

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



Sixteenth meeting of the Conference of the Parties
Bangkok (Thailand), 3-14 March 2013

Interpretation and implementation of the Convention

Amendment of the Appendices

PROPOSED REVISION OF RESOLUTION CONF 10.9 ON
CONSIDERATION OF PROPOSALS FOR THE TRANSFER OF
AFRICAN ELEPHANT POPULATIONS FROM APPENDIX I TO APPENDIX II

1. This document has been submitted by Côte d'Ivoire, Liberia, Mali¹ and Sierra Leone².

Background

2. The Parties to CITES are required to consider the report of the Panel of Experts (developed in accordance with Resolution Conf 10.9) when analyzing Proposals to downlist populations of African Elephants from Appendix I to Appendix II.
3. At previous meetings of the Conference of the Parties to CITES, the report of the Panel of Experts has sometimes been provided extremely late, rendering it very difficult for Parties to adequately analyze the report and use it to inform their decisions. At CoP15, for example, the English version of the Panel of Experts report concerning the Proposal by Zambia to downlist its elephant population (CoP15 Doc. 68 Annex 6 b), was not made available until the 11 March 2010, two days before CoP15 began. Similarly, the French version of the two Panel of Experts reports (CoP15 Doc. 68 Annex 6 a, and CoP15 Doc. 68 Annex 6 b) was not made available until after CoP15 had begun and the Spanish version of these same documents was made available on April 1st 2010, one week after CoP15 was over. This delay in the translation of the Panel of Experts report interfered with the implementation of Rule 8 of the Rules of Procedure of the Conference of the Parties which provides that "The official documents of the meeting shall be distributed in the three working languages except for informative documents submitted in accordance with Rule 28 which are not submitted for discussion and therefore shall be distributed in the language in which they are provided." It also prevented non-English speakers from accessing vital information on which they may rely.
4. Given the complexity of debate concerning elephant downlisting Proposals, the Panel of Experts reports are viewed by many Parties as integral to their decision-making processes, and as such these delays are of considerable concern. Delays also interfere with the ability of countries proposing a downlisting to respond to the concerns expressed in the Panel's report. The special mechanism created in Resolution Conf. 10.9 for considering proposals to transfer certain African elephant populations from Appendix I to Appendix II should therefore be improved to ensure that information contained in the Panel of Experts report can be taken into account sufficiently in advance by all CITES Parties;

¹ Note from the Secretariat: no official submission of the present document has been received from this country.

² 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.

5. Resolution Conf 10.9 states that costs associated with the Panel of Experts mission is to be provided by the CITES regular budget, but does not indicate how the costs of translation should be met. Clarifying this in the text of the Resolution might help reduce delays in the submission of translated reports.

Recommendation

6. The Proponents understand that the delays in producing the Panel of Experts reports are largely due to the significant amount of time it can take to identify and approve which experts shall be invited onto the Panel. This has subsequently led to delays in convening a mission to the Proponent country and in the production of a report from that mission. The Proponents therefore recommend the establishment of a standing Panel of Experts to shortcut the designation process.
7. Because CITES funds are increasingly limited, the proponents recommend that the cost of the Panel of Experts mission, and production of the Panel's report into the three working languages of the Convention, should be met by the Proponent State.
8. The Proponents therefore recommend a number of amendments to Resolution Conf 10.9 in Annex I to this document.

COMMENTS FROM THE SECRETARIAT

- A. Although roughly 35,000 species of animals and plants are covered by CITES, the African elephant is the only species for which the Conference of the Parties has decided that proposals to amend the Appendices should be subject to a review by an *ad hoc* panel. As Resolution Conf. 10.9 has been in effect for more than 15 years, and given that Parties are now considering a decision-making mechanism for authorizing ivory trade, the Secretariat supports the intent of the proponents to revisit this Resolution but believes that it would be desirable for the Conference of the Parties to consider whether it is still needed and, if so, how it can be improved. Why does it refer to only the African elephant and not the Asian elephant? Should it refer to all possible amendments and not only to proposals for transfers to Appendix II? Should it refer to the criteria for inclusion of species in Appendices I and II? Should it refer to other species and not only to elephants? Is the cost (in time and effort) disproportionate to that spent on proposals relating to other species, or to the actual use that is made of the reports of the Panel of Experts?
- B. With regard to the background of the present document, while the Secretariat shares the concern regarding the lateness of some reports of the Panel, two corrections should be noted:
 - i) It is correct that the reports of the Panel of Experts for CoP15 were completed only shortly before the meeting, and that the delay was, at its root, the result of a prolonged process in appointing the Panel. But, it is not correct that the Spanish versions of these reports were made available a week after the meeting. The Spanish and French versions of these reports were provided to participants in printed form on the second day of the meeting;
 - ii) Regarding the suggestion that delays in finishing the report "interfere with the ability of countries proposing a downlisting to respond to the concerns expressed in the Panel's report", it should be noted that the Panel always discusses its findings with the country concerned during its mission;
 - iii) Paragraph 5 states that Resolution Conf. 10.9 "does not indicate how the costs of translation should be met". But, the Resolution does state, in paragraph i) vi), that "the Panel of Experts shall ... be financed from the regular budget of the CITES Secretariat or from funds assigned for this purpose by Parties". This means that the funding is from the Trust Fund Budget unless there is a donation from a Party.
- C. With regard to the amendments proposed to Resolution Conf. 10.9 in the Annex to the present document, the Secretariat believes that these raise a number of issues:
 - i) Regarding the proposal that the proponent States should pay the costs of the missions of the Panel of Experts and of the translation of the Panel's report, Parties may want to consider whether this is fair and reasonable, considering that each State proposing the transfer of its elephant population to Appendix II has presented its complete case for the proposal and that the review by a Panel of Experts is an additional requirement requested by the Conference of the Parties. In this context, it

should also be noted that the amendments proposed in the Annex would effectively quadruple the costs so far by doubling the number of Panel members and more-or-less doubling the period of their mission to each country;

- ii) Regarding the proposal that the proponent States should pay the costs of the translation of the Panel's report: Parties may want to consider whether this is appropriate, considering that such reports are official documents of the Conference of the Parties, and requested by the Conference of the Parties;
 - iii) Regarding the proposed size of the Panel of Experts, which must consider only three aspects of the proposal: what is the optimum number of experts?; is regional representation necessary?; and is expertise really needed in areas (such as sociology) that are not to be considered?;
 - iv) On the basis of the experience of the Secretariat, the requirement that the Panel conduct its mission to the proponent State within 30 days of the receipt of the proposal by the Secretariat is not realistic, considering in particular the need to coordinate with the Panel members and to organize their travel, and that there is no guarantee of their availability within that time. And the requirement that the mission for the whole Panel must be at least seven days seems unnecessary on the basis of past experience. If the work is completed in five days, why is it necessary to stay also for the weekend? But there is a need for flexibility, depending on what the Panel finds;
 - vi) With regard to what the Secretariat must do when it receives the report of the Panel of Experts, considering that this is an official document of a meeting of the Conference of the Parties, the Secretariat believes it should be treated as all other documents, and there is no need for special rules.
- D. In view of the above, if the Conference of the Parties decides to proceed with the amendment of Resolution Conf. 10.9 at CoP16, the Secretariat suggests that a working group would be needed to consider all aspects of the proposed amendments and their possible consequences. If this route is taken, the Secretariat will have a number of suggestions regarding the detail.
- E. In the view of the Secretariat, however, it would be useful to have a wider and deeper discussion on the utility of Resolution Conf. 10.9, whether it should be retained and, if so, whether it has broader applicability. It therefore recommends that, instead of adopting the amendments to Resolution Conf. 10.9 proposed in the Annex, the Conference of the Parties adopt the following draft decision:

Directed to the Standing Committee

The Standing Committee shall, in consultation with African and Asian elephant range States and the Secretariat, evaluate the need to revise Resolution Conf. 10.9 and present a summary of the consultations and its proposals in this regard at the 17th meeting of the Conference of the Parties.

DRAFT REVISION OF RESOLUTION CONF. 10.9
CONSIDERATION OF PROPOSALS FOR THE TRANSFER OF AFRICAN ELEPHANT
POPULATIONS FROM APPENDIX I TO APPENDIX II

NB: New text is underlined and deleted text is ~~struckthrough~~

RECALLING Resolution Conf. 7.9, adopted by the Conference of the Parties at its seventh meeting (Lausanne, 1989), which provided a special mechanism for considering proposals to transfer certain African elephant populations from Appendix I to Appendix II;

RECOGNIZING that the transfer of the African elephant to Appendix I was agreed by the Conference of the Parties in 1989 although populations in certain range States may not have met the criteria in Resolution Conf. 1.1, adopted at the first meeting of the Conference of the Parties (Bern, 1976);

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

RESOLVES that:

- a) all ~~p~~Proposals to transfer populations of the African elephant from Appendix I to Appendix II shall be subject to a review by a Panel of Experts, which shall consider:
 - i) the scientific evidence regarding the numbers and trends of the populations;
 - ii) the conservation and management of these populations, and threats to their status; and
 - iii) the adequacy of controls on trade in ivory and other parts and derivatives;
- b) the Panel of Experts shall comprise a Standing Panel of eight members, nominated by the Standing Committee in consultation with the range States. Members of the Standing Panel of Experts shall be appointed by the Standing Committee based on the conditions set out in paragraphs c) and d) of this resolution regarding regional representation and expertise.
- c) the Panel of Experts shall include regional representation as follows:
 - i) At least one expert representative from East Africa
 - ii) At least one expert representative from West Africa
 - iii) At least one expert representative from Central Africa
 - iv) At least one expert representative from Southern Africa
- b d) the Panel of Experts shall include expertise in the following areas:
 - i) elephant ecology and population biology;
 - ii) field conservation and management;
 - iii) ~~monitoring of trade in parts and derivatives of elephants~~ wildlife crime investigation and wildlife law enforcement;
 - iv) ~~establishment and operation of trade regimes including establishment of quotas;~~ domestic wildlife laws;
 - v) security of stocks of elephant parts and derivatives; and
 - vi) monitoring of trade in elephant parts and derivatives; and and/or wildlife law enforcement;
 - vii) Sociology
- e) upon receipt of a Proposal to downlist African Elephant populations from Appendix I to Appendix II, the Secretariat shall notify the Standing Panel of Experts immediately and secure the availability of the panel to participate in a mission to the Proponent country within 30 days of receipt of the Proposal to downlist. Such mission will last at least seven days and no more than ten days;
- f) the Secretariat, working in collaboration with members of the Panel, shall then develop a budget covering the cost of the Panel's mission and costs associated with report drafting and translation in the three

languages of the Convention ; upon finalizing the budget, the Secretariat will send it to the proponent State and convene the Panel of Experts to allow it to start its mission.

- ~~e) the Standing Committee, after consultation as appropriate with UNEP, IUCN, TRAFFIC International, the affected range State and the region concerned, shall nominate the members of the Panel of Experts, which should not exceed six in number;~~
- ~~d) the selection should take into account the need for appropriate geographical representation;~~
- e) g) the proponent State should appoint a focal point representative to facilitate the work of the Panel and to act as an adviser;
- ~~f) the Standing Committee shall direct the CITES Secretariat to convene the Panel of Experts;~~
- ~~g) the Secretariat Panel of Experts shall notify the Panel of Experts not more than 14 days after the deadline for the submission of Proposals has passed as to whether it has received a relevant Proposal.~~
- i) The Panel of Experts shall:
 - i) participate in a mission of not less than 7 and not more than 10 days, meet at its earliest convenience but no later than ~~two months~~ 30 days following the notification by the Secretariat pursuant to paragraph h) above receipt by the Secretariat of a Proposal to be reviewed and as frequently thereafter as is necessary;
 - ~~i) evaluate, within 45 days after its first meeting if possible, each proposal to transfer a population to Appendix II;~~
 - ii) elect its Chairman from within its own membership;
 - iii) be provided with technical assistance and support by the Proponent Party, the Secretariat and any relevant expert as required;
 - iv) assign particular tasks to individual members and may appoint additional consultants to carry out specific studies on its behalf; and
 - v) submit their analysis of the Proposal to downlist an elephant population from Appendix I to Appendix II no later than 30 days after the conclusion of the mission;
 - ~~vi) be financed from the regular budget of the CITES Secretariat or from funds assigned for this purpose by Parties;~~
- ~~h) j) the proponent State shall:~~
 - i) ~~should undertake to give~~ provide the Panel or its accredited consultants free and unrestricted access to all data in its possession regarding elephant populations, elephant management, trade in parts and derivatives of elephants and, as appropriate, law enforcement procedures and actions;
 - ii) provide all necessary funding and resources for the Panel's mission and report preparation as per the budget prepared by the Secretariat in accordance with para f) above; and
 - iii) provide all necessary funding for translation of the Panel's reports into the three working languages of the Convention;
- ~~i) k) in evaluating the status and management of an elephant population the Panel of Experts shall take into account:~~
 - i) the viability and sustainability of the population, and potential risks;
 - ii) the proponent affected range State's demonstrated ability to monitor the subject population; and
 - iii) the effectiveness of the proponent range State's current anti-poaching measures;
- ~~j) l) in evaluating the proponent affected range State's ability to control trade in ivory from African elephants, the Panel of Experts shall take into account:~~
 - i) the impact of whether total levels of offtake from both legal and illegal killing and whether they are sustainable;
 - ii) whether control of ivory stocks is adequate to effectively prevent the mixing of legal and illegal ivory;
 - iii) whether law enforcement is effective and adequately resourced; and

- iv) whether enforcement and controls are sufficient to ensure that no significant amounts of ivory taken or traded illegally from other countries are traded within or through the territory of the proponent affected range State; and
- v) whether domestic legislation is adequate and adequately enforced;

k m) when appropriate, the Panel of Experts shall also consider:

- i) the trade in parts and derivatives from the African elephant other than ivory and the controls on such trade in the proponent State; and
- ii) the controls on ivory trade in specified importing countries;

l n) the Panel of Experts shall also evaluate whether acceptance of the proposal under review is likely to have a positive or negative impact on the conservation status of the elephant population and its environment in the proponent affected range State; and

o) the Secretariat shall:

- i) upon receipt of the Panel of Expert's report, immediately post this report in the form submitted on the CITES website and arrange for the report to be translated into the three working languages of the Convention;
- ii) publish the Panel of Expert's report on the CITES website in the three working languages of the Convention, no later than 15 days following receipt of the report;

m p) for the purpose of deciding on whether or not to approve the transfer of a population of the African elephant from Appendix I to Appendix II and the necessary conditions to be attached to such a transfer, the Parties shall take into account the report of the Panel of Experts and in particular:

- i) the status of the elephant population in the proponent affected range State;
- ii) the proponent affected-range State's ability to manage and conserve its population effectively; and
- iii) the proponent affected-range State's ability to control trade in elephant ivory; and

REPEALS Resolution Conf. 7.9 (Lausanne, 1989) - Terms of Reference for the Panel of Experts on the African Elephant and Criteria for the Transfer of Certain African Elephant Populations from Appendix I to Appendix II.