

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



Seventeenth meeting of the Conference of the Parties
Johannesburg (South Africa), 24 September -5 October 2016

Interpretation and implementation matters

General compliance and enforcement

ACTIONS TO COMBAT WILDLIFE TRAFFICKING

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

Background

2. The escalation of wildlife trafficking in recent years poses an urgent threat to conservation and security globally. Wildlife trafficking is generating enormous illegal profits for the sophisticated criminal syndicates that are often responsible for the killing, transport and marketing of illegal wildlife products. Wildlife trafficking is corrupting governments, undermining the rule of law, and helping to finance organized crime and insurgent groups.
3. Wildlife trafficking robs local communities of the natural resources on which they rely for food and livelihoods. It also robs them of an economic resource base as wildlife trafficking deters tourism and other legal, sustainable sources of income.
4. The illegal wildlife trade is threatening the survival of many species in the wild. In a recent three-year period, approximately one-fifth of the entire African elephant population – 100,000 elephants – was killed for ivory. Smaller rhino populations in Africa also are being decimated at rates of more than 1,000 killings per year. More than 1 million pangolins have been poached from the wild in the last decade alone. Rampant wildlife trafficking is not limited to charismatic mammals, as reptiles, birds, timber species, orchids, sea turtles, corals and myriad other CITES-listed species are also being pushed toward extinction.

Discussion

Actions to Combat Wildlife Trafficking

5. Since CoP16, a number of major political events have added further measures to combat trafficking in wildlife, raise the profile of illegal wildlife trade, and secure high-level political support for combating wildlife trafficking. These events and actions include: U.S. President Obama's Executive Order on Combating Wildlife Trafficking (and associated U.S. National Strategy and Implementation Plan), World Wildlife Day events focused on raising awareness of the threats posed by wildlife trafficking, the African Elephant Summits (Botswana, December 2013 and March 2015), the London Conference on Illegal Wildlife Trade (2014), and the Kasane Conference on Illegal Wildlife Trade (March 2015).

* *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.*

6. On 30 July 2015, the United Nations General Assembly adopted by consensus its first-ever resolution focused on wildlife trafficking (UNGA A/69/L.80, “Tackling illicit trafficking in wildlife”).¹
7. On 25 September 2015, the UN Sustainable Development Summit for the post-2015 development agenda (convened as a high-level plenary meeting of the UN General Assembly) adopted the new 2030 Agenda for Sustainable Development and its Sustainable Development Goals (SDGs), which represent the commitment of the 193 Member States of the United Nations. Among many vital issues, the SDGs specifically address illegal wildlife trade through target 15.7 of Goal 15,² which states: *Take urgent action to end poaching and trafficking of protected species of flora and fauna and address both demand and supply of illegal wildlife products.*

Domestic Ivory Markets

8. The illegal killing of elephants and trade in their ivory is a major problem across much of Africa. It threatens the survival of many populations of both savannah and forest elephants, including those which have previously been thought secure, and undermines the ecological integrity of African forest and savannah ecosystems. In addition, it harms the sustainable economic development of local communities as well as elephant range States more broadly.
9. Legal sales of ivory, including within domestic markets, are likely to increase the risk to elephant populations and local communities, as domestic ivory markets, whether in range, transit, or consumer countries, create a significant opportunity for the laundering of illegal ivory under the guise of legality.
10. On 25 September 2015, President Barack Obama of the United States and President Xi Jinping of China issued a statement regarding their joint commitments to combat wildlife trafficking,³ including the commitment of both countries to “enact nearly complete bans on ivory import and export, including significant and timely restrictions on the import of ivory as hunting trophies, and to take significant and timely steps to halt the domestic commercial trade of ivory.”
11. On 13 January 2016, Hong Kong Chief Executive Leung Chun-ying announced in his 2016 Policy Address that Hong Kong will take steps “as soon as possible to ban the import and export of elephant hunting trophies and actively explore other appropriate measures, such as enacting legislation to further ban the import and export of ivory and phase out the local ivory trade.”
12. Many elephant range States have, in multiple fora, called upon transit and consumer States to assist efforts to protect elephant populations, by closing their legal domestic ivory markets. On 4 November 2015, representatives from 25 African elephant range States adopted the Cotonou Declaration,⁴ which, inter alia, stated that the African Elephant Action Plan, agreed to by all range States and adopted by the CITES Conference of the Parties, can only be implemented effectively in the absence of trade in ivory; and agreed to “support all proposals and actions at international and national levels to close domestic ivory markets worldwide.”
13. The Conference of the Parties has previously called upon CITES Parties to take measures to close domestic markets in products of species that are threatened by intense trafficking in their parts, such as:
 - a. Resolution Conf. 6.10, *Trade in rhinoceros products*, where the Conference of the Parties urged “a complete prohibition on all sales and trade, internal and international, of rhinoceros parts and derivatives, especially horn...;”
 - b. Resolution Conf. 11.8 (Rev. CoP13), *Conservation of and control of trade in the Tibetan antelope*, where the Conference of the Parties recommended that “all Parties and non-Parties, especially consumer and range States, adopt comprehensive legislation and enforcement controls as a matter of urgency, with the aim of eliminating commercial trade in Tibetan antelope parts and derivatives, especially shatoosh, in order to reduce demonstrably the illegal trade in Tibetan antelope products;” and

¹ <http://www.un.org/Docs/journal/asp/ws.asp?m=A/69/L.80>

² http://www.un.org/ga/search/view_doc.asp?symbol=A/69/L.85&Lang=E and <https://sustainabledevelopment.un.org/post2015/summit>

³ <https://www.whitehouse.gov/the-press-office/2015/09/25/fact-sheet-president-xi-jinpings-state-visit-united-states>

⁴ http://www.stopivory.org/wp-content/uploads/20151105_African-Elephant-Coalition-Cotonou-Declaration.pdf

- c. Resolution Conf. 12.5 (Rev. CoP16), *Conservation of and trade in tigers and other Asian big cat species*, where the Conference of the Parties urged “all Parties seeking to improve their legislation prohibiting international commercial trade in specimens of tiger and other Asian big cat species, and products labelled as, or claiming to contain, their parts and derivatives, to adopt such legislation, to include penalties adequate to deter illegal trade and to consider introducing national measures to facilitate implementation of CITES, such as voluntarily prohibiting internal trade in such parts, derivatives and products, as provided for in Resolution Conf. 9.6 (Rev. CoP16);”
14. Since 2011, more than ten countries have destroyed more than 150 tons of ivory, sending a strong signal that elephant poaching and illegal ivory trade will not be tolerated.
15. Many range and consumer States have already announced that they have taken, are taking, or intend to take legislative and regulatory steps to close their domestic ivory markets.
16. Resolution Conf. 10.10 (Rev. CoP16), *Trade in elephant specimens*, should be revised to reflect the need for Parties to take actions to close their domestic ivory markets.

Other Domestic Wildlife Markets

17. Article II, paragraph 1 of the Convention states that Appendix I shall include all species threatened with extinction which are or may be affected by trade. Trade in specimens of these species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances.
18. As noted above, the CITES Parties have agreed that regulation and, in some cases, closure, of domestic wildlife markets is critical to ensuring that illegal and unsustainable trade is not pushing CITES-listed species toward extinction.
19. Likewise, certain CITES Appendix-II species, such as species subject to zero quotas for commercial trade (i.e., Asian pangolins), are generally not found in legal commercial trade but are nonetheless often found in large volumes in domestic markets in consumer countries.
20. Unregulated and poorly regulated domestic markets continue to pose a threat to many CITES-listed species, and a review of the regulation of domestic markets would benefit the conservation of these species.

Wildlife Products Produced from Synthetic or Cultured DNA

21. Several companies and researchers are reportedly developing or have developed bioengineered rhinoceros horn and rhinoceros horn powder. Although the scientific processes through which these products are being developed may vary, the products appear to be genetically similar or identical to real rhinoceros horn. Further, the technology is not unique to rhinoceros horn, and some of these entities have indicated that they may produce other cultured wildlife products, including elephant ivory, tiger bone, and pangolin scales.
22. Although these entities may believe that flooding the market with such products will relieve pressure on rhinoceroses, elephants, tigers, pangolins, and other frequently poached and illegally traded species, many in the conservation and wildlife enforcement communities believe that these efforts are likely to exacerbate existing threats, create secondary markets, and severely complicate law enforcement efforts.
23. If the real and synthetic products are visually and diagnostically indistinguishable, such production would create opportunities for laundering real wildlife products as cultured products, undermine educational efforts to reduce demand, and potentially introduce a new, broader consumer base for endangered species products.
24. Article I of the Convention defines a ‘specimen’ as including readily recognizable parts and derivatives of animals and plants but does not define the term ‘readily recognizable’.
25. In Resolution Conf. 9.6 (Rev. CoP16), *Trade in readily recognizable parts and derivatives*, the Conference of the Parties agreed that the term ‘readily recognizable part or derivative’, as used in the Convention, shall be interpreted to include “any specimen which appears from an accompanying document, the packaging or a mark or label, or from any other circumstances, to be a part or derivative of an animal or plant of a

species included in the Appendices, unless such part or derivative is specifically exempted from the provisions of the Convention.”

26. Resolution Conf. 9.6 (Rev. CoP16) applies to all specimens of CITES-listed species that meet the interpretation, including any wildlife products produced from synthetic or cultured DNA that meet the interpretation. The Parties should closely examine this issue to ensure that it is clear that CITES controls govern all trade in specimens that meet the interpretation, to better understand how Parties have applied the interpretation to wildlife products produced from synthetic or cultured DNA, and to ensure that these new technologies do not pose a threat to CITES-listed species.

Recommendation

27. Adopt proposed revisions to Resolution Conf. 10.10 (Rev. CoP16) contained in Annex 1, updating the preamble and urging Parties to take action to close domestic ivory markets and to report on those efforts.
28. Adopt draft decisions contained in Annex 1 regarding domestic markets for frequently illegally traded specimens of CITES-listed species.
29. Adopt draft decisions contained in Annex 1 regarding CITES controls for specimens of CITES-listed species produced from synthetic or cultured DNA.

COMMENTS FROM THE SECRETARIAT

Domestic ivory markets

- A. The proposed revisions to Resolution Conf. 10.10 (Rev. CoP16) on *Trade in elephant specimens* presented in Annex 1 to the present document, and draft decisions 17.xx and 17.xy in Annex 2, aim to address domestic trade issues by, *inter alia*, urging Parties to take action to close domestic ivory markets and to report on efforts to do so. The Secretariat notes that a similar proposal for a resolution on closure of domestic markets for elephant ivory has been put forward by a number of African States (see document CoP17 Doc. 57.2).
- B. The Secretariat also addresses domestic trade issues in paragraphs 26 to 35 of document SC66 Doc. 44.1 on Asian big cats (*Felidae* spp.) prepared for the 66th meeting of the Standing Committee (SC66, Geneva, January 2016), and in document CoP17 Doc. 60.1 on Asian big cats (*Felidae* spp.) prepared for the present meeting. Parties may wish to take into consideration the discussions on domestic trade issues that already took place in the context of Asian big cats, which emphasizes the need for an agreed way forward to be reached, one which will allow for unity and clarity in the Convention's approach to issues of domestic trade.
- C. The World Wildlife Crime Report developed by the United Nations Office on Drugs and Crime (UNODC), with the support of the International Consortium on Combating Wildlife Crime (ICWC), (see document CoP17 Doc. 14.), includes a case study on African elephant ivory. Parties may also wish to take into consideration the contents of this report in their deliberations. The World Wildlife Crime Report is available as an information document at the present meeting.
- D. The Secretariat notes that closure of domestic markets is a complex and potentially sensitive issue. Trade is defined in Article 1 of the Convention as “export, re-export, import and introduction from the sea” and hence seeking to close domestic markets, namely internal trade, including legal national trade, may be beyond the scope of the Convention.
- E. Parties may also wish to refer to Article 3 of the Convention on Biological Diversity and Principle 2 of the Rio Declaration on Environment and Development, according to which “States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental [and developmental policies], and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction”.

- F. The Secretariat notes that Parties have addressed domestic markets on rare occasions where there was a sufficiently clear nexus between domestic and international trade issues. Three cases for this are given in the present document. Regarding these examples, the Secretariat notes that, with the exception of Resolution Conf. 6.10 on *Trade in rhinoceros products*, the intention of the Parties has been to regulate domestic markets rather than to close them completely. The Secretariat notes that Resolution Conf. 6.10 has been repealed and replaced by Resolution Conf. 9.14 (Rev. CoP15) on *Conservation of and trade in African and Asian rhinoceroses* which does not urge a “complete prohibition” of all domestic sales and trade (as did Resolution Conf. 6.10), but instead “urges all Parties to adopt and implement comprehensive legislation and enforcement controls, including internal trade restrictions and penalties”.
- G. Based on these considerations, the Secretariat considers that urging Parties to close their domestic markets for commercial trade in ivory may go beyond the scope of the Convention. As an alternative, Parties could be invited to consider closing domestic markets. In this context, the Secretariat would like to remind Parties that they have the right to take stricter domestic measures under Article XIV of the Convention, and the Conference of the Parties may also wish to note that Parties could take such measures.
- H. If Parties wish to regulate legal domestic markets for CITES-listed species in this manner, they may need to consider a change the Convention text, including to the definition of trade.
- I. The Secretariat would further wish to note that Parties should ensure that possession of illegally traded specimens is penalised under national legislation in accordance with Article VIII of the Convention and that national legislation addresses such issues as domestic possession of illegally obtained specimens.
- J. The Secretariat also draws Parties attention to document CoP17 Doc. 24 on National ivory action plans process, which is being used to strengthen domestic measures to combat illegal trade in elephant ivory, including in relation to domestic ivory markets.
- K. Regarding draft decision 17.xx, Parties may wish to provide more specific guidance as to the methodology of the study. The decision as currently drafted gives too little guidance for the Secretariat to estimate the required budget for the study. As an alternative to the Secretariat commissioning the study, the Conference of the Parties may wish to encourage Parties that have domestic markets in CITES listed species to undertake such studies directly, in accordance with Resolution Conf. 15.2 on *Wildlife trade policy reviews*, which invites Parties to carry out reviews of their policies on the use of and trade in specimens of CITES-listed species.

Wildlife products produced from synthetic or cultured DNA

- L. The present document suggests that a number of companies and researchers might be developing or have developed bioengineered rhinoceros horn and rhinoceros horn powder. The document further suggests that although the scientific processes through which these products are being developed may vary, the products appear to be genetically similar or identical to real rhinoceros horn. It also states that this technology is not unique to rhinoceros horn, and that some of these companies or researchers have indicated that they may produce other cultured wildlife products, including elephant ivory, tiger bone, and pangolin scales.
- M. The Secretariat is aware of reports about wildlife products produced from synthetic or cultured DNA, and given these recent developments, recommends that Parties consider the implementation of the Convention as it relates to such products. The Secretariat considers that the review proposed in draft decision 17.xz should include tools to distinguish between synthetic and cultured DNA, as well as relevant implications with regards to the interrelationship with the access and benefit sharing regime as regulated under the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity.
- N. The Secretariat further considers that given the substantive nature of the review, the timing of the reporting to the Animals Committee, Plants Committee and Standing Committee should remain flexible. The Secretariat therefore recommends that the Conference of the Parties adopt draft decisions 17.xz, 17.yy and 17.yz, in Annex 2 to the present document, with the following amendments:

Directed to the Secretariat

17.xz The Secretariat, subject to external funding, is requested to: 1. Undertake a review of relevant CITES provisions, resolutions and decisions, including Resolution Conf. 9.6 (Rev. CoP16), Trade in readily recognizable parts and derivatives, to examine how Parties have applied the interpretation of Resolution Conf. 9.6 (Rev. CoP16) to wildlife products produced from synthetic or cultured DNA, under what circumstances wildlife products produced from synthetic or cultured DNA meet the current interpretation, and whether any revisions should be considered, with a view to ensuring that such trade does not pose a threat to the survival of CITES-listed species; 2. Report the findings and recommendations of this study to ~~the 29th meeting of the Animals Committee, the 23rd meeting of the Plants Committee, and the 69th meeting of the Standing Committee;~~

Directed to the Animals and Plants Committees

17.yy ~~At the 29th meeting of the Animals Committee and the 23rd meeting of the Plants Committee,~~ The Animals and Plants Committees are requested to review the findings and recommendations of the Secretariat's report in 17.xz and make recommendations for consideration at the 69th meeting of the Standing Committee, including appropriate revisions to existing resolutions.

Directed to the Standing Committee

17.yz ~~At its 69th meeting, the~~ The Standing Committee is requested to review the findings and recommendations of the Secretariat's report in 17.xz and the recommendations of the Animals and Plants Committees, and make recommendations for consideration at CoP18, including appropriate revisions to existing resolutions.

- O. The implementation of draft decision 17.xz would be subject to the provision of external funds and the Secretariat estimates that such a study would require approximately 100,000 USD. Supervision of the work would require some time from the Secretariat, but should be a core part of the Secretariat's work and accommodated within its regular work programme.
- P. The tasks allocated to the Animals Committee, Plants Committee and Standing Committee in draft decisions 17.yy and 17.yz might require intersessional work by the Committees and time during its meetings. However, the Secretariat believes that the work can be accommodated within the regular work programme of these Committees and without additional funding.

PROPOSED REVISION TO RESOLUTION CONF. 10.10 (REV. COP16) TRADE IN ELEPHANT SPECIMENS

[Insert the following paragraphs at the end of the preamble to Resolution Conf. 10.10 (Rev. CoP16)]

CONCERNED that the epidemic of poaching of elephants and trafficking in ivory is facilitated by international criminal networks and syndicates, is fueled by corruption, undermines the rule of law and security, harms the sustainable economic development of local communities, and in some cases provides funding to groups that destabilize governments;

CONSIDERING that any supply of ivory, including that within otherwise legal domestic markets, increases the risk to elephant populations and local communities, due to the opportunity it creates for the laundering of illegal ivory under the guise of legality;

WELCOMING the joint commitments announced in September 2015 of President Barack Obama of the United States and President Xi Jinping of China to combat wildlife trafficking and “enact nearly complete bans on ivory import and export, including significant and timely restrictions on the import of ivory as hunting trophies, and to take significant and timely steps to halt the domestic commercial trade of ivory”;

FURTHER WELCOMING the adoption by the United Nations General Assembly on 30 July 2015, by consensus, of its first-ever resolution on wildlife trafficking (UNGA A/69/L.80, “Tackling illicit trafficking in wildlife”).

FURTHER WELCOMING the adoption of the new 2030 Agenda for Sustainable Development and its Sustainable Development Goals (SDGs), on 25 September 2015, by the UN Sustainable Development Summit for the post-2015 development agenda, which specifically address illegal wildlife trade through target 15.7 of Goal 15, which states: Take urgent action to end poaching and trafficking of protected species of flora and fauna and address both demand and supply of illegal wildlife products;

RECOGNIZING the Cotonou Declaration of the African Elephant Coalition of 4 November 2015, in which representatives of 25 African elephant range States agreed to “support all proposals and actions at international and national levels to close domestic ivory markets worldwide”;

ACKNOWLEDGING that many elephant range States have, in multiple fora, called upon transit and consumer States to assist efforts to protect elephant populations, by closing their legal domestic ivory markets; and

FURTHER ACKNOWLEDGING that many range and consumer States have already announced that they have taken, are taking, or intend to take legislative and regulatory steps to close their legal domestic ivory markets.

[Insert as the first paragraph under “Regarding trade in elephant specimens”]

URGES all Parties, particularly those in whose jurisdiction there is a legal domestic market for ivory, or any domestic commerce in ivory, to take all necessary legislative, regulatory and enforcement efforts to close their domestic markets for commercial trade in raw and worked ivory;

[Revise the first “URGES” under “Regarding trade in elephant specimens” as follows]

ALSO URGES those Parties that have not yet closed their domestic ivory markets for commercial trade in ivory and in whose jurisdiction there is an ivory carving industry, a legal domestic trade in ivory, an unregulated market for or illegal trade in ivory, or where ivory stockpiles exist, and Parties that may be designated as ivory importing countries, to ensure that they have put in place comprehensive internal legislative, regulatory, enforcement and other measures to:

[Insert after the first “ENCOURAGES” under “Regarding trade in elephant specimens”]

REQUESTS Parties to inform the Secretariat of the status of the legality of their domestic ivory markets and efforts to implement the provisions of this Resolution, including efforts to close those markets;

DRAFT DECISIONS REGARDING DOMESTIC MARKETS FOR FREQUENTLY ILLEGALLY TRADED SPECIMENS OF CITES-LISTED SPECIES

Directed to the Secretariat

17.xx The Secretariat, subject to external funding, is requested to: 1. Contract independent consultant(s) to undertake a study of the domestic controls in consumer markets for specimens of CITES-listed species for which international trade is predominantly illegal; 2. Report the findings and recommendations of this study to the 70th meeting of the Standing Committee;

Directed to the Standing Committee

17.xy At its 70th meeting, the Standing Committee is requested to review the findings and recommendations of the Secretariat's report in 17.xx and make recommendations for consideration at CoP18, including appropriate revisions to existing resolutions, to strengthen domestic controls addressing illegal trade in specimens of CITES-listed species for which international trade is predominantly illegal;

DRAFT DECISIONS REGARDING CITES CONTROLS FOR SPECIMENS OF CITES-LISTED SPECIES PRODUCED FROM SYNTHETIC OR CULTURED DNA

Directed to the Secretariat

17.xz The Secretariat, subject to external funding, is requested to: 1. Undertake a review of relevant CITES provisions, resolutions and decisions, including Resolution Conf. 9.6 (Rev. CoP16), *Trade in readily recognizable parts and derivatives*, to examine how Parties have applied the interpretation of Resolution Conf. 9.6 (Rev. CoP16) to wildlife products produced from synthetic or cultured DNA, under what circumstances wildlife products produced from synthetic or cultured DNA meet the current interpretation, and whether any revisions should be considered, with a view to ensuring that such trade does not pose a threat to the survival of CITES-listed species; 2. Report the findings and recommendations of this study to the 29th meeting of the Animals Committee, the 23rd meeting of the Plants Committee, and the 69th meeting of the Standing Committee;

Directed to the Animals and Plants Committees

17.yy

At the 29th meeting of the Animals Committee and the 23rd meeting of the Plants Committee, the Animals and Plants Committees are requested to review the findings and recommendations of the Secretariat's report in 17.xz and make recommendations for consideration at the 69th meeting of the Standing Committee, including appropriate revisions to existing resolutions.

Directed to the Standing Committee

17.yz At its 69th meeting, the Standing Committee is requested to review the findings and recommendations of the Secretariat's report in 17.xz and the recommendations of the Animals and Plants Committees, and make recommendations for consideration at CoP18, including appropriate revisions to existing resolutions.