

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



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ANALYSIS OF THE NON-DETRIMENT FINDING FOR PERICOPSIS ELATA FROM
THE DEMOCRATIC REPUBLIC OF THE CONGO AND
SUBSEQUENT RELATED VIOLATIONS OF CITES RULES FOR THE DRC

1. This document has been submitted by the Centre for International Environmental Law, Environmental Investigation Agency, and Greenpeace* in relation to the agenda item 12.1 "Report on Non-detriment findings for *Pericopsis elata* in the Democratic Republic of the Congo".

* *The geographical designations employed in this document do not imply the expression of any opinion whatsoever on the part of the CITES Secretariat (or the United Nations Environment Programme) concerning the legal status of any country, territory, or area, or concerning the delimitation of its frontiers or boundaries. The responsibility for the contents of the document rests exclusively with its author.*

At the 65th CITES Standing Committee meeting in July 2014, the Committee encouraged the Democratic Republic of Congo to present its process for the NDF at the 22nd CITES Plants Committee meeting,¹ as the result of a request by Parties based on the removal of *Pericopsis elata* from the Review of Significant Trade prior to SC65. At that same Standing Committee meeting the Center for International Environmental Law, Greenpeace, Global Witness, and the Environmental Investigation Agency expressed their concerns about exports of illegally harvested *P. elata* from the Democratic Republic of Congo (DRC), its treatment of *P. elata* under Annex II, and requested that trade in all CITES-listed species from the DRC be immediately suspended.²

This document provides a follow-up analysis of the Non-detriment finding (NDF) for *Pericopsis elata* from the Democratic Republic of the Congo and subsequent related violations of CITES rules by the DRC, including exports of *P. elata* while the March 19, 2015 CITES trade suspension was in place, and DRC's intent to export in 2015 30,290 m³ of *P. elata* harvested in 2014,³ in excess of approved CITES export quotas.

1. DRC's *Pericopsis Elata* NDF does not meet CITES NDF Guidance

In May 2014 DRC submitted its NDF to the Secretariat for review.⁴ Our examination of DRC's NDF is that it does not provide sufficient information to demonstrate the trade will not be detrimental to the survival of *P. elata*, and that the species will be maintained throughout their range at a level consistent with their role in the ecosystem, to justify continued exports of *P. elata*. Specific concerns with the NDF are that it does not meet CITES Guidance on NDFs in a number of key areas, including assessment of total population, overall harvest, volume of legal and illegal trade, and enforcement considerations.

An NDF should be the result of a *science-based assessment* that verifies whether a proposed export is detrimental to the survival of that species or not, based on, *inter alia*: whether the species would be

¹ CITES, *Sixty-fifth meeting of the Standing Committee, Geneva (Switzerland), 7-11 July 2014, EXECUTIVE SUMMARY, MORNING, SC65 Sum. 5 (Rev. 1) (09/07/2014)*, p. 2, <https://www.cites.org/sites/default/files/eng/com/sc/65/exsum/E-SC65-Sum-05.pdf>.

² Center for International Environmental Law, et al., *Afrormosia (Pericopsis elata) from the Democratic Republic of Congo, July 7, 2014*, http://ciel.org/Publications/CITES_DRC_8Jul2014.pdf. While our concerns regarding trade in other species remain, and our stand behind our call for a full trade suspension, this document and recommendations focus exclusively on *P. elata* from the DRC.

³ RDC Ministère de l'Environnement et Développement Durable (MEDD), *Organe de gestion CITES/RDC, Letter No 055/ORG-CITES-RDC/DCN/SG/EDD/2015 to European Commission DG Environment, March 7, 2015 [hereinafter MEDD Letter]*.

⁴ Institut Congolais pour la Conservation de la Nature & Secrétariat Général à l'Environnement et Conservation de la Nature Ministère de l'Environnement, Conservation de la Nature et Tourisme (MECNT), *Avis de Commerce Non Préjudiciable pour l'exploitation et le commerce d'Afrormosia (Pericopsis elata (Harms) Meeuwen (Fabaceae)) en République Démocratique du Congo (May 2014) [hereinafter Avis de Commerce Non Préjudiciable]*.

maintained throughout its range at a level consistent with its role in the ecosystem; sustainability of the overall harvest; volume of legal and illegal trade;⁵ and enforcement considerations based on national circumstances.⁶

a. Total population⁷

The NDF does not provide a science-based assessment of the total range of *P. elata* and its role in the ecosystem. The NDF provided six concession inventories, and a further three were completed prior to the November 30, 2014 deadline (circled in red below).

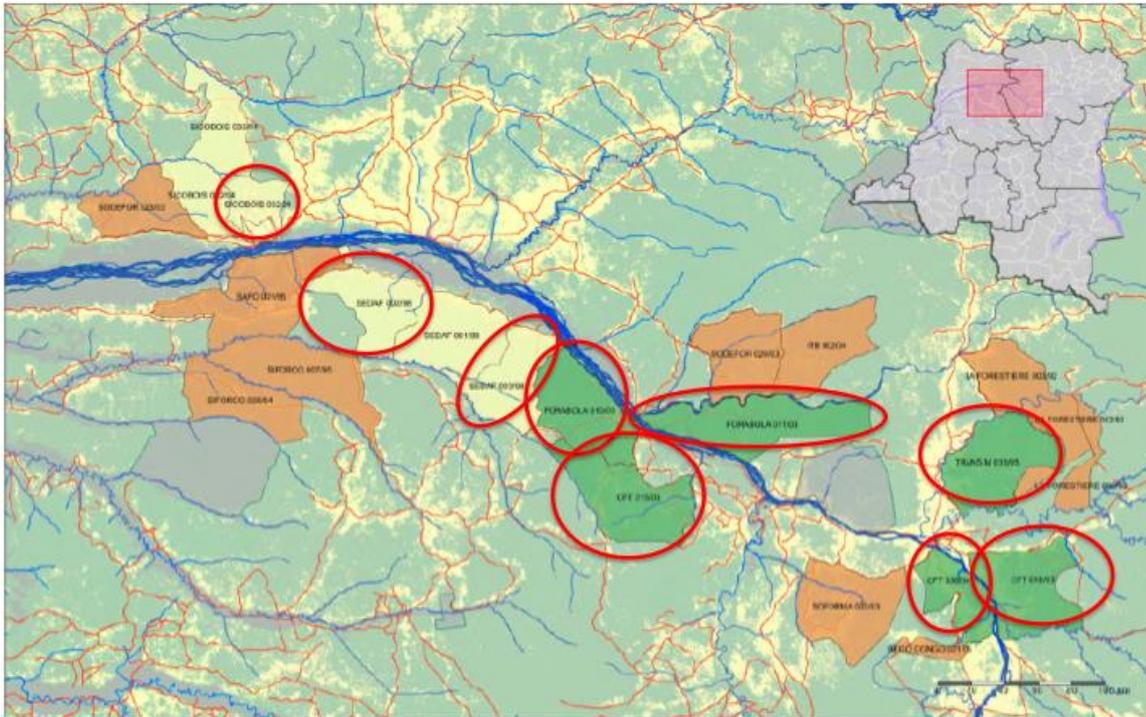


Figure 1.⁸

The NDF states “[m]anagement inventory data should be *the sole valid criterion* for the formulation of a rigorous, national quota as part of the NDF,”⁹ even though it acknowledges “variability observed in the population structures of *P. elata* is significant.”¹⁰ Management inventories of only nine of the 23 concessions in DRC do not provide a sufficient basis for assessing the long-term sustainability of *P. elata* throughout its range, which is dependent on a broad range of ecological, as well as social and economic factors. Furthermore, the inventories were done by the companies or consultancy companies (FRM) and the quality and reliability of those inventories need to be independently verified to ensure they do not over estimate timber stands and volumes.

The NDF does not establish sustainable harvest levels in the *P. elata* growth range because each concession inventory is assessed without reference to the overall population, and the impact of illegal

⁵ CITES, Non-detriment findings, Resolution Conf. 16.7(a) (2013).

⁶ CITES, Sustainable use of biodiversity: Addis Ababa Principles and Guidelines, Resolution Conf. 13.2(a) (Rev. CoP14).

⁷ Resolution Conf. 16.7(a).

⁸ Map from Avis de Commerce Non Préjudiciable pour l’exploitation et le commerce d’Afromosia, p. 12.

⁹ Institut Congolais pour la Conservation de la Nature & Secrétariat Général à l’Environnement et Conservation de la Nature Ministère de l’Environnement, Conservation de la Nature et Tourisme (MECNT), Non-detriment finding on Afrormosia (*Pericopsis elata*) in the Democratic Republic of Congo [English translation of the original French report, hereinafter NDF] p. 13 (emphasis added).

¹⁰ NDF p. 27.

logging within and outside concessions. The ITTO-CITES project should have, but did not, provide full technical information on the ecology and management of *P. elata*.¹¹

b. Overall harvest¹²

Overall harvest is not even mentioned in NDF. As of May 2014, the authorized overall harvest for 2014 was 55,373 m³¹³—exceeding by more than 30,000m³ the 2014 CITES export quota. The DRC is the world’s largest supplier of *P. elata*, by a large margin, and due to the high value of the wood, it is unlikely that more *P. elata* was being used within the DRC than is being exported. In a March 2015 letter MECNT stated forestry companies harvested and stockpiled approximately 41,000 m³ of *P. elata* in 2014, based on the assumption that the export quota would increase as a result of the NDF submission to CITES.¹⁴ Furthermore, most concession holders do not have an approved five-year forest management plan, but are instead operating under a simple provisional plan.¹⁵ This is problematic because, as the NDF states, these provisional management plans “cannot - and it is not their purpose - to offer the same guarantee of sustainability as will be provided by the implementation of the development plans.”¹⁶ The official overall harvest quantities are much greater than those authorized for export, which is essential to determining the overall sustainability of *P. elata*, but was not considered in the NDF.

c. Volume of legal and illegal trade

COP Guidance on NDF recommends an assessment of “known, inferred, projected, estimated” legal and illegal trade.¹⁷

While the NDF provides estimates of authorized exports very close to the quota of 25,000 m³ for the past few years for legal trade,¹⁸ it makes no attempt to assess volumes of illegal trade. The NDF does acknowledge the existence of a problem related to illegal trade, however, by noting “in vast tracts of forest land, including those in the natural distribution area of *P. elata*, *significant volumes of timber are still illegally harvested and marketed*, without planning, management or monitoring in line with the procedures introduced by the competent authorities and administrations.” Furthermore, “[s]ome of the volumes of *P. elata* available for export to international markets are produced using these casual harvesting practices, which may be locally detrimental to the renewal of the species in its natural distribution area.”¹⁹

The NDF does not recognize the broader underlying problem, where the procedures designed to ensure legal trade using CITES export permits are not followed by the DRC government. The issue with a large number of fake or falsified permits in 2014²⁰ demonstrates lack of organization at best, and absence of the rule of law at worst. The NDF made no attempt to make an independent assessment of: the volumes of illegal timber harvested and exported or impact of illegal logging on the overall sustainability of *P. elata* throughout its range. Moreover, a number of the companies

¹¹ NDF p. 16, 17.

¹² Resolution Conf. 16.7, fn 1.

¹³ Emmanuel Heuse, L’actualité du dossier Afrormosia, May 2014.

¹⁴ MEDD Letter; supra note 3.

¹⁵ Letter N0239/org-cites-rdc/dom/sg/ecn/2014), 28 November 2014, MECNT to CITES Secretariat [hereinafter MECNT Letter]. The Annex to this letter shows only one concession holder has an approved management plan for one concession title.

¹⁶ NDF p. 10.

¹⁷ Resolution Conf. 16.7(a)(iii).

¹⁸ NDF p. 42. The CITES trade database has similar numbers for exports based on reporting by the DRC to the Secretariat. It should be noted however, determining quota excesses, even for officially reported exports, is difficult due to calendar and quota years not coinciding (and lack of clarity in quota time period from year to year).

¹⁹ NDF, p. 45-46 (emphasis added).

²⁰ CITES, DEMOCRATIC REPUBLIC OF THE CONGO, Missing permits and Verification of permits, Notification to the parties 2014/017, April 2, 2014, <https://cites.org/sites/default/files/notif/E-Notif-2014-017.pdf>.

authorized to export, under the condition of completion of their concession inventories, have systematically engaged in illegal logging operations as reported by the mandated IM-FLEG (Independent Monitor on Forest Law Enforcement and Governance) in the DRC. Most recent reports include the logging companies Siforco, Cotrefor, Forabola and Sodefor.²¹

d. Enforcement concerns²²

NDF notes that there is “currently no reliable strategy for the monitoring and control of *P. elata* by the authorities concerned, despite its inclusion in Appendix II of CITES.”²³ The DRC’s NDF proposal document promised that the NDF team’s first goal would be to evaluate not only *P. elata* production levels but the status of “control and follow-up” of logging in concessions with *P. elata*. Yet the NDF provides literally no data about control,²⁴ although it does acknowledge the myriad problems in the DRC related to control.

Furthermore the NDF highlights the following issues related to compliance with CITES and national laws related to harvest and export of *P. elata*: No validation between different departments in MECNT (now MEDD); documents with the CITES certificate do not provide verifiable information into the origin of the wood; the CITES Management Authority in the DRC does not have the means and technical capacity to verify legal compliance for issuing export permits; and while the Timber Production and Marketing Control Programme could theoretically address traceability through the Forestry Information and Management System, funding is uncertain, so alternate measures are proposed.²⁵

NDF proposed the following for 2015:

- Inventories for concessions authorized to export;
- Companies must submit a dossier to request CITES permit;
- Simple database of exports to calculate if quota is reached;
- Database of exports on a secure website accessible to CITES Secretariat, and national authorities upon request; and
- Validation of inventories based on audit of “all or part of one” of the completed inventories.²⁶

NDF calls these “traceability monitoring procedures,” but they are in no way a guarantee of either traceability or legality at this time. Although the only companies authorized to export are those with concessions that have completed forest concession inventories, to our knowledge there are no companies providing reliable evidence to demonstrate the *P. elata* timber being exported in 2015 was harvested from one of the nine approved concessions during 2015. In fact, based on the stockpiling of overharvested timber in 2014,²⁷ it is most likely that the timber destined for export was actually harvested in a previous year, in a concession without a completed inventory or outside concession boundaries.

²¹ *Rapports d'activités d'OI en République Démocratique du Congo*, <http://skoop-cm.com/flag/index.php/publications/rapports/rapports-d-activites-d-oi-au-congo.html> (3).

²² Resolution Conf. 13.2 (Rev. CoP14).

²³ NDF, p. 47. *The NDF notes the Management Authority takes an accounting approach to monitoring, which is based solely on export volumes and is “far from perfect.”*

²⁴ Ministère de l’Environnement, Conservation de la Nature et Tourisme, Proposition d’activité a l’organisation Internationale des bois Tropicaux (OIBT)/Projet Gestion Durable de l’assamela dans le Bassin du Congo, undated, <http://www.itto.int/files/user/cites/republica-do-congo/DRC%202013%20Activity%20Doc%20%20Pericosis%20elata%20for%20web.pdf>. NDF, p. 45-54.

²⁵ NDF, p. 50, 52.

²⁶ NDF, p. 16. *“Since the quota is calculated using inventory data which have yet to be approved by the Administration, it is recommended that as part of the validation process, an audit is carried out on all or part of one of six inventories on which the approach is based, in order to confirm (i) the overall quality of the inventories and (ii) the apparently favourable population structures in the concessions concerned (regeneration / abundant crop trees).”*

²⁷ MEDD Letter; supra note 3.

Due to the DRC's inability to reliably assure the legality and traceability of *P. elata* to importing countries, the EU's Scientific Research Group (SRG) continued to issue a "no opinion" finding for these imports to the EU during both their April and July 2015 meetings.²⁸ Based on shipping data very little, if any, *P. elata* has been officially imported into Europe, which is in stark contrast to *P. elata* imports into Europe in recent years.²⁹ *P. elata* is instead being exported to countries where MA's are accepting the DRC's CITES export permits as *pro forma* evidence of legality in spite of the wealth of evidence to the contrary—including China, India, Qatar, Taiwan, Turkey, and the United States.

We understand validation missions are being carried out in concessions and reports will be presented at the 22nd Plants Committee meeting, as well as shared with the EU's SRG. While this is an important initial step needed to confirm the accuracy of completed inventories, it is a wholly insufficient basis for exports purporting to comply with the NDF and Legal Acquisition Finding requirements of the Convention.³⁰

2. Potential increase in the 2015 quota once additional forestry concession inventories are completed

In November 2014 the DRC CITES Management Authority indicated their intention to update the 2015 quota biannually based on inventories finalized after that date.³¹ While it is unknown whether the DRC MA still intends to increase the 2015 quota based on additional inventories, such a move would further undermine the credibility of the quota system and the NDF. Without a comprehensive assessment of harvest on the survival of the species, if the export quota is based only on the piecemeal assessment of annual harvests in each concession, it is likely to increase. Even if the DRC does not seek to increase the 2015 quota due to additional inventories, it is likely that these additional concession inventories will be used as a basis for increasing the 2016 export quota. Currently, the usable area of the nine concessions with inventories is 1,433,670 ha of a total of 3,378,083 ha for all concessions (see Figure 2 below), and it is conceivable the DRC will establish an export quota in excess of 50,000 m³ once inventories for all 23 concessions are completed. As noted previously, making an assessment that export levels will not be detrimental to *P. elata* solely on the basis of accumulating harvest quantities from individual concession inventories is a flawed approach.

²⁸ *Short Summary of Conclusions of the 72nd Meeting of the Scientific Review Group on Trade in Wild Fauna and Flora, 2 July 2015; Short Summary of Conclusions of the 71st Meeting of the Scientific Review Group on Trade in Wild Fauna and Flora, 9 April 2015.*

²⁹ *See CITES Trade database for import volumes of P. elata from the DRC into European countries through 2014.*

³⁰ *CITES, Art IV(2)(a), (b).*

³¹ *MECNT Letter, supra note 15, p. 3.*

Titulaire du titre forestier	N° de contrat	N° GA	Province	Superficie totale PG (ha.)	Superficie utile PG (ha.)	% SU/ST	Situation dans le processus de Conversion	Situation dans le processus d'aménagement	Observations
COTREFOR	018/11	033/05	Orientale	277.031	215.503	78%	PG provisoire Validé	Rapport d'inventaire validé (sous réserve)	Titres dont les données d'inventaire ont été utilisées pour l'estimation du quota pour <i>P. elata</i> en 2015 (voir section 4)
CFT	047/11	018/03	Orientale	243.794	170.154	70%	PG provisoire Validé	Rapport d'inventaire déposé	
CFT	046/11	036/04	Orientale	156.714	94.281	60%	PG provisoire Validé	Rapport d'inventaire déposé	
FORAROLA	042/11	011/03	Orientale	311.410	206.168	66%	PG provisoire Validé	Rapport d'inventaire déposé	
FORAROLA		010/03	Orientale	262.760	204.995	78%	PG provisoire Validé	Plan de sondage déposé / inventaire terminé	
Nouvelle CFT		015/03	Orientale	288.404	181.407	63%	PG provisoire Validé	Plan de sondage déposé / inventaire terminé	
SEDAF		001/08	Orientale	251.806	202.098	80%	PG provisoire Validé	Plan de sondage validé / inventaire en cours	Titres dans lesquels les inventaires sont en cours
SEDAF		002/08	Equateur	212.401	167.977	79%	PG provisoire Validé	Plan de sondage validé / inventaire en cours	
SEDAF		003/08	Orientale	212.696	167.376	79%	PG provisoire Validé	Plan de sondage validé / inventaire en cours	
SICOBOIS	033/11	032/04	Equateur	100.809	55.235	55%	PG provisoire Validé	Plan de sondage validé / inventaire en cours	Titres susceptibles d'être pris en compte pour le calcul du quota pour <i>P. elata</i> en 2015 (voir section 4)
SICOBOIS	051/14	033/04	Equateur	166.453	99.087	60%	PG provisoire Validé	Plan de sondage validé / inventaire en cours	
SICOBOIS	014/11	042/04	Equateur	110.108	92.438	84%	PG provisoire Validé	Plan de sondage validé / inventaire en cours	
SIFORCO	026/11	007/05	Equateur	291.846	248.104	84%	PG provisoire Validé	Plan de sondage déposé	Titres dont la prise en compte pour le calcul du quota pour <i>P. elata</i> en 2015 est peu probable en raison du retard pris dans le processus d'aménagement
SIFORCO	027/11	026/04	Equateur	210.652	157.545	75%	PG provisoire Validé	Plan de sondage déposé	
BEGO CONGO	022/11	021/05	Orientale	37.942	24.484	65%	PG provisoire Validé	Plan de sondage déposé	
SODEFOR	037/11	020/03	Orientale	218.935	173.200	79%	PG provisoire Validé	Plan de sondage déposé	
ITB	009/11	002/04	Orientale	223.780	173.938	78%	PG provisoire Validé	Aucun plan de sondage déposé	
La Forestière	001/11	002/02	Orientale	190.829	140.366	74%	PG provisoire Validé	Aucun plan de sondage déposé	
La Forestière	003/11	002/03	Orientale	141.801	110.373	78%	PG provisoire Validé	Aucun plan de sondage déposé	
La Forestière	002/11	003/02	Orientale	147.447	90.026	61%	PG provisoire Validé	Aucun plan de sondage déposé	
SAFO	010/11	001/05	Equateur	328.953	189.509	58%	PG provisoire Validé	Aucun plan de sondage déposé	
SODEFOR	036/11	023/03	Equateur	182.751	115.283	63%	PG provisoire Validé	Aucun plan de sondage déposé	
SIFORMA	043/11	008/03	Equateur	164.861	99.848	61%	PG provisoire Validé	Aucun plan de sondage déposé	
				4.731.965	3.378.083	71%			

Figure 2.³²

3. “Transition” quota for timber harvested in 2014

The DRC’s established a “transitional” quota of 30,290 m³, in addition to the 2015 export quota of 23,240 m³, justifying such a move by stating the DRC’s forestry companies had cut and stored approximately 41,000 m³ of *P. elata* in 2014.³³ These exports of 2014 stocks—more than doubling the 2014 export quota—would be unprecedented and undermine the CITES system of yearly quota, if allowed to proceed.

The Guidelines for management of nationally established export quotas provide a mechanism for specimens harvested to be exported the following year and deducted from the harvest year’s quota, but do not allow for an increase in the previous or current year’s export quota.³⁴ However, these Guidelines do not provide specific recommendations applicable to the current situation of an export quota that was subject to approval of the Standing Committee; the DRC’s prior year’s quota for which the overall volume of exports of *P. elata* were very close to the 25,000 m³ limit, and the DRC’s attempt to retroactively increase the 2014 quota through the use of a “transition” quota during 2015.

In conclusion, the granting of a transitional quota would set a dangerous precedent of endorsing non-compliance with CITES rules and quotas, and promote additional unsustainable and illegal timber harvesting. Companies will be able to export the excess stocks from prior years without having to demonstrate traceability or legality, and government officials can continue to issue harvest permits for timber solely destined for export markets in excess of established export quotas. As noted previously, in 2014 the DRC issued harvest permits well in excess of the export quota. Authorized overall harvest in May 2014 was 55,373 m³³⁵—more than double the 2014 quota of 25,000 m³.³⁶ This has resulted in excess stocks and the efforts to export these stocks under a transitional quota, indicating that the

³² Avis de Commerce Non Préjudiciable, supra note 4, p. 11.

³³ MEDD Letter, supra note 3.

³⁴ (Resolution Conf. 14.7 (Rev. CoP15), paras. 20-21). If a Party wishes to avail themselves of the opportunity to export stocks from the previous year, they must inform the Secretariat by January 15 and explain why they were not exported during the year. See CITES, The role of quotas in CITES, <https://cites.unia.es/file.php/1/trainers/Quotas.ppt>.

³⁵ Heuse, supra note 13.

³⁶ CITES national export quotas for 2014, Sept. 24, 2014, <https://cites.org/sites/default/files/common/quotas/2014/ExportQuotas2014.pdf>.

government will make all efforts to ensure companies can export whatever quantities of *P. elata* harvested, regardless of the CITES export quota volume.

4. Export of *P. elata* while trade suspension in place

P. elata was exported from the DRC to the US on March 26, 2015, while the CITES Notification No. 2015/012 recommendation to suspend all commercial trade from the DRC³⁷ was in effect. While the shipment was still in transit, the DRC completed their National Ivory Action Plan and the trade suspension was lifted on April 15, 2015.³⁸ The shipment arrived in the United States in June 2015 and was permitted entry. The recipient company, J. Gibson McLivain Company, is one of only a few US companies buying *P. elata* from the DRC.

5. Recommendations

All *P. elata* exports from the DRC should be suspended until the DRC's Scientific and Management Authorities can demonstrate full compliance with CITES Article IV(2)(a), through a revised NDF that addresses long term sustainability of *P. elata* based on the combined volumes of legally and illegally harvested wood within and outside concession areas, and CITES Article IV(2)(b), allowing the issuance of export permits for *P. elata* only with reliable evidence that "the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora." The latter requirement can only be met once a reliable traceability system is put in place to ensure source and legality of timber before export.

The CITES Export Quota should not include timber from concessions that do not have an approved management plan (5 year, not provisional), since only these plans require a Forest Inventory for the entire concession area, and from concessions that have recently been evaluated by IM-FLEG with illegalities uncovered. Furthermore, the 2015 export quota should not be increased. In revising the NDF, the proposed and applied methodology for developing inventories, setting sustainable harvest volumes, and estimating the natural regeneration rate should be independently verified, and the role of artisanal permits and any future community forestry concessions in the production for export of CITES species should be clarified.

As outlined above, in addition to concerns that the NDF does not fulfill the CITES guidelines for an NDF, exports during a the period of suspension of CITES trade permission, and efforts to export in 2015 very significant volumes harvested in 2014 in excess of the 2014 export quota, indicate ongoing and systemic problems for *P. elata* exports from the DRC.

Therefore, a return of the DRC to Review of Significant Trade for *P. elata* is warranted.

³⁷ CITES, Notification to the Parties No. 2015/012: DEMOCRATIC REPUBLIC OF THE CONGO Recommendation to suspend trade, March 19, 2015, https://cites.org/sites/default/files/notif/E-Notif-2015-012_0.pdf.

³⁸ CITES, Notification to the Parties No. 2015/021: DEMOCRATIC REPUBLIC OF THE CONGO – Withdrawal of a recommendation to suspend trade, April 15, 2015, <https://cites.org/sites/default/files/notif/E-Notif-2015-021.pdf>.