Confiscated Specimens

Disposal of illegally traded and confiscated specimens of Appendix-II and -III species

CoP14 Doc. 27 (Indonesia) Proposes Decisions directing the Standing Committee to develop amendments to Resolution Conf. 9.10 (Rev. CoP13) on Disposal of illegally traded, confiscated and accumulated specimens, and directing Parties to auction confiscated specimens that cannot be returned to the country of origin and to ensure profits from these sales are returned to the country of export or origin.

SSN VIEW: OPPOSE adoption of CoP14 Doc. 27

DOC. 27 IS INCONSISTENT WITH NATIONAL POLICIES AND LAWS REGARDING OWNERSHIP OF WILDLIFE. Doc. 27 calls for profits from the sale of confiscated specimen to be returned to the exporting country; however, in many countries ownership of the wildlife may not reside with the State. The basis of Doc. 27—that confiscated specimens are the property of the country of export—does not apply to all CITES Parties. In many countries (e.g. China, Malawi, Tajikistan, Uganda), ownership of wild animals is vested in the national government on behalf of and for the benefit of the people. In Burkina Faso, forests, fauna and fish are declared to be part of the national estate. In other countries—such as the United Kingdom and Norway—wildlife ownership is determined by where the wildlife is found. Wildlife found on private property, for example, belongs to the landowner. In other countries (e.g. Morocco) wildlife is considered res nullius, meaning it belongs neither to the government nor to private individuals.

In these and similarly-situated countries, returning the profits to the country of origin would create complex legal issues. In many, if not most cases, it may be difficult to discern the exact origin of the wildlife, further complicating ownership issues. Re-directing profits from the sale of confiscated specimens to the country of export or origin could give private citizens in some countries claims against either their own or another government for reparations due for specimens that may have been their property.

COUNTRIES THAT SEIZE ILLEGAL SPECIMENS SHOULD BE ENCOURAGED TO REPORT SEIZURES TO THE EXPORTING COUNTRY AND COUNTRY OF ORIGIN, IF THESE CAN BE ESTABLISHED. Such reporting would allow exporting countries and countries of origin to respond by seeking prosecutions, increasing enforcement and/or adjusting export quotas in response to illegal takes. SSN agrees that Resolution Conf. 9.10 (Rev. CoP13) and/or Resolution Conf. 11.3 (Rev. CoP13) on Compliance and enforcement should be amended to encourage increased communication between importing and exporting countries.

IMPORTING COUNTRIES SHOULD NOT BE REQUIRED TO AUCTION SEIZED WILDLIFE. While SSN agrees that illegal trade represents a loss of biodiversity, we believe that neither the country of origin nor the seized wildlife is best served by auctioning. Such sales should generally be prohibited. They may promote consumption and demand of rare or protected species, and allow the individuals seeking to import illegal shipments to bid publicly for these same specimens. Further, an auctioning requirement could prevent importing countries from using seized specimens for forensic analysis, public education or other valuable purposes. Requiring importing countries to auction seized specimens and send the proceeds to the country of origin would impose administrative and financial burdens on enforcement agencies, reducing resources available for other enforcement activities and creating potential disincentives to vigorous enforcement.

RETURNING PROFITS TO THE COUNTRY OF ORIGIN COULD PROMOTE ILLEGAL TRADE. Re-directing profits received from the sale of confiscated specimens to the country of export or origin does not
serve as an incentive to these countries to enforce wildlife laws. In fact, it could unintentionally create an incentive for allowing illegal shipments to leave the country, thus promoting illegal wildlife trade and laundering as an alternate means to obtain profit from high-value specimens of protected species.

FINES AND PENALTY FEES SHOULD BE USED FOR ENFORCEMENT AND CONSERVATION. SSN believes that a more appropriate mechanism for generating funds for enforcement and *in situ* conservation is the use of fines and penalty fees resulting from illegal trade for enforcement and conservation in range States. For example, in early 2007, individuals found guilty of illegal poaching and sale of leopard sharks in the United States paid fines totaling more than US$400,000 towards a conservation fund for the species. We also encourage Parties to assess penalties and fines that more appropriately reflect the true costs for loss of the traded specimens, their repatriation and/or care.

Finally, training and other forms of cooperative assistance, rather than funds, are likely to be more effective and provide longer-lasting benefits for improved enforcement and *in situ* conservation in range States. The Parties affirmed as long ago as 1989, during discussions on confiscated caiman lizard skins, that sales of confiscated specimens could be counter-productive. Though RC 9.10 Rev. CoP13 does not prohibit such sales, its preamble notes "that some Parties do not allow the sale of confiscated specimens because of the message this transmits to the public".