SPECIES SURVIVAL NETWORK

BRIEFING FOR

THE 49TH MEETING OF

THE CITES STANDING COMMITTEE

22-25 APRIL 2003 GENEVA, SWITZERLAND

TRADE IN AFRICAN ELEPHANT PRODUCTS

Background

At COP12, it was agreed that Botswana, Namibia and South Africa could export ivory to an as yet unidentified buyer, subject to certain conditions. The Standing Committee is required to interpret and define the language of these conditions, and to establish the process and time-frame within which decisions should be made as to their fulfillment.

Decisions 12.37, 12.38 and 12.39

Decision 12.38 requests the Secretariat to assist range States in the implementation of Resolution Conf. 10.10 (Rev. COP12), particularly in assessing whether or not countries with currently active internal ivory markets have established the comprehensive internal legislative, regulatory and enforcement measures required to establish control of internal trade.

Decision 12.39, paragraph B, requests the Secretariat to seek from those Parties that lack adequate regulations an action plan and timeframe for developing and implementing such measures and to provide technical assistance.

Decision 12.37 directs the Standing Committee, at its 50th meeting, to review the work conducted by the Secretariat and the Parties and to consider whether additional measures are appropriate.

In SC49 Doc.11.1 the Secretariat has stated that it does not have a budget to carry out anything more than "desk research" on these issues. Unless additional funding is found for this work, the Secretariat will only be able, by the time of SC50, to assess a very small number of Parties. The Secretariat suggests that "discussion on this subject be postponed to the Committee's 50th meeting."

It is unacceptable that budgetary provision has not been made with respect to these decisions, particularly since implementation of the provisions relating to internal ivory markets is a condition for the resumption of trade. Desk research will not give the level of reassurance that many Parties would require. The onus should be on those Parties, CITES bodies and non-governmental organizations (NGOs) advocating the resumption of ivory trade to find the funds necessary to ensure that the decisions made at COP12 are fully implemented.

After COP10, verification trips were made to the exporting countries and to Japan. Such precaution is equally warranted now. The Standing Committee should make it clear that, as a precondition of any future ivory trade, on-site visits **must** be carried out to all exporting countries and to countries identifying themselves as prospective importers of ivory from Botswana, Namibia or South Africa, to ensure that all the provisions of Resolution Conf. 10.10 (Rev. COP12) are complied with. The Standing Committee should establish a deadline (e.g. within three months of SC49) by which time Parties wishing to import ivory from Botswana, Namibia or South Africa must identify themselves to the Secretariat.

The Committee could also clarify that postponing discussion until SC50 will not waive the requirement that Decision 12.37 be fully implemented prior to a final decision on ivory sales.

Resolution Conf. 10.10 (Rev. COP12)

The revised resolution recommends that Parties with an ivory carving industry and those designated as importing countries should "*register or license all importers, manufacturers, wholesalers and retailers dealing in raw, semi-worked or worked ivory products.*"

The term "register" requires definition. Registration should be a condition for obtaining permission to import or otherwise acquire, manufacture or sell ivory and ivory items. Failure to comply should carry a strong penalty. Applicants should be required to declare and document all ivory stocks in their possession prior to becoming registered.

Ivory importing Parties are also requested to assert *"compulsory trade controls over raw ivory" and to establish "a comprehensive and demonstrably effective reporting and enforcement system for worked ivory."*

The nature of the suggested "trade controls" should be defined. The SSN Elephant Working Group (EWG) suggests that all transactions of whole, raw ivory tusks and trade in cut pieces should be recorded at every stage of the trade. All relevant information should be provided to the Management Authority, for inclusion in its annual reports.

Similarly, all items of worked ivory displayed for sale should be traceable back to their point of origin. This requires that all transactions be recorded at every stage, including prior to manufacture. The current Japanese registration system, which has separate registration systems for whole tusks and for cut pieces and final products, makes it impossible to trace the origin of final products.

The Committee should consider the development of a standardised label for worked ivory items, incorporating a bar code, watermark or hologram that would be difficult to counterfeit.

The implementation of Resolution Conf. 10.10 (Rev. COP12) should begin with a **compulsory inventory of existing ivory stocks, both private and public** in ivory consuming countries as part of "*effective reporting and enforcement*" measures. This inventory should be updated annually and included in the importing Parties' annual reports. The completion of such an inventory should be a precondition of any future import, with registration permitted only for those dealers who have declared and documented their stocks.

These measures should be implemented before SC50 and the current status of compliance should be reported to that meeting.

The resolution directs the Secretariat to identify Parties with an ivory carving industry and internal ivory trade whose domestic measures do not allow them to control such trade. Decisions 12.36 – 12.39 also relate to this issue, with Decision 12.39 providing a list of specific Parties to be assessed.

The language of this requirement *("to identify those Parties …..whose domestic measures* **do not** *allow them to control.."*) presents a problem of interpretation. If the Secretariat does not specifically identify a Party as lacking adequate controls, it should not be assumed that the Party in question ***does*** have adequate controls. The Standing Committee should make this clear.

Decision 12.33

This Decision requires that, by its 49th meeting, the Standing Committee, in consultation with MIKE and IUCN, "*define the geographical scope and the nature of the data that constitute the baseline information from MIKE that must be provided before any exports can be approved."*

SC49 Doc. 11.2 suggests that "geographical scope" should mean 65% of "current" sites in Africa and an as yet undecided percentage of sites in Asia. No definition of "current" is given. Is a site that has merely been identified to be considered "current?" In order to be able to contribute to baseline information these sites must be required to produce meaningful data. Some MIKE sites have been established for a considerable time, while others have only just begun operating. A purely numerical approach to scope is therefore inappropriate. Future reports from MIKE should provide an accurate assessment of the level of advancement of MIKE in each site.

If, as believed, 55 MIKE sites have been identified, this would mean that some 35 sites would be required to provide baseline data. However, if the 35 sites are concentrated in only a few range states or do not cover all sub-regions, they will not provide a general picture of the status of elephant populations continent-wide. Taking into consideration that conditions in sub-regions can vary significantly the Committee could consider requiring that chosen sites include 65% of all sites in Africa but no fewer than, for example, 50% of sites in each sub-region. A similar arrangement should be made for sites in Asia.

SC49 Doc.11.2 also suggests that for each reporting site information from at least one population survey will be presented, along with the rates of illegal killing derived from 12 months' data. A single survey, however, cannot reliably establish a representative baseline. Over such a short term, both exogenous forces and sampling bias may generate apparent spikes or declines that do not accurately reflect sustained

poaching pressure. To avoid this problem, two sample points (surveys) should be considered the minimum.

The Parties have already agreed that cause and effect cannot be proven with regard to the illegal killing of elephants. Subjective judgments should therefore be excluded as far as possible from the proposed report on the pattern of influencing factors. Questioning poachers regarding their motives and their understanding of current CITES regulations should be a routine element when investigating "influencing factors." Prior to and during COP12, the Chinese delegation stated that many Chinese people had misunderstood the 1997 decision, believing that the trade had generally resumed. Such misunderstandings could indicate a "signal effect," and should be monitored.

Decision 12.34

The Standing Committee is required to "*determine how it would conclude that a detrimental impact on other elephant populations had occurred as a result of approved trade in ivory."*

The question of cause and effect is central to this decision. Given available baseline data, a direct link between renewed ivory trade and a detrimental impact on elephant populations can be neither proven nor disproven to a scientific certainty. However, the language in the Decision must not be treated as meaningless. In the face of uncertainty, the SSN EWG advocates a precautionary approach and a measure of common sense. The Committee should assume that if an elephant is poached and its tusks removed, ivory trading is the motive. The Committee should also consider that the availability of legal ivory may create demand, and that the availability of a ready market creates an incentive to poach and an opportunity for laundering.

Decision 12.35

By its 49th meeting, the Standing Committee is encouraged to "*recommend measures for improving law enforcement coordination between ivory producing and ivory importing States."*

SC49 Doc. 11.3, recommends an improved flow of information between relevant bodies, including the Lusaka Task Force. Law enforcement co-ordination would be helped considerably if ivory exporting states were to **ratify the Lusaka Agreement**, as they have been requested to do for some years.

Co-operation between ivory producing and importing states should include co-operation among exporting states, importing states and, of critical importance, ivory entrepôts. The six tonnes of illegal ivory seized in Singapore in June 2002 passed through at least three southern African states, but the authorities in those states were not informed of its existence by the state of origin.

The Standing Committee should ensure that this Decision is fully implemented.

The Annotations

The document provided by the government of Kenya provides a number of suggestions as to the interpretation of the language in the annotations. However, the SSN EWG would like to emphasize the importance of clarifying annotation 1) (5) vi): *"On a proposal from the Secretariat, the Standing Committee can decide to cause this trade to cease partially or completely in the event of non-compliance by exporting or importing countries, or in the case of proven detrimental impacts of the trade on other elephant populations."*

The Standing Committee should ensure that any evidence of non-compliance or detrimental impacts on elephant populations is fully investigated ***before*** any trade in ivory can occur and should prompt the Secretariat to propose that trade be prevented in the event that there are clear indications of non-compliance or detrimental effects.

CRITERIA FOR AMENDMENT OF APPENDICES I AND II

The listing criteria are central to the operation of CITES, and to the confidence of the Parties and the public in CITES outcomes. Decision 12.97, which deals with terms of reference for the further review of the CITES listing criteria, refers to the Standing Committee only in paragraph (d). This paragraph requires the Committee to establish a deadline by which the Animals and Plants Committees must report. However, the Committee should go beyond simply setting a deadline, as suggested by the Secretariat in SC49 Doc. 19. The Standing Committee should do its utmost to ensure that the review will lead to the preparation of revised criteria

that are broadly acceptable enough to be adopted by consensus.

Paragraph (b) of Decision 12.97 requires the Animals and Plants Committees to coordinate "an open, transparent and broadly consultative process," but it does not say who is responsible for determining the form that this process will take. As is evident from discussions at and before COP12, the design of this process is crucial to achieving eventual consensus on the final product. Although the revised text of the listing criteria produced by the Criteria Working Group in Santiago addresses many of the objections raised to earlier revisions, much of the difficulty Parties had was a lack of confidence that their views were being taken fully into account prior to COP12.We consider it of utmost importance that this situation not be repeated.

As the Decision requires the review to be completed by COP13, any deadline set by this Committee must be well in advance of its meeting prior to the next COP. This will not give the two scientific committees much time to coordinate the review. The outline of the review process should therefore be in place before the Animals and Plants Committees meet. To ensure this schedule is met, the Standing Committee should begin developing the outline at this meeting.

SSN recalls that the Parties felt very strongly in Fort Lauderdale that Resolution Conf. 9.24 should be adopted by consensus, in order to demonstrate that they were of one mind on this potentially contentious and divisive issue. For the sake of CITES, any document that replaces Res. 9.24 should be prepared in the same spirit of compromise that was shown in Fort Lauderdale, and should be adopted in a similar manner. The Standing Committee can contribute to this by designing, or helping to design, the most open and broadly consultative process possible.

COOPERATION BETWEEN CITES AND FAO

Background

In Decision 12.7, the Conference of the Parties directed the Standing Committee to work with the United Nations Food and Agriculture Organization (FAO) to establish a draft framework for cooperation to be considered at the 25th meeting of the FAO's Committee on Fisheries (COFI 25) and, if possible, at the 49th meeting of the Standing Committee.

The matter of cooperation between CITES and FAO was considered by FAO at COFI 25; and three documents relating to this issue were included as Appendices E, F and G to the report of the meeting. One of these documents, included as Appendix G to the COFI Report, is a draft Memorandum of Understanding (MOU) between the two organizations. An alternative draft MOU has been developed by the CITES Secretariat. Both texts are likely to be discussed at SC49 as the Standing Committee looks for a way forward on this issue.

Appendix G to the COFI Report

As a preliminary matter, it must be noted that the draft MOU included in Appendix G is not a consensus document. From a purely procedural standpoint, therefore, it should not be considered a formal negotiating proposal from FAO to CITES.

It also bears mention that the representative of the CITES Secretariat was completely excluded from the working group that produced this document. Given that the ostensible purpose of the MOU is to improve cooperation between CITES and the FAO, this exclusion is altogether remarkable and doubtlessly contributed to the substantially one-sided document that was ultimately produced.

Rather than establish a framework for cooperation between two independent bodies, as called for in Decision 12.7, the provisions of Appendix G would effectively subordinate CITES to the FAO. For example, the preamble to Appendix G recognizes "the *primary role* of sovereign States, FAO and regional fisheries management organizations in fisheries conservation and management," thus relegating the Convention to a peripheral role in the conservation of marine wildlife.

The substantive provisions further exacerbate this imbalance, creating substantial opportunities for friction between the two bodies while providing only skeletal guidance regarding avenues for real cooperation between them. For example, operative paragraph 4 of the text declares that "FAO will continue to provide advice to CITES and *be involved* in the process of revision of the CITES listing criteria" without identifying situations in which advice might be provided or specifying the form FAO's "involvement" in the criteria revision should take.

Similarly, operative paragraph 5 requires CITES to inform FAO of all proposals for amending Appendices I and II of CITES relating to

"commercially-exploited aquatic species" without defining this ambiguous and demonstrably controversial term. Paragraph 5 entitles FAO to conduct a scientific and technical review of such proposals "in a manner it deems appropriate" without establishing parameters of any kind regarding the process or output of that review. Presumably, this process would follow the "Terms of Reference for Ad Hoc Expert Advisory Panel for Assessment of Proposals to CITES" set forth as Appendix E to the COFI Report. Because this process is not incorporated into or referred to in the MOU, however, FAO could unilaterally change it at any time without any requirement that the CITES Parties or Secretariat be consulted.

Regardless of the process or "output" of an FAO review, paragraph 5 would require the CITES Secretariat to "consider [that output] in its deliberations to provide recommendations to the Parties to CITES." This provision provides no guidance as to how the FAO's output should be incorporated into the Secretariat's deliberations or the relative weight that output should be given in the resulting recommendations. Indeed, Appendix G is more ambiguous in this respect that the Convention itself, which expressly requires that "views expressed and data provided" by fisheries bodies be directly communicated to the CITES Parties. Ironically, by requiring that the FAO's views be filtered through the Secretariat, rather than communicated directly to the Parties themselves, Appendix G would substantially *reduce* the input of FAO into the CITES decision-making process while simultaneously increasing the risk of misunderstandings and friction between the two bodies.

Nor is this risk alleviated by operative paragraph 6, which would mandate that "CITES" (meaning, presumably the CITES Secretariat):

> "*incorporate to the greatest extent possible* the results of the FAO scientific and technical review of proposals to amend the Appendices, the responses from all the relevant bodies associated with management of the species in question, *as well as the substance of the preambular paragraphs of this memorandum* in its advice and recommendations to the CITES Parties."

Article XV(2) of the Convention requires the Secretariat to solicit and communicate the views of relevant intergovernmental bodies regarding marine species proposals; but it also requires the Secretariat to communicate "its own findings and recommendations" to the Parties. As a practical matter, the time and space the Secretariat can dedicate to recommendations on any single species proposal is very limited. In light of this very real limitation, adhering to operative paragraph 6 would confront the Secretariat with the unenviable choice between condensing the input provided by relevant bodies to a series of simplistic bullet points and a rote repetition of the preamble to the MOU, or else ignoring its mandate under the Convention to conduct its own independent analysis. In either circumstance, the aggregate amount of information available to the Parties is reduced, to the obvious detriment of the CITES process.

The Secretariat's Draft MOU

In stark contrast to Appendix G, the draft MOU prepared by the Secretariat provides a solid and balanced framework for future cooperation between CITES and the FAO. Unlike Appendix G, the Secretariat's Draft begins from an assumption of parity and complementarity between the two bodies, and outlines a process for exploring synergies and resolving potential differences.

For example, Article 1 of the Secretariat's Draft commits the bodies to jointly develop a procedure for ensuring FAO involvement in the scientific evaluation of species proposals "in accordance with Article XV." Unlike Appendix G, the Secretariat's Draft requires that this procedure be annexed to and considered part of the MOU, thus ensuring the input of both bodies into any future changes. Considered together, Article XV(2)(b) and the Terms of Reference set out in Appendix E to the COFI Report provide a solid starting point from which this procedure can be developed.

As with Appendix G, Article 1 relies on the term "commercially-exploited aquatic species" without specifically defining that term. To avoid future controversy, SSN recommends that any MOU between CITES and FAO either define the taxa covered by the agreement or explicitly identify taxa that are excluded from its scope.

In Article 2, the Secretariat's Draft MOU also identifies specific ways in which FAO and CITES can cooperate to build capacity for natural resource management relating to marine species. By providing a clear and detailed mandate for future cooperation in this field, the MOU would fill a significant gap in global marine conservation efforts and provide a forum in which cooperation and mutual trust between the organizations can more fully develop.

Article 3 of the Secretariat's Draft commits CITES and the FAO to identify and jointly address technical and legal issues of common interest. Such an approach is consistent with the independent and coeval status of the two bodies and preferable to the unilateral approach to these

issues adopted in Appendix F to the COFI Report. SSN notes with particular concern the FAO's decision, in Appendix F, to convene an expert consultation to address the meaning and application of the phrase "introduction from the sea" in the CITES text and the "legal implications of the existing CITES listing criteria and the CITES Convention itself" in relation to the UN Convention on the Law of the Sea and other international law related to fisheries. SSN is unaware of any basis in UN practice or in the law of treaties upon which the FAO could legitimately interpret the constituent instrument of a separate and wholly independent body. Authority to issue authoritative interpretations of the CITES text lies within the exclusive jurisdiction of the CITES Parties themselves constituted as the Conference of the Parties. For the FAO to undertake such an interpretive process outside of CITES is, at best, meaningless and, at worst, a direct affront to the CITES Parties.

Significantly, Article 5 of the Secretariat's Draft makes specific provision for annual meetings between the bodies, the preparation and execution of an ongoing joint program of work, and the periodic reporting of activities under the MOU to both the Standing Committee and the FAO's Sub-Committee on Fish Trade. SSN believes such a provision is vital to ensuring a constructive, responsive and mutually beneficial relationship between the two bodies. Accordingly, we strongly recommend that it be a major element of the final MOU between CITES and FAO.

Recommendation

SSN believes that the draft CITES-FAO MOU developed by the CITES Secretariat provides a solid foundation from which a balanced and productive agreement between the two bodies may be reached. Recognizing that the FAO has not yet been formally presented with this draft, SSN recommends that the Standing Committee take note of the progress made thus far, approve in principle the substantive elements of the Secretariat's draft, and formally communicate the draft to the FAO as the basis for further negotiations.

For reasons set forth above, Appendix G to the COFI Report does not provide a workable or desirable alternative to the Secretariat's draft. Because Appendix G is not a consensus FAO document, and has not been formally proffered by that body, it neither requires nor warrants further consideration by the Standing Committee.

NGO PARTICIPATION

The Species Survival Network thanks the Chair and Committee members for admitting non-governmental organizations to this meeting of the Standing Committee.

SSN welcomes the opening of this Committee to NGO observers. We believe that the participation of qualified observers will improve the quality of information available to Committee members. It is particularly appropriate that NGOs have been admitted to this meeting, because two important agenda items relate to openness and transparency: the process for assessing future ivory sales, and the review of the criteria to amend the appendices.

SSN is not merely an issue advocate, but an advocate for CITES itself. We seek to make positive and constructive contributions to the work of the Parties, the Committees, and the Secretariat. SSN, and its many member organizations worldwide, have provided useful and carefully researched documents ranging from our *CITES Digest* to detailed reports on such subjects as the use of wild species in traditional medicine. We would be willing to assist in other matters, such as the preparation of species reviews. We hope that the Committee will regard SSN as a resource to be more fully utilized.

We look forward to a constructive working relationship with the Standing Committee at both this and future meetings.

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