

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

Eighth Meeting of the Conference of the Parties
Kyoto (Japan), 2 to 13 March 1992

Interpretation and Implementation of the Convention

EXPORT AND RE-EXPORT OF CONFISCATED SPECIMENS

This document has been prepared and is submitted by the United States of America

1. Re-export certificates for specimens of Appendix-I or -II species that were not imported in accordance with the provisions of the Convention may not be issued, unless the specimens were subsequently confiscated [Article IV, paragraph 5(a) and Resolution Conf. 4.17].
2. No similar exception exists in the case of export permits for such specimens that were obtained in contravention of national laws for the protection of fauna and flora and subsequently confiscated. As it now stands, a Management Authority has no explicit authority to issue an export permit for illegally obtained specimens of Appendix-I, -II or -III species even though the specimens were subsequently confiscated.
3. Resolution Conf. 4.17 and the documents upon which it is based make it clear that it is only applicable to re-exports of specimens of Appendix-II species. However, paragraph (b) of the resolution incorrectly refers to export permits instead of re-export certificates and, therefore, needs to be revised.
4. Therefore, this paper proposes the adoption of the annexed resolution entitled "Export and Re-export of Confiscated Specimens." It would incorporate the provisions of Resolution Conf. 4.17 (revised as indicated in paragraph 3, above) and allow the issuance of export permits for illegally obtained specimens of Appendix-I, -II and -III species provided they were subsequently confiscated.
5. As in Resolution Conf. 4.17, this resolution would not endorse the issuance of export permits or re-export certificates for specimens of Appendix-I species that were confiscated, unless export or re-export were for scientific/educational or enforcement/identification purposes, for investigatory or prosecutorial purposes, or for purposes of implementing Article VIII, paragraph 4 (regarding living specimens). Note that in the annexed resolution, paragraphs (a) and (b) apply to exports and re-exports of confiscated specimens not sold by the Management Authority and that paragraphs (c) and (d) apply to exports and re-exports of confiscated specimens subsequently sold by the Management Authority (Appendix-II species).
6. As recalled in the preamble of the annexed draft resolution, even though an illegally obtained specimen has been confiscated, the Scientific Authority must still advise that export will not be detrimental to the survival of the species before an export permit can be issued.

DRAFT RESOLUTION OF THE CONFERENCE OF THE PARTIES

Export and Re-export of Confiscated Specimens

RECALLING that Articles III, paragraph 4(a), and IV, paragraph 5(a), of the Convention, require that as pre-condition to the issuance of a re-export certificate the Management Authority be "satisfied that the specimen was imported into that State in accordance with provisions of the present Convention";

NOTING that Article VIII allows certain confiscated specimens to be returned to the country of origin;

MINDFUL that Resolution Conf. 3.9, adopted at the third meeting of the Conference of the Parties (New Delhi, 1981), recommends that importing Parties should "not authorize under any circumstances or pretext, the re-export of specimens for which there is evidence that they were imported in violation of the Convention...";

NOTING that Resolution Conf. 4.17, adopted at the fourth meeting of the Conference of the Parties (Gaborone, 1983), which pertains only to re-export certificates, incorrectly refers to export permits in paragraph (b);

RECALLING that Articles III, paragraph 2(b), and IV, paragraph 2(b), of the Convention, require that as a pre-condition to the issuance of an export permit the Management Authority be "satisfied that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora";

RECALLING that the Articles III, paragraph 2(a), and IV, paragraph 2(a) also require as a precondition to the issuance of an export permit that the Scientific Authority "...has advised that such export will not be detrimental to the survival of the species involved...";

MINDFUL that Resolution Conf. 3.9 recommends that exporting Parties should "...take all measures at their disposal to comply with each and every technical and administrative requirement laid down by the Convention...";

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

RECOMMENDS

- a) that when applying Article III, paragraph 2(b), Article IV, paragraph 2(b), and Article V, paragraph 2(a), of the Convention to specimens obtained in contravention of the laws of the State of export and being exported by a Management Authority for bona fide scientific/educational or enforcement/identification purposes, the specimens be deemed to have been obtained not in contravention of the laws of that State;
- b) that when applying Article III, paragraph 4(a), and Article IV, paragraph 5(a), of the Convention to specimens imported not in accordance with the provisions of the Convention that are being re-exported by a Management Authority for purposes of implementing the provisions of Article VIII, for purposes of implementing Resolution Conf. 3.14, or for investigatory or prosecutorial purposes, the specimens be deemed to have been imported in accordance with the provisions of the Convention;
- c) that when applying Article IV, paragraph 2(b) and Article V, paragraph 2(a), of the Convention to specimens of species which have been confiscated because they were obtained in contravention of the laws of the State of export and are subsequently sold by the Management Authority, the specimens be deemed to have been obtained not in contravention of the laws of that State; and
- d) that when applying Article IV, paragraph 5(a) of the Convention, to specimens of species included in Appendix II which have been confiscated as a result of attempts to import them illegally and are subsequently sold by the Management Authority having satisfied itself that this would not be detrimental to the survival of the species, the specimens be deemed to have been imported in accordance with the provisions of the Convention; and

DECIDES that Resolution Conf. 4.17 be repealed.