

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

Eleventh meeting of the Conference of the Parties
Gigiri (Kenya), 10-20 April 2000

Interpretation and implementation of the Convention

INTERPRETATION AND IMPLEMENTATION OF ARTICLE III, PARAGRAPH 5,
ARTICLE IV, PARAGRAPHS 6 AND 7 AND ARTICLE XIV, PARAGRAPHS 4, 5 AND 6,
RELATING TO INTRODUCTION FROM THE SEA

1. This document has been submitted by the Government of Australia.

Introduction

2. The Convention has the scope to apply to all species of wild fauna and flora, including marine species. Although the appendices to the Convention currently include numerous marine species, many of these species are not subject to international trade for commercial purposes.
3. The Convention contains provisions that enable Parties to trade in specimens of marine species in Appendix I and II subject to compliance with a number of requirements. In this context, provisions of the Convention make specific reference to 'introduction from the sea' and provide a framework to regulate international trade in specimens of species that can be regarded as introduction from the sea.
4. In Australia's view, a common approach to the interpretation of the provisions of the Convention relating to introductions from the sea is essential to ensure the effective implementation of those provisions. The draft resolution (at Annex 2) proposed by Australia seeks to provide a practical basis for such an approach.

Scope of draft resolution

5. The draft resolution provides a practical basis for the implementation of the provisions of the Convention relating to introduction from the sea – principally, Article III, Article IV and Article XIV of the Convention.
6. In particular, the draft resolution addresses the following key issues:
 - a) interpretation of the term "Introduction from the sea";
 - b) implementation of the provisions of Article III and Article IV of the Convention concerning the regulation of trade in specimens of species that are introduced from the sea;
 - c) the effect of the provisions of Article XIV of the Convention on the regulation of trade in specimens of species that are introduced from the sea;
 - d) consistency with previous Resolutions adopted by the Conference of Parties; and,
 - e) ensuring effective international co-operation.
7. Collectively addressing these issues provides advice on those situations in which a certificate of introduction from the sea is required (Annex 1), as well as situations where such a certificate is not required.

Interpretation of the term "Introduction from the sea"

8. Article I(e) of the Convention provides the following definition of the term "Introduction from the sea":

"transportation into a State of specimens of any species which were taken in the marine environment not under the jurisdiction of any State"

9. In this respect, the Convention does not elaborate further on the scope of the phrase "*the marine environment not under the jurisdiction of any State*". Clearly, an agreed understanding of the scope and meaning of that phrase is necessary for the implementation of the relevant provisions of the Convention relating to introduction from the sea.
10. In Australia's view, it is necessary to interpret the phrase "*the marine environment not under the jurisdiction of any State*" in a manner that is consistent with general principles of international law and in particular, the provisions of the 1982 United Nations Convention on the Law of the Sea (UNCLOS). Such an approach is consistent with Article XIV, paragraph 6, of the Convention, which anticipates the development of an agreement such as UNCLOS in the process of the codification and development of the international law of the sea.
11. UNCLOS does not use the term "*marine environment not under the jurisdiction of any State*". However, provisions of UNCLOS do deal generally with the question of areas of national jurisdiction and the guidelines for the determination of the limits of those areas. Taking into account UNCLOS, the following is an appropriate definition of marine environment not under the jurisdiction of any State:

"All parts of the sea, seabed and subsoil that are not included in the exclusive economic zone, in the continental shelf, in the territorial sea, or in the internal waters of a State, or in the archipelagic waters of an archipelagic State".

12. The draft resolution in Annex 2 proposes the adoption of this definition of the term "*marine environment not under the jurisdiction of any State*" (see first operative paragraph of the draft resolution).

Implementation of Article III and Article IV of the Convention concerning the regulation of trade in specimens of species that are introduced from the sea.

13. Article III and Article IV of the Convention set out the framework to regulate trade in specimens of species that are included in Appendix I and Appendix II to the Convention. Article III, paragraph 5, and Article IV, paragraph 6, specifically apply to introductions from the sea. In particular, they provide that a certificate from a Management Authority is required for the introduction from the sea of any specimen of a species included in Appendix I or II of the Convention. Where a Party that is the State of introduction reconsigns specimens to another State, the act of consigning those specimens constitutes an export and is therefore subject to Article III, paragraph 2, or Article IV, paragraph 2, depending on whether the species is included in Appendix I or Appendix II. This raises two issues that are discussed below.

Export of introductions from the sea

14. The Convention provides that a certificate of introduction from the sea may only be granted where specific conditions have been satisfied including, that a Scientific Authority of the State of introduction advises that the introduction will not be detrimental to the survival of the species involved [Article II, paragraph 5(a), and Article IV, paragraph 6(a)]. Under Article III, paragraph 2, and Article IV, paragraph 2, of the Convention, export permits are required for the export of specimens of species included in Appendix I and Appendix II. It is also a condition of the approval process for the grant of export permits that a Scientific Authority of the State of export advises that the export will not be detrimental to the survival of the species involved.
15. To enhance the assessment process relating to issue of export permits for specimens that have been introduced from the sea, it is proposed that any application to export such specimens, be

accompanied by the relevant certificate of introduction from the sea. This will allow a finding made pursuant to either Articles III, paragraph 5(a) or Article IV, paragraph 6(a), to be taken into account by a Scientific Authority for the purposes of an assessment under Articles III, paragraph 2(a) and Article IV, paragraph 2(a). This proposal is included in operative paragraph d) of the draft resolution.

Monitoring of trade in specimens introduced from the sea

16. Australia notes that it will be necessary to establish (in trade records) data fields that accommodate trade in specimens for which a certificate of introduction from the sea has been issued. In relation to specimens of species that are subsequently exported, accurate reporting will also require the identification of the Party that undertook the original harvest of the specimen. Australia proposes that such a data field should report "introduction from the sea (and export)" by Party X ("harvested" by Party Y). This proposal is reflected in operative paragraph c) of the draft resolution.'

The effect of the provisions of Article XIV of the Convention on the regulation of trade in specimens of species that are introduced from the sea.

17. Article XIV clarifies the effect of the Convention on domestic legislation and other international agreements. Articles XIV, paragraphs 4 and 5, address the relationship between the Convention and other related international agreements that were in force at the time of the entry into force of the present Convention. In this respect, Article XIV paragraphs 4 and 5 provide as follows:

"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."

Consistency with previous resolutions adopted by the Conference of Parties

18. Australia recognizes the importance of ensuring consistency with previous resolutions adopted by the Conference of Parties. The attached draft resolution accords with previous resolutions adopted by the Conference of Parties.
19. Resolution Conf. 10.2 (Harare, 1997) prescribes information that must be contained on CITES permits and certificates. The attached draft resolution recommends a minimum set of information requirements for a certificate of introduction from the sea, which addresses the information requirements for permits and certificates outlined in Resolution Conf. 10.2 to ensure consistency between the established information requirements and those proposed for a certificate of introduction from the sea.

In adopting an agreed format for certificates of introduction from the sea, it is important to identify the management measures that formed the basis for issuing the certificate. Such measures include, but are not limited to, total allowable catches and individual or national quotas that are used to monitor the total take of that species (see operative paragraph b) of the draft Resolution).

20. Resolution Conf. 9.7 (Fort Lauderdale, 1994) establishes the circumstances that have been agreed to by Parties as constituting "transit or transshipment of specimens". This has been defined to refer only to specimens that remain in Customs control and are in the process of shipment to a named consignee, including where the specimens are being shipped to or from States not party to the Convention (see second operative paragraph of the draft resolution).

Effective international co-operation

21. Implementation of the provisions of the Convention relating to introduction from the sea will require close collaboration between the Parties and co-ordination with other relevant multilateral, species-specific and regional agreements, as well as the relevant intergovernmental fisheries organizations.
22. Mechanisms for international co-operation are set out in Article XV, paragraph 2(b), of the Convention. These include, mechanisms for the Secretariat to co-ordinate the proposed conservation measures of the Convention, in relation to a proposal to include a marine species in the appendices, with those adopted by intergovernmental fisheries bodies. The attached draft resolution emphasizes the importance of international co-operation and proposes means to effect such co-operation (see operative paragraph e) of the draft resolution).

COMMENTS FROM THE SECRETARIAT

- A. The Secretariat considers the draft resolution presented in this document to be unnecessary as it is not clear that there is a problem requiring a solution. However, it offers the following specific comments in case the Parties decide that a resolution on this subject is required.
- B. The paragraph under "AGREES" provides a useful interpretation if it is agreed.
- C. The paragraph under "AGREES FURTHER" is redundant since the provisions of Articles III, IV and V do not apply to specimens that remain under Customs control (see Article VII, paragraph 1, and Resolution Conf. 9.7).
- D. Regarding the paragraphs under "RECOMMENDS":
 - paragraphs a) and d) seem unobjectionable;
 - paragraph b) seems unnecessary. A certificate of introduction from the sea is to be used only in the State of issuance, which already has the information referred to. There is therefore no need to put it on the certificate;
 - paragraph c) is mostly unproblematic. However the reference to "all the necessary information prescribed by Resolution Conf. 10.2" requires clarification, since there is no reference in this Resolution to certificates of introduction from the sea. Moreover, subparagraph iii) requires clarification since it refers to "the Party that harvested the specimens" although harvesting is generally done by commercial agencies and not by governments;
 - paragraph e) appears to be making a connection with Article XIV, paragraph 4, of the Convention. If it is based on this article, it is not appropriate to refer to an "arrangement assigning competence for the management of the species" since this is not referred to in Article XIV. If paragraph e) is not based on this article, then it should probably refer to Appendix-I species as well as to those in Appendix II; and
 - paragraph f) is in essence unobjectionable but the provisions of Article VII, paragraph 1, should be borne in mind. In other words, the provisions of Articles III, IV and V do not apply to specimens transhipped through the territory of a Party while they remain in Customs control. No certificate of introduction from the sea is required in this case, and the place of introduction from the sea is therefore the State in which the specimens first enter the territory after being released from Customs control or without being subject to Customs control.
- E. The paragraph under "REQUESTS" could be useful. The information referred to is not necessarily required under the provisions of the Convention but its availability could improve monitoring of the trade.
- F. The paragraphs under "DIRECTS the Secretariat" are unproblematic but paragraph b) should rather be cast as a draft decision of the Conference of the Parties since it could be deleted as soon as it is implemented and has no relevance to the long-term implementation of the resolution.

- G. The paragraph under "FURTHER REQUESTS the Secretariat" as drafted seems to lack purpose. The Secretariat can do what is necessary to monitor implementation of the resolution but nothing is said about what action should be taken by the Secretariat where information suggests that the provisions are not being implemented. If no specific action is to be taken, it is not clear why implementation of this resolution requires specific monitoring (unlike most other resolutions). It is not clear why the Animals Committee, a scientific advisory body, should have a role in the long-term monitoring of the implementation of the resolution. Moreover nothing is said about the resources required for the Secretariat to undertake this work [see Resolution Conf. 10.1, paragraph c) under "DECIDES", and Resolution Conf. 4.6 (Rev.)]. The Secretariat could not commit itself without adequate resources.

**INTRODUCTION FROM THE SEA – Listed species taken in the marine environment
not within the jurisdiction of a State**

Scenario	Intended use	CITES listing	Permit/Certificate requirement	Other requirements
Catches by all ships irrespective of flag [including landings of specimens transhipped at sea from one vessel to another]	Use by State at whose port the specimen is first landed	Appendix I or II	'Introduction from the sea' certificate issued by the Management Authority of the State of introduction [ie State where the specimens are first landed and cleared by Customs]	No
	Export	Appendix I	Export and import permit	Must present copy of 'introduction from the sea' certificate to obtain export and import permit.
		Appendix II	Export permit	Must present copy of 'introduction from the sea' certificate to obtain export permit.
	Transit or under Customs control pending movement to another State	Appendix I or II	No	'Introduction from the sea' certificate [issued by the Management Authority of the State of final destination] should be presented to Customs authorities of transit State prior to Customs clearance.
b) Article XIV(4) exemption applying to any Party to CITES that is also a Party to any other treaty, convention or international agreement that was in force on 1 July 1975, and has provisions that protect marine species included in Appendix II taken by ships registered to that State and in accordance with the provisions of such treaty, convention or international agreement.	Use by State at whose port the specimen is first landed and cleared by Customs for use in that State	Appendix II	No	Must meet any provisions of the applicable treaty, convention or international agreement.
	Export	Appendix II	Article XIV(5) certificate, issued by the Management Authority of the State of introduction [State where the specimen was first landed and cleared by Customs] stating that the specimen was taken in accordance with the provisions of the applicable treaty, convention or international agreement.	No

DRAFT RESOLUTION OF THE CONFERENCE OF THE PARTIES

Interpretation and implementation of Article III, paragraph 5, Article IV, paragraphs 6 and 7 and Article XIV, paragraphs 4, 5 and 6, relating to introduction from the sea

RECALLING that the Convention may be applied to all species of wild fauna and flora, including marine species, that satisfy the criteria for inclusion in the appendices;

AWARE of the need for an agreed understanding of the interpretation and implementation of the provisions of the Convention concerning introductions from the sea;

NOTING that Article III, paragraph 5, and Article IV, paragraph 6, of the Convention provide a framework to regulate the introduction from the sea of specimens included in Appendices I and II respectively;

RECOGNIZING that Article XIV, paragraph 6, of the Convention addresses the relationship between the Convention and the 1982 United Nations Convention on the Law of the Sea (UNCLOS) and that the provisions of UNCLOS concerning areas beyond national jurisdiction are relevant to the interpretation and implementation of the provisions of the Convention relating to introduction from the sea;

RECALLING that Resolution Conf. 9.7, adopted at the ninth meeting of the Conference of Parties (Fort Lauderdale, 1994), provides an agreed interpretation of the terms "transit and transshipment of specimens" to refer only to specimens that remain under Customs control and are in the process of shipment to a named consignee when any interruption in the movement arises only from the arrangements necessitated by this form of traffic;

NOTING that the management of many marine species comes under the competence of other international agreements and organizations;

NOTING FURTHER the need for co-operation to ensure harmonization between the approach under the Convention and arrangements under other international instruments;

RECOGNIZING that Article XIV, paragraph 4, provides for a State party to the Convention, that is also a party to any other treaty, convention or international agreement that was in force at the time of coming into force of CITES and under the provisions of which protection is afforded to marine species included in Appendix II, to be relieved of the obligations imposed on it by CITES with respect to trade in specimens 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;

RECOGNIZING ALSO that Article XIV, paragraph 5, provides that, notwithstanding the provisions of Article IV, any export of a specimen taken in accordance with Article XIV, paragraph 4, 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;

AWARE of the need to establish practical administrative mechanisms to give effect to the provisions of the Convention concerning the introduction from the sea of specimens of species included in Appendices I and II;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

AGREES that, consistently with UNCLOS, the term "*marine environment not under the jurisdiction of any State*" in Article 1, paragraph (e), of the Convention means:

"All parts of the sea, seabed and subsoil that are not included in the exclusive economic zone, in the continental shelf, in the territorial sea, or in the internal waters of a State, or in the archipelagic waters of an archipelagic State".

AGREES FURTHER that the "State of introduction" shall be deemed to be the State in which a specimen is first landed, except where the specimen remains under Customs control pending movement to another State;

RECOMMENDS that:

- a) the following minimum information be recorded on a certificate of introduction from the sea that is issued in accordance with Article III, paragraph 5, and Article IV, paragraph 6, of the Convention:
 - i) full name and logo of the Convention;
 - ii) complete name and address of the Management Authority issuing the certificate;
 - iii) unique certificate number;
 - iv) vessel identification (name and distinguishing symbol/number of vessel);
 - v) number and country of registration;
 - vi) name and address of person receiving specimens (equivalent to the importer);
 - vii) scientific name of the species;
 - viii) description of specimens;
 - ix) appendix in which the species is listed;
 - x) place of removal from the marine environment of the specimens (based upon FAO statistical areas or other appropriate measurement);
 - xi) number and/or weight of the specimens, including unit of measurement;
 - xii) allocated total allowable catch, quota, or similar management control measure to monitor total take;
 - xiii) date of issue;
 - xiv) date of expiration of certificate (the period of validity may not exceed one year);
 - xv) name of signatory and their handwritten signature; and
 - xvi) seal or stamp of the Management Authority;
- b) in addition to the information specified in paragraph a), a certificate of introduction from the sea should identify the basis for the management control measures to monitor total take;
- c) in order to maintain accurate data over time on specimens introduced from the sea, export permits issued in accordance with Article III, paragraph 2, or Article IV, paragraph 2, for these specimens shall, as well as containing all the necessary information prescribed by Resolution Conf. 10.2, record the following information:
 - i) 'seas beyond national jurisdiction' as the country of origin [box 12 of the permit format];
 - ii) the 'permit number' as the number of the certificate of introduction from the sea or comparable Article XIV, paragraph 5, certificate; and
 - iii) the Party that harvested the specimens, where it is not the Party that issued the certificate of introduction from the sea;

- d) for the purposes of the granting of an export permit under Article III, paragraph 2, or Article IV, paragraph 2, of the Convention in respect of a specimen of a species that is introduced from the sea, an application for an export permit shall be accompanied by the certificate of introduction from the sea granted by the Management Authority of the State of Introduction;
- e) in the case of specimens of species included in Appendix II that are also the subject of another treaty, convention, agreement or arrangement assigning competence for the management of the species, a Scientific Authority should, for purposes of a making a determination under Article IV, paragraph 6(a) of the Convention, seek and take account of advice received from the scientific body or organ, if any, established or designated by the relevant treaty, convention or international agreement or management arrangement; and
- f) with respect to the transfer at sea of specimens taken from the marine environment not under the jurisdiction of a State, notwithstanding that the specimens may have been caught by a vessel under the flag of one State and transferred to a vessel under the flag of another State, the State at which the specimens are first landed will be responsible for issuing the certificate of introduction from the sea;

REQUESTS Parties that introduce from the sea, specimens of species included in Appendix II that are protected by another international treaty, convention or agreement referred to in Article XIV of the Convention to submit information on the quantities of specimens of these species in their annual reports to the Secretariat;

DIRECTS the Secretariat to:

- a) develop an appropriate mechanism to accurately record transactions involving specimens that are the subject of certificates of introduction from the sea and, where applicable, the subsequent export of these specimens; and
- b) communicate the administrative arrangements agreed in this Resolution directly to the Food and Agriculture Organization of the United Nations, other intergovernmental fisheries organizations and the UNCLOS Secretariat to ensure close collaboration to achieve the efficient and effective implementation of this Resolution; and

FURTHER REQUESTS the Secretariat, in collaboration with the Animals Committee and relevant intergovernmental fisheries organizations, to monitor implementation of the measures agreed to in this Resolution.