

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



Fifteenth meeting of the Conference of the Parties
Doha (Qatar), 13-25 March 2010

ARTICLE XIV, PARAGRAPHS 4 AND 5, OF THE CONVENTION

1. This document has been prepared by the Secretariat. It is intended to assist Parties with their interpretation and implementation of Article XIV, paragraphs 4 and 5, of the Convention which provide:
 4. *A State party to the present Convention, which is also a party to any other treaty, convention or international agreement which is in force at the time of the coming into force of the present Convention and under the provisions of which protection is afforded to marine species included in Appendix II, shall be relieved of the obligations imposed on it under the provisions of the present Convention with respect to trade in specimens of species included in Appendix II that are taken by ships registered in that State and in accordance with the provisions of such other treaty, convention or international agreement.*
 5. *Notwithstanding the provisions of Articles III, IV and V, any export of a specimen taken in accordance with paragraph 4 of this Article shall only require a certificate from a Management Authority of the State of introduction to the effect that the specimen was taken in accordance with the provisions of the other treaty, convention or international agreement in question.*
2. During the preparatory period for the present meeting, the Secretariat responded to queries from several Parties about its interpretation of Article XIV, paragraphs 4 and 5. The Secretariat also provided advice on the interpretation and implementation of those provisions to the Expert Advisory Panel of the Food and Agriculture Organization of the United Nations (FAO). The information conveyed by the Secretariat during such exchanges, and the results of additional internal discussions, are summarized below.

Background

3. During the 1973 plenipotentiary conference at which CITES was concluded, there were a number of discussions about the inclusion or exclusion of marine species and how to provide for specimens that were taken from areas beyond national territory, particularly in view of the International Convention for the Regulation of Whaling, the International Convention for the Northwest Atlantic Fisheries, other regional fisheries conventions, other existing legal instruments and ongoing negotiations on the United Nations Convention on the Law of the Sea (UNCLOS).
4. At one point, it was suggested that pre-existing international agreements be listed in an Appendix V to the Convention and that trade conducted in accordance with those agreements be exempt from CITES. Such an Appendix was finally not included. Instead, Parties agreed to paragraphs 4 and 5 of Article XIV. They derived paragraph 6 of Article XIV, which concerns the relationship between CITES and UNCLOS, from Article XIII of the London Dumping Convention of 1972.
5. It was not until 1994 at its ninth meeting, that the Conference of the Parties (CoP) discussed the implementation of Article XIV, paragraphs 4 and 5. This occurred in relation to document Doc. 9.40, submitted by the United States of America. The issue was revisited in 2000 at CoP11 in the context of document Doc. 11.18, submitted by Australia. In both cases, draft resolutions were proposed. At CoP9 the draft resolution was withdrawn during consideration of the matter in Committee II and at CoP11 the draft resolution was rejected following a secret ballot.

6. In 2004, the FAO Expert Consultancy on Legal Issues related to CITES and Commercially-Exploited Aquatic Species determined that the status of Regional Fishery Management Organizations (RFMOs) "whose founding document has been re-negotiated since the entry into force of CITES may be in question" with regard to Article XIV of the Convention and that this "is an issue that will require further consideration and reflection".
7. During the CITES Workshop on Introduction from the Sea issues (Geneva, 2005), participants identified the need to further consider "how Article XIV, paragraphs 4 and 5, should be interpreted and practically implemented" (see Annex to the Workshop report contained in document CoP14 Doc. 33).

Relevant treaties, conventions or international agreements

8. Paragraphs 4 and 5 of Article XIV apply to CITES Parties that are also party to "any other treaty, convention or international agreement which is in force at the time of the coming into force of the Convention and under the provisions of which protection is afforded to marine species included in Appendix II". If a State is party to CITES but not party to an agreement covered by Article XIV, then that Article does not apply and the State must follow the applicable provisions of the Convention.
9. There are two key requirements for an agreement to be considered as covered by Article XIV (an 'Article XIV agreement'): it was already in force when CITES entered into force in 1975 and Appendix-II marine species are afforded protection under its provisions.

In force before 1975

10. The International Convention for the Regulation of Whaling (ICRW) was adopted in 1946 to replace the 1937 International Agreement for the Regulation of Whaling. The ICRW entered into force in 1948 and was amended by Protocol in 1956. The Schedule to the Convention is periodically reviewed and revised, most recently in June 2009. On the basis of this history, it would seem that the ICRW was already in force when CITES entered into force.
11. The International Convention for the Northwest Atlantic Fisheries, adopted in 1949, was replaced in 1978 by the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries (NAFO Convention) which entered into force on 1 January 1979. Substantial amendments to the NAFO Convention were adopted in 2007 but have not yet entered into force. As the founding document for NAFO was re-negotiated after 1975, it would seem that the NAFO Convention was not in force when CITES entered into force.
12. The International Convention for the Conservation of Atlantic Tunas (ICCAT) was concluded in 1966 and entered into force in 1969. Two protocols modifying or amending several articles of ICCAT were adopted by plenipotentiary conferences in 1984 and 1992, respectively. It does not appear, however, that the original text of ICCAT has ever been wholly renegotiated. On the basis of this history, it would seem that ICCAT was already in force when CITES entered into force.

Protection for Appendix-II marine species

13. The text of the ICRW indicates that its purpose is "to provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry". Great whales are under the competence of the International Whaling Commission and most are in CITES Appendix I. However, the West Greenland stock of the minke whale, *Balaenoptera acutorostrata*, is listed in Appendix II.
14. The title and text of ICCAT indicate that its purpose is the conservation of the resources of tuna and tuna-like fishes in the Atlantic Ocean. It enables international cooperation in maintaining the populations of those species at levels which will allow the maximum sustainable catch for food and other purposes.
15. Annex 3 to document CoP15 Doc. 27 contains the report of the meeting of the Standing Committee Working Group on Introduction from the Sea held in September 2009. Paragraph 37 of the report states:

It was suggested that RFMOs could contribute to CITES in three main areas: documentation systems (these have evolved from being limited to catch statistics to now providing catch, transshipment and trade documents); the making of non-detriment findings (RFMO activities could be relevant criteria for such a finding); and a potential role under Article XIV, paragraphs 4 and 5, of the Convention. With regard to the last item, some WG members were of the opinion that the mere existence of an

agreement does not satisfy Article XIV, paragraph 4, and that there is also a need for action regarding the protection of a particular marine species listed in Appendix II of CITES.

16. The Secretariat understands that any stocks of a marine species listed in Appendix II, and 'protected' under an 'Article XIV agreement', would be exploited under sustainable catch quotas set under that 'Article XIV agreement'. Such quotas should generally be based on scientific advice provided under the 'Article XIV agreement' and ensure that protection is afforded to the stocks concerned.

Relief from CITES trade obligations

17. Under paragraph 4 of Article XIV, a State which is party to both CITES and an 'Article XIV agreement' is relieved of trade obligations under Article IV for specimens of an Appendix II marine species that are taken (a) by the registered ships of that State and (b) in accordance with the 'Article XIV agreement'.
 - (i) If a ship takes the specimens from the high seas or the Exclusive Economic Zone (EEZ) or the territorial sea of the State in which it is registered, no CITES document is required. Should the specimens thereafter be exported to another country, the State of introduction must issue a document which certifies that they were taken in accordance with the 'Article XIV agreement' (see paragraphs 20 to 23 below) rather than a CITES export permit (i.e. a 'certificate of accordace').
 - (ii) If the ship takes the specimens from the EEZ or the territorial sea of another country, which is party to CITES, the movement of specimens out of the territory of that country requires a CITES export permit. This applies even if there is a bilateral fishing access agreement between the two countries.
18. In trade situations other than those described in paragraph 17 above, appropriate CITES documents are required. This includes the case where: a State is party to CITES but not an 'Article XIV agreement'; the registered ships of another State take the marine specimens concerned; or the specimens are not taken in accordance with an 'Article XIV agreement'.

Continued relevance of other CITES obligations

19. The relief from Article IV trade obligations afforded by the application of Article XIV does not necessarily extend to other obligations of the Convention, such as Article VIII obligations on enforcement and reporting (where applicable). While a Party applying the 'derogation' provided by Article XIV would not be required to issue introduction from the sea certificates or export permits, it would nevertheless be required to prohibit trade in specimens in violation of the Convention, enforce the provisions of the Convention and report on any certificates of accordace which are issued for the export of specimens of CITES-listed species.

Certificate of accordace by State of introduction

20. Paragraph 17 of Annex 3 to document CoP15 Doc. 27 on *Introduction from the sea* states:

Some CITES specimens may be taken in accordance with a convention, treaty or agreement described in Article XIV, paragraph 4, of the Convention. In this case, Article XIV, paragraph 5, requires any export of such specimens to be accompanied by a certificate of accordace from a Management Authority of the State of introduction. Working Group members found that differing interpretations of Article XIV showed there were some sequence-related issues which required further consideration and clarification.

21. The scope of paragraph 5 of Article XIV is limited to the export of specimens introduced from the sea and therefore does not cover specimens taken from another country's EEZ or territorial sea. As noted in document CoP15 Doc. 27, the term 'State of introduction' is not defined in the Convention, even though several articles of the Convention, including Article XIV, paragraph 5, place certain obligations on the State of introduction. The Standing Committee Working Group on Introduction from the Sea was unable to reach agreement on a definition of 'State of introduction' and has put forward both the port State and flag State as alternatives in bracketed text (see Annex 1 to document CoP15 Doc. 27).
22. The 'certificate of accordace' certifies that the marine specimens concerned were taken pursuant to the provisions of the 'Article XIV agreement' in question.
23. Guidance on the type of document that might constitute a certificate of accordace, the content of such a document and the procedure for validating such a document was proposed in document Doc. 9.40 but, as

mentioned in paragraph 5 above, the draft resolution containing this guidance was withdrawn during its consideration by Committee II. Accordingly, there is no guidance so far on the format or procedure for issuing a certificate of accordance. This means there is not necessarily any information on the certificate about quantities or other aspects of the 'taking', unless CITES Parties decide to require this. The document may generally certify that the taking of the specimens was done in accordance with the 'Article XIV agreement', without any specifics. Of course, to require more information may be contrary to the notion of a Party being relieved of its Article IV obligations.

Analysis of situations which may arise

24. Based on the foregoing analysis, the Secretariat has developed a chart showing the various requirements that are involved (see below).

	CITES requirements for State party to 'Article XIV agreement'	CITES requirements for State not party to 'Article XIV agreement'
Export	Issuance of Article XIV certificate of accordance	Issuance of Article IV export permit
Import	Requirement of Article XIV certificate of accordance or Article IV export permit	Requirement of Article XIV certificate of accordance or Article IV export permit
Introduction from the sea via ships registered in State of introduction (cf. only where a document is required)	No issuance of a CITES document	Issuance of introduction from the sea certificate
Introduction from the sea via ships not registered in State of introduction (cf. only where a document is required)	Issuance of introduction from the sea certificate	Issuance of introduction from the sea certificate
Enforcement under Article VIII, paragraph 1	Required	Required
Reporting under Article VIII, paragraph 7 a)	Required, where a CITES permit or certificate is issued	Required

Conclusion

25. One of the concerns about the application of Article XIV, paragraphs 4 and 5, seems to stem from the language which states that Parties "shall be relieved of the obligations imposed on it under the provisions of the present Convention with respect to trade in specimens of species included in Appendix II". It is correct that application of this Article would mean that the trade provisions of Article IV would not apply, namely the permit or certificate, non-detriment and legal acquisition requirements. However, a Party would apparently still be required to implement other relevant provisions of the Convention such as those on reporting (where applicable) and enforcement which are found in Article VIII.