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OF WILD FAUNA AND FLORA

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Interpretation and implementation of the Convention

Species trade and conservation issues

NATIONALLY ESTABLISHED EXPORT QUOTAS FOR APPENDIX-II SPECIES:
THE SCIENTIFIC BASIS FOR QUOTA ESTABLISHMENT AND IMPLEMENTATION

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

Introduction

2. As a major importer and exporter of wildlife listed in Appendix II of the Convention, the United States is concerned about several issues regarding the scientific basis for establishment and implementation of 'nationally established export quotas' for Appendix-II species (i.e. Appendix-II export quotas established voluntarily by individual Parties to the Convention) reported to the CITES Secretariat. The purpose of this discussion paper is to outline these concerns, and provide a basis for further discussion and possible action.
3. Nationally established export quotas for species listed in Appendix II have become important tools used by CITES Parties to monitor and regulate trade in live specimens, and parts and derivatives thereof, of a variety of taxa. Although procedures for the use and implementation of export quotas for Appendix-II species are not specified in the text of the Convention or a current resolution of the Conference of the Parties, export quotas have become an important component of CITES implementation for many Parties. The CITES Secretariat distributes a Notification to the Parties each year transmitting nationally established Appendix-II export quotas reported by Parties. In 2002, 60 Parties (not including Parties reporting quotas for sturgeon species under Decision 11.58) reported export quotas for Appendix II species, up from 51 Parties reporting quotas in 2001. This represents nearly a 20 per cent increase in reporting Parties in a single year. Although the vast majority of export quotas reported to the Secretariat are for animal species, the use of quotas for plant species may be poised to increase, with 10 plant quotas transmitted to the Secretariat by three Parties for 2002.
4. The use of quotas can be particularly valuable to exporting Parties. They can serve as the framework for monitoring and limiting trade within the goals of managed and sustainable off-take from wild populations, and they can serve as deterrent and preventative measure against the improper issuance of CITES export permits. In order to receive the greatest benefits from a quota system, Parties should develop scientifically- based methods for establishing appropriate quotas, must monitor the issuance of permits within the numerical limits of the quota, and must report on the usage of the quota to the Secretariat in a timely manner. When exporting Parties execute these steps, they can receive significant return of data and information necessary to manage the quota system properly in future years, which can provide a meaningful return to the conservation of resident species' populations.
5. The majority of Appendix-II specimens traded under an export quota are traded under nationally established export quotas. However, only Resolution Conf. 10.2 (Rev.) on Permits and certificates provides any real guidance to the Parties on the employment of export quotas for Appendix-II species,

and the relevant text is limited to a single paragraph that reads [section II, paragraph i) under RECOMMENDS]:

when a country has voluntarily fixed national export quotas for specimens of species included in Appendix I, for non-commercial purposes, and/or in Appendices II and III, it [should] inform the Secretariat of the quotas before issuing export permits and of any changes thereto as soon as they are made and it [should] state on each export permit the total number of specimens already exported in the current year (including those covered by the permit in question) and the quota for the species concerned;

6. The Annex to this document provides additional background information on the history of export quotas under CITES.

Purpose of Appendix-II export quotas

7. Among their most basic purposes, export quotas properly used can “demonstrate sustainable management of wildlife resources and the making of non-detriment findings [and] can also assist [in] the detection and deterrence of illegal shipments”¹. By reporting quotas to the Secretariat for distribution via Notification, Parties effectively communicate the maximum allowable exports for a given taxon in a given calendar year, thus, providing the CITES community with a simple measure of anticipated and allowable trade volumes.

Scientific basis for establishment and implementation of Appendix-II export quotas: current problems

8. The United States believes there are a number of problems regarding the scientific basis for establishing and implementing nationally established Appendix-II export quotas. The following five points elaborate its principal concerns.

Lack of a common understanding of the relationship between non-detriment findings and nationally established quotas for Appendix-II species

9. At present, there is no common understanding among Parties regarding the scientific basis of nationally established export quotas for Appendix-II species reported to the Secretariat. Although it is logical to assume that such quotas are based on scientifically valid non-detriment findings (presumably most Parties would make a single finding for the entire quota rather than individual non-detriment assessments for each export), as required by Article IV of the Convention, there currently is no requirement that published quotas be based on a valid non-detriment finding. This has led to confusion among Parties, many of whom presume that published quotas are based on a non-detriment finding. Even the CITES website has contradictory information on this issue. In the section entitled “The CITES export quotas”, a paragraph states:

Before any Party can issue a permit to allow export of specimens of species in Appendix I or II, the Scientific Authority of the State must advise that the proposed export will not be detrimental to the survival of the species (the so-called non-detriment finding...). The setting of an export quota by a Party in effect meets this requirement by establishing the maximum number of specimens of a species that it will allow over the course of a year that will not have a detrimental effect on the survival of the species...

¹ Document SC45 Doc. 11.2 on Enforcement matters (Export quotas, p. 3).

10. However, in its Notification to the Parties No. 2002/32 on Export quotas for 2002 (and for previous years' Notifications), the Secretariat included the following as paragraph 11:

The inclusion of quotas in this list does not imply endorsement by the Secretariat. The quotas are established by the Parties and the Secretariat has no indication, in particular regarding the removal of specimens from wild populations, whether these quotas are based on the determinations that Parties are required to make that the level of exports would not be detrimental to the survival of the species [Article IV, paragraph 2 (a)]...

11. Such contradictory information inhibits the development among Parties of a common understanding regarding the scientific basis of nationally established quotas for Appendix-II species. We believe that a common understanding is vital, and that Parties should consider this issue and reach a consensus on the scientific basis of nationally established quotas for Appendix-II species (i.e., that such quotas must be based on scientifically valid non-detriment findings).

Lack of a common understanding of the relationship between non-detriment findings and revisions to nationally established quotas for Appendix-II species

12. In practice, few Parties make changes to their reported quotas during the year, instead making adjustments when reporting new quotas in the subsequent year. Of course, if population monitoring and sound adaptive management practices are employed, quotas can theoretically be adjusted during a calendar year. Adjustments to an export quota during a calendar should also be based on a scientifically valid non-detriment finding, but there currently is no such requirement. This is also a source of confusion. As under Point 1 above, we believe that a common understanding is vital, and that Parties could consider this issue and reach a consensus that such revisions to quotas must be based on scientifically valid non-detriment findings.

Lack of a mechanism to review the biological basis of quotas.

13. At present, there is no agreed-upon mechanism for Parties or the Secretariat to review and make adjustments to export quotas that do not appear to be reasonable based on the biology of the taxon concerned. To date, the Secretariat has adopted an informal approach, as stated in its annual Notification to the Parties: "The Secretariat will, however, request clarification as well as supporting information from the Party concerned, whenever a concern about a specific quota arises. In such instances, and also in cases where Parties have indicated that a quota is provisional, quotas in the Annex are indicated to be 'in preparation'. The Secretariat may, in addition, decline to publish a quota when it has inadequate information about the status of the species concerned and its management." The Parties could consider formalizing what is now an informal mechanism for reviewing and adjusting quotas when their biological basis is questionable.

Lack of a mechanism agreed upon for addressing quota overages.

14. Some Parties have stricter domestic measures that can be employed to restrict imports of specimens that have been exported in quantities exceeding reported quotas, or if exports occur when 'zero quotas' are reported [i.e., zero (0) specimens are exported]. Both of these circumstances may indicate the illegality of the export(s). The United States has the authority to deny imports of specimens if they are not accompanied by authentic, lawfully issued export or re-export documents, or are exported in violation of another country's laws or regulations. A few countries, when possible under domestic law, employ investigative and legal measures to question export documents if quota irregularities are readily apparent. Additionally, some countries have procedures in place to implement and enforce trade measures recommended by the Standing Committee, and such recommendations to halt trade with specific countries or in specific species are implemented through such processes. However, many Parties do not have legal or regulatory authority to take action when a nationally established quota is exceeded. The Parties could consider formalizing a process for addressing quota excesses.

Lack of specific requirements in reporting quotas.

15. At present there are no requirements specifying the type of information that should be reported in a quota. This can lead to confusion in interpretation. As in Point 3 above, the Secretariat has adopted an informal approach to this issue, as stated in its annual Notification to the Parties: "The Secretariat recommends to Parties to make quotas as specific as possible, i.e., to refer to a number or other restrictions (weight, measure, age class, etc.), a requirement for tagging or labelling where applicable and to describe precisely the type of specimens included (e.g. live specimens or hunting trophies) and their source (e.g. wild-taken, ranches or bred in captivity)". The Parties could consider formalizing what is now an informal approach to information requirements in reported quotas.

Recommendation

16. The Parties should consider the establishment of an Export Quota Working Group at CoP12 to consider the issues discussed above and develop procedures to address existing shortcomings. The Parties should authorize this Working Group to continue on an inter-sessional basis, to address issues that remain unresolved following CoP12, as suggested in the draft decisions of Annex 3 of document CoP12 Doc. 50.2 on the Implementation and monitoring of nationally established export quotas for species listed in Appendix II of the Convention.

COMMENTS FROM THE SECRETARIAT

- A. Regarding paragraphs 9 and 10, the Secretariat disagrees that there is a contradiction between the text quoted from the Secretariat's website and Notification to the Parties No. 2002/032. It remains a national obligation for each Party to determine that exports of Appendix-I and -II species are non-detrimental, and some Parties have chosen to inform others of the maximum number of specimens that they will allow into trade, i.e. through an export quota. The underlying requirement for a non-detriment finding is not replaced by the establishment of an export quota, although an export quota may be part of a national approach to ensure that trade is sustainable.
- B. Regarding paragraph 10, the Secretariat wishes to note that, as stated above, it is a national obligation for Parties to determine that exports are non-detrimental. There is no requirement in the Convention or elsewhere for Parties to prove to others that their exports are non-detrimental, or for the Secretariat to be provided with such proof before a nationally established export quota is published. The only exceptions in this regard are when a species is included in the Review of Significant Trade, where exporting Parties are routinely asked to explain the basis of their implementation of Article IV, or in cases where the Secretariat is acting in pursuance of Article XIII of the Convention, having become aware that trade is adversely affecting a species, and the basis of non-detriment findings is reviewed in conjunction with the relevant Parties.
- C. The Secretariat agrees that some Parties need further assistance to ensure that adequate non-detriment findings are made for all exports, whether subject to quotas or not. This has become an important element in the Secretariat's capacity-building programme, and further initiatives are planned in this regard. Comments made on document CoP12 Doc. 50.2 also have relevance here. In addition, work undertaken on the sustainable use of wild species through the Convention on Biological Diversity is directly relevant, and a strong possibility exists that CITES would benefit from the implementation of the guidelines currently under consideration in CBD.
- D. While strongly in favour of providing Parties with the necessary tools and assistance to enable them to meet their obligations under the Convention to make non-detriment findings, the Secretariat is not in support of a new mechanism to evaluate how such national responsibilities are met. The Conference of the Parties has already established an appropriate mechanism, namely the Review of Significant Trade, through which it can be determined whether the trade in a species may be detrimental.

Historical background

In the context of CITES, export quotas are used for both Appendix-I and Appendix-II species. The use of export quotas under CITES has a long and complicated history. Much of that complexity is related to the fact that the employment of export quotas has been closely linked to the transfer of species from Appendix I to Appendix II. Most visibly, this linkage has taken place with regards to crocodylian species and the CITES ranching requirements (Resolution Conf. 11.16 on Ranching and trade in ranched specimens of species transferred from Appendix I to Appendix II). Because of the close linkage of these issues, the export quota issued has undergone a metamorphosis through a number of Resolutions, starting with one governing how species are to be transferred from Appendix I to Appendix II (Resolution Conf. 1.2, which was later modified by Resolutions Conf. 2.23, 5.21 and 7.14), and resulting, most recently, in Resolution Conf. 10.2 (Rev.) (Permits and certificates), which provides additional guidance, albeit minimal, to the Parties for the implementation of export quotas for species listed on any of the three Appendices [paragraphs II i) and j)], and Resolution Conf. 11.16 which also lacks specific guidance for the implementation of a quota system.

A number of Resolutions are currently in place regarding quotas for Appendix-I taxa. They include resolutions covering:

- a) the use of export quotas for sport-hunted leopard trophies (Resolution Conf. 10.14 on Quotas for leopard hunting trophies and skins for personal use);
- b) markhor trophies [Resolution Conf. 10.15 (Rev.) on Establishment of quotas for markhor hunting trophies]; and
- c) Appendix-I species in general (Resolution Conf. 9.21 on The interpretation and application of quotas for species included in Appendix I).

A brief description of a selection of prominent quota systems, both for Appendix I and II species, is provided document CoP12 Doc. 50.2 on the Implementation and monitoring of nationally established export quotas for species listed in Appendix II of the Convention.

Quotas for Appendix-II taxa are established in a number of ways. Most Appendix-II export quotas are set voluntarily by the Parties [Resolution Conf. 10.2 (Rev.), section II, paragraph i)]. These 'nationally established export quotas' differ from quotas set by resolution or decision, by action of the Conference of the Parties (i.e., through adoption of annotations to listings), or by recommendation of the Standing Committee. For sturgeon (Acipenseriformes), for example, Decision 11.58 directed range States to establish "coordinated quotas...". Examples of export quotas set for Appendix-II species by the CoP, through an annotation to the listing, include Asian pangolins (*Manis* spp.; °612), and African spurred tortoise (*Geochelone sulcata*; °613). Other quotas could be set by the Standing Committee through the authority designated by the Conference of the Parties [Resolution Conf. 11.1, Annex 1, or Resolution Conf. 8.9 (Rev.), "RECOMMENDS" g)]. Export quotas established following recommendations by the Standing Committee include Malagasy chameleons (*Furcifer* = *Chameleo* spp.), Malagasy day geckos (*Phelsuma* spp.), and pancake tortoises (*Malacochersus tornieri*). However, export quotas set in response to recommendations of the Standing Committee are best characterized as nationally established export quotas, as their actual legal basis falls under the authority of the domestic laws or regulations of each individual Party.