

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

Thirteenth meeting of the Conference of the Parties
Bangkok (Thailand), 2-14 October 2004

Interpretation and implementation of the Convention

Trade control and marking issues

REVISION OF RESOLUTION CONF. 9.10 (REV.) ON DISPOSAL OF ILLEGALLY TRADED,
CONFISCATED AND ACCUMULATED SPECIMENS

1. This document has been submitted by Kenya.
2. It has come to our attention that there is currently no guidance to Parties on the disposal of illegally traded, confiscated and accumulated dead specimens of Appendix-I species. Between the third and the ninth meetings of the Conference of the Parties (New Delhi, 1981, and Fort Lauderdale, 1994), such guidance was provided by Resolution Conf. 3.14 which recommended in paragraph e):

that Parties transfer confiscated accumulated dead specimens of Appendix I species only for bona fide scientific/educational or enforcement/identification purposes, and that Parties save in storage or destroy those excess specimens where transfer for these purposes is not practicable.

3. At the ninth meeting of the Conference of the Parties, Resolution Conf. 3.14 was repealed and replaced by Resolution Conf. 9.10, which consolidated guidance from various Resolutions. Paragraph e) of Resolution Conf. 3.14 became paragraph k) of Resolution Conf. 9.10.
4. At the tenth meeting of the Conference of the Parties (Harare, 1997), Resolution Conf. 9.10 was amended and provisions on the disposal of confiscated live specimens of Appendix-I species transferred to Resolution Conf. 10.7. In the process of amendment and transfer paragraph k) was omitted from the revised Resolution Conf. 9.10.
5. The omission has led to confusion and uncertainty over how Parties should dispose of confiscated dead specimens of Appendix-I species.
6. It is our understanding that this omission was inadvertent and that the Conference of the Parties did not intend to leave a loophole that could lead to the sale of such specimens.
7. It is therefore proposed to amend Resolution Conf. 9.10 (Rev.) to provide for the appropriate disposal of illegally traded, confiscated and accumulated dead specimens of Appendix-I species.
8. It is further proposed to expand the provision for disposal of dead specimens of Appendix-II species to include dead specimens of Appendix-III species, and to recognize the right of Parties to decide not to allow their sale.
9. In order to act as a disincentive for illegal trade, it is also proposed that the provision for recovering from the guilty party costs associated with confiscation, storage and disposal of live specimens of Appendix-II species be broadened to include dead specimens of Appendix-I, -II and -III species. Kenya therefore recommends the adoption of the draft revision of Resolution Conf. 9.10 (Rev.) as outlined in the Annex.

COMMENT FROM THE SECRETARIAT

The Secretariat generally supports the amendments proposed by Kenya to Resolution Conf. 9.10 (Rev.).

DRAFT RESOLUTION OF THE CONFERENCE OF THE PARTIES

Revision of Resolution Conf. 9.10 (Rev.) on Disposal of illegally traded,
confiscated and accumulated specimens

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

RECALLING Resolutions Conf. 2.15, Conf. 3.9, paragraph c) ii), Conf. 3.14, Conf. 4.17, Conf. 4.18, Conf. 5.14, paragraph f), and Conf. 7.6, adopted by the Conference of the Parties at its second, third, fourth, fifth and seventh meetings (San José, 1979; New Delhi, 1981; Gaborone, 1983; Buenos Aires, 1985; Lausanne, 1989), relating to illegally traded, confiscated and accumulated specimens, international compliance control and other aspects of enforcement;

RECOGNIZING that Parties have experienced problems with the disposal of specimens of Appendix-I species that have been obtained as a result of confiscation, accidental death or otherwise;

RECALLING that Article III, paragraph 4 (a), and Article IV, paragraph 5 (a), of the Convention require that as a pre-condition for the issuance of a re-export certificate the Management Authority of the State of re-export be "satisfied that the specimen was imported into that State in accordance with the provisions of the present Convention";

WHEREAS Article VIII of the Convention requires Parties to take appropriate measures to enforce the provisions of the Convention and to prohibit trade in specimens in violation thereof, including measures to provide for the confiscation or return to the State of export of illegally traded specimens;

RECOGNIZING that Article VIII, paragraph 4 (b), of the Convention requires Parties to return any confiscated living specimen to the State of export, after consultation with and at the expense of that State, or to place it in a rescue centre or other appropriate place;

NOTING, however, that Article VIII does not preclude the Management Authority allowing the importer to refuse acceptance of a shipment, thus forcing the transporter to carry the shipment back to the (re-) exporter;

CONSIDERING that a Party may also provide for the internal reimbursement of expenses that result from the confiscation of a specimen traded in violation of the Convention;

AWARE of Resolution Conf. 10.7 on Disposal of confiscated live specimens included in the Appendices, which considers that the successful recovery of the costs of confiscation and disposal from the guilty party may be a disincentive for illegal trade;

AWARE that some Parties do not allow the sale of confiscated specimens because of the message this transmits to the public;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

RECOMMENDS that:

Regarding the export or re-export of illegally traded specimens

- a) except in the circumstances specified in paragraphs b) and c) below, Parties not authorize any re-export of specimens for which there is evidence that they were imported in violation of the Convention;
- b) when applying Article III, paragraph 4 (a), and Article IV, paragraph 5 (a), of the Convention to specimens imported not in accordance with the provisions of the Convention that are being re-exported by a Management Authority for purposes of implementing the provisions of Article VIII or of

this Resolution, or for investigatory or judicial purposes, the specimens be deemed to have been imported in accordance with the provisions of the Convention;

- c) when applying Article IV, paragraphs 2 (b) and 5 (a), of the Convention to specimens of species in Appendix II that have been confiscated as a result of attempts to import or export them illegally and that have subsequently been sold by the Management Authority, having satisfied itself that this would not be detrimental to the survival of the species, the specimens be deemed to have been obtained in accordance with the provisions of the Convention and with the laws of the State for the protection of fauna and flora for the purposes of issuing export permits or re-export certificates; and
- d) permits and certificates granted in accordance with paragraph b) or c) above clearly indicate that the specimens are confiscated specimens;

Regarding the disposal of illegally traded, confiscated and accumulated dead specimens of Appendix-I species

- e) Parties transfer confiscated and accumulated dead specimens of Appendix-I species, including parts and derivatives, only for bona fide scientific/educational or enforcement/identification purposes, and that Parties save in storage or destroy those excess specimens whose transfer for these purposes is not practicable;
- f) Parties make legislative provision to require the guilty importer and/or the carrier to meet the costs of confiscation, custody and storage or destruction of the specimens;

Regarding the disposal of illegally traded, confiscated and accumulated specimens of species in Appendix II and Appendix III

- eg) as a general rule, confiscated dead specimens, including parts and derivatives, of Appendix-II and Appendix-III species be disposed of in the best manner possible to benefit enforcement and administration of the Convention, and that steps be taken to ensure that the person responsible for the offence does not receive financial or other gain from the disposal;
- h) should they choose to do so, Parties have the right to decide not to allow the sale of confiscated dead specimens, including parts and derivatives, of Appendix-II and -III species;
- ~~fi) in the case of live specimens, Parties having not done so endeavour to~~ make legislative provision to require the guilty importer and/or the carrier to meet the costs of confiscation, custody and disposal, including returning specimens to the country of origin or re-export (as appropriate), where the Scientific Authority of the confiscating State deems it in the interest of the specimens to do so, and the country of origin or re-export so wishes; and
- ej) where such legislation does not exist and the country of origin or re-export wishes the live specimens to be returned, the financial assistance of non-governmental organizations be sought to facilitate the return;

Regarding the disposal of seized or confiscated plants

- ~~hk)~~ priority be given to the care of seized or confiscated wild-collected specimens of Appendix-I species and of Appendix-II species that may be at risk; and

In general

- ~~il)~~ Parties publicize information on seizures and confiscations when appropriate as a deterrent to illegal trade, and inform the public about their procedures for dealing with seized and confiscated specimens and about rescue centres; and

REPEALS the Resolutions, or parts thereof, listed hereunder:

- a) Resolution Conf. 2.15 (San José, 1979) – Exchange of Confiscated Appendix-I Specimens;
- b) Resolution Conf. 3.9 (New Delhi, 1981) – International Compliance Control – paragraph c) ii);
- c) Resolution Conf. 3.14 (New Delhi, 1981) – Disposal of Confiscated or Accumulated Specimens of Appendix-I Species;
- d) Resolution Conf. 4.17 (Gaborone, 1983) – Re-export of Confiscated Specimens;
- e) Resolution Conf. 4.18 (Gaborone, 1983) – Disposal and Return of Illegally Traded Appendix-II Specimens;
- f) Resolution Conf. 5.14 (Buenos Aires, 1985) – Improving the Regulation of Trade in Plants – paragraph f); and
- g) Resolution Conf. 7.6 (Lausanne, 1989) – Return of Live Animals of Appendix-II or -III Species.