10	Party 11	Party 14
<i>Acrantophis dumerili</i>	C		5						4	1
<i>Acrantophis dumerili</i>	F									5
<i>Acrantophis madagascariensis</i>	C		25						4	3
<i>Acrantophis spp.</i>	W									3
<i>Addax nasomaculatus</i>	C		2						2	
<i>Addax nasomaculatus</i>	F									11
<i>Ailuropoda melanoleuca</i>	C	1								
<i>Amazona barbadensis</i>	C		4						6	1
<i>Amazona barbadensis</i>	F									10
<i>Amazona leucocephala</i>	C		4		2				4	
<i>Amazona tucumana</i>	C				4					
<i>Amazona tucumana</i>	U				2					
<i>Amazona vinacea</i>	C				2					
<i>Amazona vinacea</i>	F									4
<i>Amazona viridigenalis</i>	C		2						5	3
<i>Anas laysanensis</i>	C								26	
<i>Anodorhynchus hyacinthinus</i>	C				1					
<i>Anodorhynchus hyacinthinus</i>	F									5
<i>Ara ambigua</i>	C								1	10
<i>Ara ambigua</i>	F									6
<i>Ara glaucogularis</i>	F									31
<i>Ara glaucogularis</i>	W									2
<i>Ara macao</i>	C		1		3	1			9	4
<i>Ara macao</i>	F									20
<i>Ara militaris</i>	C								2	10
<i>Ara militaris</i>	F									3
<i>Ara rubrogenys</i>	C		1							6
<i>Ara rubrogenys</i>	F									2
<i>Boa constrictor occidentalis</i>	C		3						4	
<i>Brachylophus fasciatus</i>	C					9				
<i>Branta canadensis leucopareia</i>	C								4	
<i>Branta sandvicensis</i>	C								64	
<i>Brookesia perarmata</i>	W									12
<i>Cacatua goffini</i>	C				1				4	
<i>Cacatua goffini</i>	D		1							
<i>Cacatua goffini</i>	F									5

Taxon	Source code	Party 4	Party 6	Party 5	Party 13	Party 7	Party 8	Party 10	Party 11	Party 14
<i>Cacatua goffini</i>	I				3					
<i>Capra falconeri</i>	C								1	15
<i>Capra falconeri</i>	F									1
<i>Carduelis cucullata</i>	C								32	
<i>Catopuma temminckii</i>	F									1
<i>Ceratotherium simum cottoni</i>	C									1
<i>Ciconia boyciana</i>	C	2								
<i>Crossoptilon crossoptilon</i>	C		5						29	2
<i>Crossoptilon crossoptilon</i>	F									1
<i>Crossoptilon mantchuricum</i>	C								59	
<i>Cyanoramphus novaezelandiae</i>	C		30		136				1,058	
<i>Cyclura carinata</i>	F									8
<i>Cyclura comuta</i>	C									3
<i>Cyclura cychlura</i>	C									20
<i>Dyscophus antongilii</i>	C									5
<i>Elephas maximus</i>	F									7
<i>Elephas maximus</i>	W									15
<i>Epicrates inornatus</i>	C		4							
<i>Epicrates inornatus</i>	D		17							
<i>Equus grevyi</i>	C									3
<i>Eulemur fulvus</i>	C		5							
<i>Eulemur rubriventer</i>	C								1	1
<i>Eunymphicus cornutus cornutus</i>	C								5	
<i>Falco hybrid</i>	C		73	20	6					88
<i>Falco hybrid</i>	D		3,038	2						23
<i>Falco hybrid</i>	F									127
<i>Falco peregrinus pealei</i>	C									5
<i>Falco peregrinus pealei</i>	F									25
<i>Falco peregrinus peregrinus</i>	C		3						3	
<i>Falco peregrinus peregrinus</i>	D		1							
<i>Falco peregrinus peregrinus</i>	F									1
<i>Felidae hybrid</i>	C									2
<i>Felidae hybrid</i>	F									1
<i>Geochelone nigra</i>	F									2
<i>Geochelone radiata</i>	C		4							
<i>Geochelone radiata</i>	F		1							
<i>Grus japonensis</i>	C								1	
<i>Grus vipio</i>	C								1	
<i>Guarouba guarouba</i>	C			3					3	
<i>Guarouba guarouba</i>	D			2						
<i>Haliaeetus albicilla</i>	C		1							
<i>Haliaeetus leucocephalus</i>	C		1							
<i>Hapalemur griseus</i>	W									1
<i>Harpia harpyja</i>	F									1

Taxon	Source code	Party 4	Party 6	Party 5	Party 13	Party 7	Party 8	Party 10	Party 11	Party 14
<i>Hippotragus niger varians</i>	C									3
<i>Hylobates agilis</i>	C									2
<i>Hylobates agilis</i>	F									3
<i>Hylobates syndactylus</i>	C									4
<i>Lemur catta</i>	C									12
<i>Lemur catta</i>	F									2
<i>Leontopithecus rosalia</i>	C									6
<i>Leucopsar rothschildi</i>	C					6				1
<i>Lophophorus impejanus</i>	C				1				166	
<i>Lophophorus impejanus</i>	D		6							
<i>Lophura edwardsi</i>	C		4						67	
<i>Lophura imperialis</i>	C								7	
<i>Lophura swinhoii</i>	C		8						119	
<i>Loxodonta africana</i>	F									1
<i>Macaca silenus</i>	C									6
<i>Mandrillus sphinx</i>	C									2
<i>Mustela nigripes</i>	C									8
<i>Naemorhedus goral</i>	C									2
<i>Neofelis nebulosa</i>	F									1
<i>Oncifelis geoffroyi</i>	C								2	
<i>Oryx leucoryx</i>	C								3	70
<i>Pan troglodytes</i>	C		8							47
<i>Pan troglodytes</i>	F									2
<i>Pan troglodytes</i>	W									7
<i>Panthera leo persica</i>	C		1							
<i>Panthera onca</i>	C		2							
<i>Panthera onca</i>	D		2							
<i>Panthera pardus</i>	C									15
<i>Panthera tigris</i>	C		10				1			79
<i>Panthera tigris altaica</i>	C		8							4
<i>Panthera tigris altaica</i>	F									1
<i>Panthera tigris tigris</i>	C									41
<i>Polyplectron emphanum</i>	C								36	
<i>Prionailurus bengalensis bengalensis</i>	C			1						
<i>Probosciger aterrimus</i>	F									2
<i>Propyrrhura maracana</i>	C		5						13	
<i>Psephotus chrysopterygius</i>	C								38	
<i>Psephotus pulcherrimus</i>	C								6	
<i>Puma concolor coryi</i>	F									3
<i>Pyrrhura cruentata</i>	C		5						52	
<i>Python molurus molurus</i>	C		5							
<i>Saguinus oedipus</i>	C								5	1
<i>Sanzinia madagascariensis</i>	C		13						4	
<i>Spheniscus humboldti</i>	C				8					
<i>Struthio camelus</i>	C							8		
<i>Syrmaticus ellioti</i>	C								198	

Taxon	Source code	Party 4	Party 6	Party 5	Party 13	Party 7	Party 8	Party 10	Party 11	Party 14
<i>Syrmaticus ellioti</i>	D		10							
<i>Syrmaticus humiae</i>	C				1				37	
<i>Syrmaticus mikado</i>	C								76	
<i>Tapirus indicus</i>	F									1
<i>Tapirus indicus</i>	W							4		
<i>Testudo kleinmanni</i>	C		4							
<i>Testudo kleinmanni</i>	D		8							
<i>Uncia uncia</i>	C									2
<i>Varecia variegata</i>	C						4			
<i>Vultur gryphus</i>	C									4

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