

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



Fourteenth meeting of the Conference of the Parties
The Hague (Netherlands), 3-15 June 2007

Interpretation and implementation of the Convention

Exemptions and special trade provisions

RESERVATIONS REGARDING SPECIES TRANSFERRED FROM ONE APPENDIX TO ANOTHER

1. This document has been prepared by the Secretariat.
2. The text of the Convention provides the possibility for Parties to make specific reservations with regard to species included in the Appendices (or their parts or derivatives), by informing the Depositary Government (Switzerland). There are three separate provisions in the Convention indicating when a reservation can be made, and their period of validity, as follows. (The italicized text indicates a direct quotation.)
 - a)
 - i) When a State becomes a Party to CITES, it may, at the same time, enter a reservation with respect to any species included in Appendix I, II or III or any parts or derivatives specified in relation to a species included in Appendix III. (Article XXIII, paragraph 2)
 - ii) *Until a Party withdraws its reservation entered under the provisions of this Article, it shall be treated as a State not a Party to the present Convention with respect to trade in the particular species or parts or derivatives specified in such reservation.* (Article XXIII, paragraph 3)
 - b)
 - i) When Appendix I or II is amended in accordance with Article XV of the Convention, either at a meeting of the Conference of the Parties or through the postal procedures, any Party may within 90 days make a reservation with respect to the amendment. (Article XV, paragraph 3)
 - ii) *Until such reservation is withdrawn the Party shall be treated as a State not a Party to the present Convention with respect to trade in the species concerned.* (Article XV, paragraph 3)
 - c)
 - i) With regard to species included in Appendix III, any Party may at any time enter a reservation with respect to the species or any specified parts or derivatives. (Article XVI, paragraph 2)
 - ii) *Until such reservation is withdrawn, the State shall be treated as a State not a Party to the present Convention with respect to trade in the species or part or derivative concerned.* (Article XVI, paragraph 2)

3. When a species is transferred from Appendix I to II, or vice versa, or when a species in Appendix III is subsequently included in Appendix I or II, the text of the Convention is not completely clear about the effects of such an amendment on the validity of any existing reservation relating to the species. There appear to be two ways of interpreting the text of the Convention.
 - a) In each of the provisions cited in paragraph 2 above, it is indicated that, once a reservation has been made, its effect (that the Party is treated as a State not party to the Convention with respect to trade in the species or specified part or derivatives) remains valid until the reservation is withdrawn. It may therefore be inferred that, when a species is transferred from one Appendix to another, any reservation relating to that species remains in effect.
 - b) The alternative view is that, when a species is transferred from one Appendix to another, any reservation relating to that species ceases to be in effect and, if the Party concerned wishes to retain a reservation, it must inform the Depositary Government. This view is appropriate if a transfer from one Appendix to another is viewed as a deletion from one Appendix followed by an inclusion in another. Any existing reservation would thus fall when the species was deleted. This view is supported by at least three considerations.
 - i) Firstly, reservations may be viewed as being made not only in relation to a particular species but also in relation to the Appendix in which it is listed. In this connection, it is notable that any reservation made in accordance with Article XV is made in relation to a specific amendment to the Appendices. Reservations made in accordance with Article XVI clearly relate to species in Appendix III.
 - ii) Secondly, there are complications relating to reservations with respect to specific parts and derivatives. To take a hypothetical example, a shark species could be included in Appendix III with only fins listed as covered, and a Party might make a reservation with regard to the fins. If the species were subsequently included in Appendix II, where there is no possibility to specify, for an animal species, the parts and derivatives that are covered, it would not be possible for any Party to then make a new reservation with regard to the fins. Logic seems to suggest that any reservation made in relation to the parts and derivatives of the species while it was included in Appendix III should no longer be considered valid when it becomes included in Appendix II.
 - iii) Thirdly, there is an issue relating to whether a species is becoming more-strictly protected or less-strictly protected and to the reasons for making a reservation. If a Party has entered a reservation with regard to a species included in Appendix II, not wishing to be bound even by the provisions that allow a regulated trade, it would not be surprising if it wished to maintain the reservation if the species were transferred to Appendix I. However, if a Party has entered a reservation with regard to a species in Appendix I, not wishing the commercial trade to be prohibited, it would be surprising if it wished to maintain the reservation if the species were transferred to Appendix II. However, there are several possible reasons for entering reservations and, in cases where a species is transferred from one Appendix to another, it would be preferable for each Party to specify whether it wishes a reservation to continue.
4. Following the 13th meeting of the Conference of the Parties (CoP13, Bangkok, 2004), the Secretariat applied the approach indicated in paragraph 3 a) above. This seems to be a strict application of the relevant provisions. However, the Secretariat believes that the approach in paragraph 3 b) would be preferable, would solve, or help to avoid, a number of potential problems and would be more in keeping with the conservation spirit of the Convention and with the widely held view that reservations undermine the effectiveness of conventions. The Secretariat has consulted informally with the Depositary Government, which is in agreement that this approach is acceptable.
5. At the 53rd meeting of the Standing Committee (Geneva, June – July 2005), the Secretariat presented the information above and proposed (amongst other actions) that it prepare a draft resolution or a draft amendment to an existing Resolution, for consideration at the 14th meeting of the Conference of the Parties, to clarify that, in cases where a Party holds a reservation in relation to

a species that is deleted from one Appendix of the Convention and included in another, the reservation will be considered as no longer valid, and the Party will need to enter a new reservation in accordance with Article XV, paragraph 3, or XVI, paragraph 2, if it wishes to maintain the reservation.

6. The Standing Committee endorsed this proposal.
7. The Secretariat has taken this opportunity to propose a combination of the two existing recommendations in Resolution Conf. 4.25, in order to shorten and simplify the text.

Recommendation

8. The Secretariat recommends that the Conference of the Parties adopt the amendments to Resolution Conf. 4.25 presented in Annex 1, where the changes to the current Resolution are marked. A clean version, showing how the new Resolution would appear if the changes were adopted, is shown in Annex 2.

PROPOSED AMENDMENTS TO RESOLUTION CONF. 4.25

~~EFFECTS OF RESERVATIONS~~

NB: Text to be deleted is ~~crossed out~~. Proposed new text is underlined.

RECOGNIZING that, in accordance with Article XXIII of the Convention, a State may, when it becomes a Party to CITES, enter a reservation with respect to any species included in Appendix I, II or III or any parts or derivatives specified in relation to a species included in Appendix III and that, in this case, it shall be treated as a State not a Party to the present Convention with respect to trade in the specified species or parts or derivatives until it withdraws such reservations;

~~RECOGNIZING that Article XXIII of the Convention states that where a Party has a reservation on a species it shall be treated as a non-party State in respect of trade in that species;~~

RECOGNIZING that when Appendix I or II is amended in accordance with Article XV of the Convention, any Party may, within 90 days, make a reservation with respect to the amendment and that, in this case, it shall be treated as a State not a Party to the Convention with respect to trade in the species concerned until such reservation is withdrawn;

~~RECOGNIZING further that Article XV, paragraph 3, of the Convention provides for reservations with regard to amendments to Appendices I and II but, at the same time, states that where a Party has such a reservation it shall be treated as a State not a Party with respect to trade in the species concerned;~~

RECOGNIZING FURTHER that, in accordance with Article XVI of the Convention, any Party may at any time enter a reservation with respect to a species included in Appendix III or any specified parts or derivatives and that, in this case, the State shall be treated as a State not a Party to the present Convention with respect to trade in the species or part or derivative concerned until such reservation is withdrawn;

NOTING that there have been this has led to different interpretations of these provisions of the Convention by Parties;

BELIEVING that the transfer of a species from one Appendix of the Convention to another must be viewed as a deletion from one Appendix and its simultaneous inclusion in the other;

CONSIDERING that, if a species is deleted from the Appendices, any reservation entered in relation to that species ceases to be valid;

CONSIDERING also that all Parties should interpret the Convention in a uniform manner;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

RECOMMENDS that:

- a) ~~any Party having entered a reservation with regard to the transfer from Appendix II to Appendix I of a species continue to treat that species as if it remained in Appendix II for all purposes, including documentation and control; and~~
- b) ~~by analogy,~~ any Party having entered a reservation with regard to any species included listed in Appendix I treat that species as if it were included listed in Appendix II for all purposes, including documentation and control; ~~and~~

AGREES that, if a species is deleted from one Appendix of the Convention and simultaneously included in another, the deletion shall render invalid any reservation that was in effect in relation to the species and, consequently, any Party that wishes to maintain a reservation in relation to the species must enter a new reservation in accordance with Article XV, paragraph 3, or Article XVI, paragraph 2; and

CALLS on the Parties having entered reservations nevertheless to maintain and communicate statistical records on trade in the species concerned, as part of their annual reports, so that international trade in specimens of these species may be properly monitored.

PROPOSED AMENDMENTS TO RESOLUTION CONF. 4.25

RESERVATIONS

RECOGNIZING that, in accordance with Article XXIII of the Convention, a State may, when it becomes a Party to CITES, enter a reservation with respect to any species included in Appendix I, II or III or any parts or derivatives specified in relation to a species included in Appendix III and that, in this case, it shall be treated as a State not a Party to the present Convention with respect to trade in the specified species or parts or derivatives until it withdraws such reservations;

RECOGNIZING that when Appendix I or II is amended in accordance with Article XV of the Convention, any Party may, within 90 days, make a reservation with respect to the amendment and that, in this case, it shall be treated as a State not a Party to the Convention with respect to trade in the species concerned until such reservation is withdrawn;

RECOGNIZING FURTHER that, in accordance with Article XVI of the Convention, any Party may at any time enter a reservation with respect to a species included in Appendix III or any specified parts or derivatives and that, in this case, the State shall be treated as a State not a Party to the present Convention with respect to trade in the species or part or derivative concerned until such reservation is withdrawn;

NOTING that there have been different interpretations of these provisions of the Convention by Parties;

BELIEVING that the transfer of a species from one Appendix of the Convention to another must be viewed as a deletion from one Appendix and its simultaneous inclusion in the other;

CONSIDERING that, if a species is deleted from the Appendices, any reservation entered in relation to that species ceases to be valid;

CONSIDERING also that all Parties should interpret the Convention in a uniform manner;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

RECOMMENDS that any Party having entered a reservation with regard to any species included in Appendix I treat that species as if it were included in Appendix II for all purposes, including documentation and control;

AGREES that, if a species is deleted from one Appendix of the Convention and simultaneously included in another, the deletion shall render invalid any reservation that was in effect in relation to the species and, consequently, any Party that wishes to maintain a reservation in relation to the species must enter a new reservation in accordance with Article XV, paragraph 3, or Article XVI, paragraph 2; and

CALLS on the Parties having entered reservations nevertheless to maintain and communicate statistical records on trade in the species concerned, as part of their annual reports, so that international trade in specimens of these species may be properly monitored.