

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

Fifty-third meeting of the Standing Committee
Geneva (Switzerland), 27 June-1 July 2005

Interpretation and implementation of the Convention

Export quotas

ZERO EXPORT QUOTAS

1. This document has been submitted by Mexico on behalf of the North American region.

Background

2. During the 13th meeting of the Conference of the Parties, Australia and Madagascar submitted a proposal for the inclusion of the Great White shark (*Carcharodon carcharias*) in Appendix II with a zero annual export quota. Apparently, this was the first proposal to put forward the inclusion of a species in Appendix II with this annotation. Although the Conference of the Parties has adopted zero quotas for other species in previous meetings, some concerns were raised by some Parties, NGOs and the Secretariat regarding the scope and interpretation of this type of annotation.
3. Regarding the Great White Shark proposal, the Secretariat stated that the consequence of establishing a zero export quota in an annotation would be that any export of any specimen of the species would be prohibited. In consequence, it would be even more restrictive than an Appendix-I listing, which would for instance still allow for the export of specimens for non-commercial purposes or personal use. This idea was supported by some Parties (e.g. United Kingdom, China) and NGOs (e.g. IWMC World Conservation Trust), but other countries considered that an Appendix II listing (even with a zero export quota) cannot be more restrictive than an Appendix I listing, mainly because of the fundamental principles, definitions and provisions that define and regulate trade of species of both Appendices.
4. According to an analysis made by TRAFFIC-IUCN the inclusion of a species in Appendix II with a zero annual export quota would not only stop the export for commercial purposes, but would not allow for exchange in scientific specimens. Nevertheless, its interpretation of this annotation regarding trade in household and personal effects was that this would not be affected by the annotation other than where the country in which the product is acquired requires an export permit.
5. Interpretation of the reasons or the rationale behind this type of listing was also discussed. Some Parties and NGOs considered that a proposal with this kind of annotation would imply that the species does not meet the criteria for Appendix I and this type of case (zero quota) should be avoided and not become a regular option to ban trade. Others stated that a zero quota appears to be implying that Range States are not capable of responsibly managing their resources. Some Parties considered the opposite and pointed out that the species qualifies for being included in Appendix I, which would be more difficult to be approved by Parties. Nevertheless, many agreed that an Appendix-II listing requires the Parties to have the capacity to comply with Article IV and be able to demonstrate that trade is not detrimental to the survival of the species.
6. Regarding non-detriment findings (NDF), in relation to the proposal to list the whale shark (*Rhincodon typus*) in Appendix II discussed at CoP12, the Secretariat stated that "it was not clear how any Party would be able to make a non-detriment finding because of the paucity of information on this species, its highly migratory nature, and the lack of specific management programmes for this species on the high seas or in national waters." Australia believed these comments were equally valid for the Great White Shark (Prop. 32) and therefore recommended a zero quota until these issues are resolved and

it becomes possible to issue non-detriment findings in support of future quotas. Australia mentioned also that the choice of an Appendix II nomination with a zero quota however contains sufficient flexibility that if the status of the species is improved, the annotation could be amended to permit some trade in Great White Shark products. This approach is considered to be easier than having to present a down-listing proposal if the species was included on Appendix I; mainly due to precautionary measures required in Appendix 4 of Resolution Conf. 9.24.

7. In addition, other advantages can be mentioned regarding the rationale of an Appendix II zero quota listing. This type of annotation can be used as a precautionary measure for Appendix II species, which wild populations are, at the time, not in conditions to be traded (due to lack of information to carry out the NDF or to the conservation status). It can also be useful as a precautionary measure for down-listing Appendix I species that are believed to still are somehow sensitive to trade.
8. Australia and Madagascar agreed to amend their proposal to eliminate the zero quota annotation, but the debate on this issue was already opened and the concerns already rose by several Parties. This proposal exemplifies, not only the advantages or reasons behind this type of annotation, but also the complexity of the issue and the confusion and lack of clarity within the provisions of the Convention regarding the interpretation and applicability of an Appendix II zero quota listing.
9. Based on the above, this document presents an analysis of the current and historical authorized zero quotas for different species, pointing out the different types that have been used in CITES provisions, the ways in which they have been adopted and the origin of these quotas. Also, it presents some gaps that have been identified in relation to definitions and rules or guidelines on how to establish, interpret, and implement this type of quota. Finally, a proposal on a way to move forward on this issue is presented, along with some specific recommendations for the consideration of the Standing Committee. This document was prepared intending to be a point of departure to trigger discussion and a deep analysis of the issue and does not represent a final proposal to be approved or rejected by the Standing Committee.

Zero quota provisions within the Convention

10. According to the Secretariat, there are no specific requirements within the text of the Convention to establish quotas to limit the trade in CITES-listed species. Parties usually set export quotas individually, but they can also be set by the Conference of the Parties (CoP), and they are generally, but not always, set on an annual basis. Historically, quotas have been established by Parties aiming to impose trade limits for plant or animal specimens taken from the wild and for primarily commercial purposes, but none of these are within the Text of the Convention or its Resolutions. Quotas can be established by the Conference of the Parties or on a voluntary basis by the Parties themselves, and examples of zero quotas can be found in both cases. Although not widely recognized, the Standing Committee, as will be analysed in more detail later in this document, can also establish zero quotas.
11. The use of export quotas was created by Parties to facilitate trade control of certain species. This under the assumption that they are managed in a way that an export limit can be given, generally based on national management plans or catch quotas that are considered not to have a negative impact on wild populations of the species concerned. This implies that a general NDF has been given for a particular species and or stock (country) and for a defined period of time, which is the main requirement for export of Appendix II species as stated in Article IV of the Convention.
12. Within this type of regulation, there is a particular type of quota that has been used recently by parties, the zero export quotas. Currently this type of quota, as well as the others, can be set either on a voluntary basis or established during the meetings of the Conference of the Parties. The zero quota setting can have different scopes in different aspects: geographic (e.g. country, region, population, etc.), taxonomic (species or higher taxonomic hierarchy levels).
13. Examples of voluntary zero quotas established by Parties are those adopted for 2005 with several species of *Uroplatus*, *Mantella* and *Brookesia* genus by Madagascar; *Naja* spp. by Malaysia and *Acipenser* spp. for different stocks and countries; while in 2004: *Naja* spp. by Malaysia; in 2003 Several species and genera of Anthozoa by Fiji; or in 2002 *Gonystylus* spp. (App. III) from Indonesia and *Pyxis planicauda* by Madagascar (2001 and 2002), etc. It is worth mentioning that *P. planicauda*

was later up-listed to App. I, mainly because both Madagascar and importing countries failed to stem illegal trade, compelling the former to propose it for up-listing.

14. There are different ways in which the Conference of the Parties can establish an export quota in a variety of circumstances. These quotas are either specified in Appendices I and II as annotations or they are specified in a Resolution of the Conference of the Parties (e.g. Resolution Conf. 10.14 (Rev. CoP13) for the Leopard (*Panthera pardus*) and Resolution Conf. 10.15 (Rev. CoP12) for the Markhor (*Capra falconeri*)).
15. The quotas specified in the Appendices are usually established when there are special concerns about a species being transferred from Appendix I to Appendix II. In this case the quotas are specified in annotations to Appendices I and II. Former annotation °604 for the African elephant (*Loxodonta africana*) regarding trade in raw ivory is an example of a zero quota established by Parties. Other examples of this case are presented in the Annex to this document for *Vicugna vicugna* (Bolivia), *Melanosuchus niger* (Ecuador), and *Tursiops truncatus ponticus* (Georgia). On the other hand, this type of annotation can also be originated from proposals that aim to include a species directly in Appendix I, but that were amended to be included in Appendix II with a zero export quota (e.g. Prop. 10.18 Inclusion of *Chaetophractus nationi* in Appendix I), or amended proposals to transfer a species to Appendix I (e.g. Prop. 11.13 Asian Pangolins (*Manis* spp.); Prop. 11.38 African spurred tortoise, *Geochelone sulcata*). It is important to mention that proposals to use zero quotas may derive directly from the Parties or can be based upon recommendations by the Plants or Animals Committees. See annex for details of the cases cited above.
16. Regarding the available mechanisms, Resolution 9.24 (Rev. CoP13) establishes another mechanism to establish a zero quota, although it does not specify the scope or the type of specimens to which this zero quotas applies to. Literally, paragraph C2 of Appendix 4 "Precautionary measures", states "When a quota has been established for a limited period of time, after that period the quota will become zero until a new quota has been established." This refers to quotas established to species included in Appendix I transferred to Appendix II and that, as a precautionary safeguard and as an integral part of the amendment proposal, were set an export quota or other special measure was taken by the Conference of the Parties. Such quotas can only be renewed, amended or deleted by submitting an appropriate proposal for consideration at the next meeting of the Conference of the Parties.
17. According to Resolution Conf. 11.21 (Rev. CoP13) "Use of annotations in Appendices I and II", annotations that specify the types of specimens or export quotas to which some species are subject are substantive annotations, and are integral parts of species listings. Substantive annotations relating to species in Appendix I or II may be introduced, amended or deleted only by the Conference of the Parties in accordance with Article XV of the Convention. It also agrees that for species transferred to Appendix II subject to an annotation that specifies the type of specimens included in that Appendix, the specimens that are not specifically included in the annotation shall be deemed to be specimens of species included in Appendix I, and the trade in them shall be regulated accordingly (e.g. *Chaetophractus nationi*).
18. Although not widely recognized as a mechanism to establish quotas, the CoP has established zero export quotas via Decisions. An example of this was Decision 11.58 for Sturgeons (Acipenseriformes) adopted at CoP11, which reminded range States that "they should declare coordinated intergovernmental level annual export and catch quotas per basin, or biogeographical region where appropriate, for all commercial trade in specimens of Acipenseriformes and inform the Secretariat prior to 31 December of the preceding year. Parties that fail to inform the Secretariat will automatically be treated as having a zero quota for the following year." (See Notification No. 2001/073). This type of zero export quota can be interpreted as a "conditional zero export quota" established by the Conference of the Parties.
19. Even though Decision 11.58 is no longer valid, the CoP recommends in Resolution Conf. 12.7 (Rev. CoP13), regarding catch and export quotas, that Parties do not accept the import of specimens of species of Acipenseriformes from stocks shared between different range States unless certain specifications are fulfilled (e.g. agreement by range States and appropriate regional conservation strategy and monitoring regime). It is important to point out that this recommendation is not a zero

export quota, but the effect might be considered functionally equivalent. It is clear that this type of trade restriction mechanism is different from that lying behind the establishment of zero export quotas, as well as the problems intended to address are different. Nevertheless, it is also important to clarify the ways in which this type of restrictions should be interpreted and implemented by Parties.

20. Even more, the Standing Committee can also establish trade restrictions by ways of the Significant Trade Review and upon recommendations of the Plants and Animals Committees. Although this is not properly recognized as a zero quota, according to Resolution Conf. 12.8 (Rev. CoP13) recommendations directed to Range States that have been classified under the category of "species of urgent concern" may include cautious export quotas or temporary restrictions on exports of the species concerned. This might be considered equivalent to a temporal establishment of a zero export quota. Temporal trade suspensions sometimes specify the type of specimens for which the Standing Committee recommends Parties not to import, or those that they may import, but in most cases it is a general recommendation to suspend the import of all specimens of the species and countries concerned. In these cases, it is not clear whether non-commercial transactions or exchange of specimens between scientific institutions or for conservation reasons is allowed or not, and in this way, they share the same uncertainty of zero quotas established in Appendices annotations. See Notification 2004/028 which has a good summary of recommendations of the Standing Committee regarding temporal suspensions of trade for certain species and countries. Resolution Conf. 9.24 (Rev. CoP13) encourages proponents to submit proposals to transfer species to Appendix I, or to establish zero export quotas for species under review in accordance with the provisions of the Review of Significant Trade, to take account of the applicable findings of that review.
21. According to all the information presented and analysed above, apparently there are no specific requirements or rules, either within the text of the Convention or in its Resolutions, to guide the Parties in the process of establishment of zero export quotas to limit the trade in certain CITES-listed species. Neither there is an explanation or a guide on how to interpret these quotas when adopted by the CoP or by Parties on a voluntary basis.

Interpretations

22. Even though there are various ways to establish a zero quota, there are still different interpretations of what this resource means in terms of the allowance of non commercial trade (like research or trade with conservation purposes), particularly for those annotation that do not specify the type of specimens that are covered by the zero quota.
23. According to a document prepared by the Export Quota Working Group (EQWWG1 Rep. 1 CoP13) in which a Draft Resolution is presented, in general there is an agreement that quotas should be understood to apply to specimens of wild origin, unless the quota states otherwise (See Doc. SC50 Inf. 1, Annex 2, paragraph e).
24. Regarding the current annotation of zero export quota established for *Chaetophractus nationi* (Hairy armadillo), and the interpretation made by the Secretariat and some Parties that Appendix II with zero export quota would be even stricter than Appendix I, we have a different rationale. According to the valid Rules of Procedure for meetings of the CoP (see Rules 22 and 23), when a proposal is amended it cannot be modified in a way that it increases the scope of protection presented in the original proposal; this means that any modification should reduce its scope of protection or make it more precise, in other words the modifications would result in a proposal that will have a lower restrictive effect on trade of the species as compared with the original proposal. Considering the above, the adopted proposal for the hairy armadillo would implicitly indicate that a zero quota in Appendix II is considered to be less restrictive than an Appendix I listing, for it was adopted instead of the original proposal to include the species in Appendix I.
25. In conclusion, our interpretation is that for the time being zero quota should be interpreted as a limit for trade of (exclusively) specimens taken from the wild and for transactions with primarily commercial purposes, which implies that zero quota is not stricter than Appendix I, due to the less number of requirements for Appendix I specimens than Appendix II. As stated before, this has been the common use of quotas since their first use as an additional mechanism to improve trade in CITES

App. II species. This zero quota is also subject to the various general exemptions contained in the Text of the Convention like: exchange between scientific institutions, captive bred or artificially propagated specimens and personal and household effects. Even more, for some of these exemptions, such as the captive bred specimens and personal or household effects, it is clear that those restrictions for Appendix I species would be more restrictive than for those included in Appendix II with a zero quota annotation.

26. In addition, regarding the applicability of a zero quota for specimens traded with conservation purposes, and taking into account the preceding paragraph, this annotation would not limit these types of transactions as stated by some Parties. Therefore, trade in these cases should be allowed for Appendix I and II species even when a zero quota has been set. Nevertheless, in all cases a NDF is mandatory. With this interpretation, there is no need for annotations in the appendices to clarify this in each case.

Recommendations

27. Given the fact that the term "quota" lacks a definition, there is a need to adopt one that should specify that it applies only to wild specimens and exclusively for trade with commercial purposes. This can be discussed, and the definition defined, either by the Export Quota WG, the technical implementation issues clearinghouse or a consultant, and with the support of the Secretariat, which should also establish a procedure on how to interpret quotas that do not specify the type of specimens covered, containing recommendations on the elements that should be included when proposing a quota (*e.g.* to specify the type of specimens covered by the quota).
28. To clarify the meaning of zero quota in terms of the nature of the specimens covered (*i.e.* wild origin, unless otherwise stated) and the type of transactions that are covered (*i.e.* primarily commercial) and excluded from the quota (general exemptions stated in Art. VII of the Convention; trade for conservation or research, which would anyway require a NDF according to articles III and IV, because they are not recognized exemptions, etc.).
29. The following tasks could be taken as a starting point for the Standing Committee to analyse them or, if considered appropriate, to be referred to a Working Group, a consultant, etc.
- a) Consider the establishment of a general definition for quota and the different types of quotas, and recommend the pertinent amendments to relevant Resolutions (*e.g.* Annotations, Trophy Hunting, Quotas for Appendix I species, Significant Trade Review, Amendment to the Appendices, etc.) to clarify the format and scope in which the different types of quotas should be written.
 - b) Evaluate the convenience and feasibility of using zero export quotas, and make a list of the cases where it is advisable to do so and those where it is preferable to avoid them.
 - c) Evaluate the different mechanisms that are in place for the establishment of zero quotas (Resolutions, Annotations, Decisions, recommendations derived from a Significant Trade Review, Voluntary quotas), identify differences and common elements in order to harmonize them in relation to quotas and try to reach a consensus in general definitions and common procedures and guidelines to elaborate, establish, interpret and implement quotas according to the Convention fundamental principles.
 - d) Consider the need to draft a section that deals specifically with zero quotas within a general Resolution for Export Quotas.
 - e) Analyse and identify the differences (specifically regarding interpretation problems and scope) of zero quotas and other types of restrictions to trade, such as those imposed by Resolutions, Decisions or recommendations to suspend trade made by the Standing Committee in relation to non-compliance of various provisions of the Convention (*e.g.* non-compliance of recommendations derived from Significant Trade Review, National legislation inadequacy, failure to deliver annual reports, etc.), and how should these restrictions be interpreted in terms of the type of specimens and transactions covered by the recommendations. It is possible that some of these matters could overlap with the work of the Compliance Working Group. For this reason,

the Standing Committee might consider focusing the discussion on the most important aspects directly related to zero export quotas and refer associated issues to some other WG.

Examples of zero quotas established by the Conference of the Parties or the Standing Committee

Species/ Population	App.	Quota/ Annotation	Mechanism/ Type	Established	Description and details	Valid
Melanosuchus niger Black caiman Population of Ecuador	I/II	Zero annual export quota until an annual export quota has been approved by Secretariat and CSG.	Appendices Annotation	Established by CoP9 (1994)	<p>Proposal: No documents available on the Web.</p> <p>Decision: Transfer of the population of Melanosuchus niger of Ecuador to Appendix II pursuant to Resolution Conf. 3.15 on ranching but with a zero export quota until an annual export quota had been approved by the CITES Secretariat and the IUCN/SSC Crocodile Specialist Group.</p> <p>Notes: In 1998 a quota was established for 30 specimens (see Notification to the Parties No. 1998/36); In 2003 an additional annual export quota of 15 live, ranches was approved by the CITES Secretariat and the IUCN/SSC Crocodile Specialist Group (CSG).</p>	Yes
Chaetophractus nationi*		A zero annual export quota has been established. All specimens shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly.	Appendices Annotation	Established by CoP10 (1997)	<p>Proposal (Bolivia): Prop. 10.18: Inclusion in Appendix I of Chaetophractus nationi.</p> <p>Decision: Proposal adopted by consensus as amended to include the species in Appendix II with a zero export quota.</p> <p>A proposal to include this species in Appendix II at CoP8 was rejected. According to the Secretariat inclusion in Appendix I would not be of great help and it was suggested to reject the proposal or include the specie in Appendix II. The delegation of Bolivia informed the Secretariat that they had changed the proposal to list Chaetophractus nationi in Appendix II with a zero quota.</p> <p>Apparently, the following text that appears in the current annotation for the species "All specimens shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly" was added after the CoP. Needs clarification.</p>	Yes

Species/ Population	App.	Quota/ Annotation	Mechanism/ Type	Established	Description and details	Valid
Vicugna vicugna Vicuña Bolivian populations that are in App. II	I/II	Allow only the international trade in cloth made of wool sheared from live vicuñas, from certain conservation units and under the mark "Vicuña-Bolivia", but with a zero export quota.	Appendices Annotation	Established by CoP10 (1997)	<p>Proposal: Prop. 10.33 (Bolivia): Transfer from Appendix I to Appendix II of Vicugna vicugna: Populations of certain conservation units and to allow only the international trade in cloth made of wool sheared from live vicuñas, under a defined mark.</p> <p>Decision: Proposal adopted as amended to transfer the species to App. II: The populations of the Conservation Units of Mauri-Desaguadero, Ulla Ulla and Lipez-Chichas, Bolivia, with an annotation to allow only the international trade in cloth made of wool sheared from live vicuñas, under the mark "VICUÑA-BOLIVIA", but with a zero export quota.</p> <p>Apparently the amendment to the proposal was in violation of Rules of Procedure, because the scope of the proposal was increased. A zero quota would be considered to be more restrictive for trade than the original proposal of transferring the species to Appendix II alone.</p> <p>Zero quota for Bolivian populations that are in App. II was deleted in CoP11 (2000).</p>	No
Loxodonta africana African Elephant South African population	I/II	Trade in raw ivory shall be whole tusks of government-owned stock originating from the Kruger National Park, subject to a zero quota.	Appendices Annotation	Established by CoP11 (2000)	<p>Prop. 11.20 (South Africa): The proposal included the trade in raw ivory under an experimental quota of 30 ton. max. of whole tusks of government owned stock originating from the Kruger National Park, subject to the provisions as set out in Resolution Conf. 10.10; Decision 10.1 and document Doc. SC.41.6.4 (Rev. 2).</p> <p>Decision: The proposal was accepted by consensus as amended and the South African population was transferred to Appendix II to allow for commercial trade in hides and leather goods, hunting trophies for non-commercial purposes, trade in live animals for reintroduction and a zero quota in raw ivory (Annotation 0604 to Appendices I & II: Trade in raw ivory shall be whole tusks of government-owned stock originating from the Kruger National Park, subject to a zero quota. All other specimens shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly).</p> <p>Note: Apparently the amendment to the proposal was in violation of Rules of Procedure, because the scope of the proposal was increased. A zero quota for raw ivory would be considered to be more restrictive for trade than the original quota of 30 ton.</p>	No

Species/ Population	App.	Quota/ Annotation	Mechanism/ Type	Established	Description and details	Valid
Manis crassicaudata, Manis javanica, Manis pentadactyla Indian Pangolin, Chinese Pangolin, and Malayan Pangolin	II	Zero annual export quota for specimens removed from the wild and traded for primarily commercial purposes.	Appendices Annotation	Established by CoP11 (2000)	Proposal: Prop. 11.13 (India, Nepal, Sri Lanka and the United States of America): Transfer these three species of Pangolin (Indian Pangolin, Chinese Pangolin, and Malayan Pangolin) from Appendix II to Appendix I. The rest of the species of Manis spp. remain in Appendix II without quota. The proposal was ACCEPTED by consensus as amended, this is to maintain them in App. II with a zero quota for trade in wild specimens for commercial purposes, which is currently in place. Decision: Proposal accepted as amended by consensus (maintain in App. II with a zero quota for trade in wild specimen for commercial purposes).	
Geochelone sulcata African Spurred Turtle	II	Zero annual export quota for specimens removed from the wild and traded for primarily commercial purposes.	Appendices Annotation	Established by CoP11 (2000)	Proposal 11.38 (France): Transfer from App. II to App. I Decision: Proposal was accepted as amended: Zero quota for exports from the wild (VOTE 73 / 17, 22 abstentions).	Yes
Acipenseriformes Sturgeons	II	Zero export quota for Parties that fail to inform the Secretariat the agreed regional/stock quotas.	Decision	Established by CoP11 (2000)	Decision 11.58 for Sturgeons (Acipenseriformes) taken at the 11th meeting of the Conference of the Parties, reminds range States, among other things, that "starting from 1 January 2001, range States should declare coordinated intergovernmental level annual export and catch quotas per basin, or biogeographical region where appropriate, for all commercial trade in specimens of Acipenseriformes. Parties should inform the Secretariat prior to 31 December of the preceding year. Parties that fail to inform the Secretariat will automatically be treated as having a zero quota for the following year".	No
Acipenseriformes Sturgeons	II	Zero quota for Caspian Sea sturgeon and caviar for 4 countries.	Resolution / Non-compliance Measure	Established by Standing Committee (2001)	In June 2001, the CITES Standing Committee decided that this had not been achieved and issued a zero quota for Caspian Sea sturgeon and caviar for four countries for the remainder of the year (Iran faced no restrictions because it had a functioning sturgeon management system).	No

Species/ Population	App.	Quota/ Annotation	Mechanism/ Type	Established	Description and details	Valid
Tursiops truncatus Bottle-nose dolphin Black Sea population	II	Zero annual export quota for live specimens from the Black Sea population of Tursiops truncatus removed from the wild and traded for primarily commercial purposes.	Appendices Annotation	Established by CoP12 (2002)	Proposal: CoP12 Prop. 3 Transfer of Tursiops truncatus ponticus from Appendix II to Appendix I (Georgia). Decision: CETACEA spp. in Appendix II is annotated to state that a zero annual export quota has been established for live specimens from the Black Sea population of Tursiops truncatus removed from the wild and traded for primarily commercial purposes.	Yes