

## FIELD NOTES

### Field note from CITES CoP 17 on elephants and the ivory trade

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In September-October 2016, the 17<sup>th</sup> Conference of the Parties (CoP17) to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) was held in South Africa. The CoP took place against a backdrop of dramatic increases in elephant poaching as well as seizures of illegally traded ivory, which some CITES Parties and Observers considered were fuelled by a sale of ivory stockpiles in 2008. Proposals and Working Documents in favour of and against trade in elephants and their ivory were tabled at CoP17. On one side, the 29-member African Elephant Coalition (AEC) representing the overwhelming majority of range States argued for a complete ban on international ivory trade and closing all domestic markets, and on the other, Namibia, Zimbabwe and South Africa argued to open up ivory trade. The USA also submitted Working Documents to close domestic ivory markets and control live elephant trade. In one of the most significant developments at the CoP, Botswana, which has the largest elephant population in Africa, announced its support for an Appendix I listing.

Proposals (on changes to the Appendix listing of *Loxodonta africana*) and Working Documents submitted by Parties to CoP17 included:

1. Seven Proposals and Working Documents in favour of ending / strictly limiting trade: A Proposal to list all African elephants in Appendix I (AEC) and Working Documents recommending closure of domestic ivory

markets (AEC and USA), an end to discussions of a Decision-Making Mechanism (DMM) for a process of trade in ivory (AEC), better management of ivory stockpiles and their destruction (AEC), and restriction of trade in live elephants (AEC and USA);

2. Two Proposals and a Working Document in favour of opening up trade: Proposals by Namibia and by Zimbabwe to remove the annotations to the Appendix II listings of African elephants, enabling renewed international commercial trade in elephant products, and a Working Document by Namibia, South Africa and Zimbabwe to establish a DMM at CoP17 to reopen ivory trade;
3. A working Document by the CITES Secretariat to institutionalise guidelines for the National Ivory Action Plan (NIAP) compliance process initiated by CITES in 2013 in an attempt to address high levels of poaching and illegal trade.

This Field Note focuses on the outcome of the Proposals and Working Documents submitted by Parties. In addition to these outcomes, which are discussed below, guidelines for the NIAP process were agreed and incorporated into the CITES rules governing trade in elephant specimens (Resolution Conf. 10.10 (Rev. CoP17)).

### Background

The ivory trade has been a matter of fierce debate in CITES fora throughout the Convention's 42-year history. African elephants (*Loxodonta africana*)

were first listed in Appendix III by Ghana in 1975. Subsequently, the first Conference of the Parties (CoP1) in 1976 decided to up-list them to Appendix II, but efforts to achieve a controlled, licensed legal trade under this listing failed. The decision to further up-list African elephants to Appendix I was taken at CoP7 in 1989, banning all commercial international ivory trade. In the preceding decade, ivory poachers had devastated the continental elephant population from an estimated 1.2 million to 625,000.

South Africa, Botswana and Zimbabwe, however, opposed the Appendix I up-listing, arguing that with stable elephant populations, they were secure and did not qualify. Together with Namibia, who joined CITES in 1991, they campaigned to down-list their populations at subsequent conferences. Botswana, Namibia and Zimbabwe eventually succeeded in 1997 and South Africa in 2000, amidst resistance from other African elephant range States. They also obtained approval for “experimental” sales of ivory that took place in 1999 and 2008. Notably, the 2008 sale was part of a compromise package of agreements reached behind closed doors that included a moratorium on new proposals to trade until 2017, and a decision to negotiate a DMM for a process of trade in ivory to be agreed in 2013.

How the EU countries would vote at CoP17 following the region’s admission as a full CITES Party was a critical question for the CoP to decide, since the Union’s votes could potentially determine the outcome of sensitive issues such as the Convention’s trade controls on elephants. Extensive discussions led to a decision that EU Member States would cast their votes in a bloc of 28. The region’s new status afforded the European Commission significantly more weight than at previous CoPs, and it spoke for all Member States on elephants. Individual Member States disagreeing with the bloc position could not speak or abstain.

### **Decision-making mechanism for a process of trade in ivory**

In 2007 at CoP14, Parties adopted a decision directing the CITES Standing Committee to propose a “decision-making mechanism for a process of trade in ivory under the auspices of

the Conference of the Parties”. The DMM, as it came to be known, was to be approved at the latest by CoP16, held in Bangkok in 2013. However, discussions failed to make progress, and the mandate for negotiations was re-extended to CoP17.

The first decision on the ivory trade at CoP17, arguably setting the tone for subsequent negotiations, was on the DMM. While the AEC Working Document proposed to end the mandate for discussions on the DMM, Namibia, South Africa and Zimbabwe proposed establishing an unrestricted DMM at the conference.

The three southern African countries argued that developing a DMM had been part of the 2007 compromise, and a regulated ivory trade would incentivise conservation efforts by channeling proceeds to rural communities. They went further to argue that if no DMM was adopted they would consider the 2007 agreement as not implemented and the annotation containing the moratorium clause as *pro non scripto* (as if not written). The AEC, meanwhile, argued that the status of elephants had changed considerably since 2007 as a result of the ivory trade and that the very discussion of a legalisation process was sending signals that it could soon reopen, undermining global efforts to reduce demand for ivory.

Although many Parties considered further discussions on the DMM inappropriate, there was no clear consensus in the room. In a series of tense votes, the DMM was defeated, even though South Africa requested a secret ballot for the vote on their proposal. The decision ended nearly a decade of contentious negotiations that kept the prospect of a future ivory trade alive.

### **Closure of domestic ivory markets and ivory stockpile destruction and management**

Probably the most significant decision for elephants at CoP17 was on the closure of domestic ivory markets. Working Documents submitted by the AEC and the USA to close domestic markets raised fierce opposition from a small number of Parties, some arguing that it should not be discussed as it was an attack on States’ “permanent sovereignty over natural resources”. A motion by Namibia to close the debate was rejected, however, and further discussion was deemed admissible.

An open working group was established to discuss the documents on domestic ivory markets, as well as on ivory stockpile management and destruction. The AEC and the US presented a unified proposal to the working

group for revising Resolution Conf. 10.10 (Rev. CoP16), which became the basis for discussions on closing domestic ivory markets. Negotiations were intense. Proponents for closure (the AEC, China and the USA) argued that maintaining domestic markets enables the laundering of poached ivory under the guise that it is antique, “pre-Convention” or otherwise legally acquired, and that closing legal markets would reduce such opportunities, and reduce demand. Opponents of closure included Namibia, South Africa and Zimbabwe, supported by Japan and Brazil, while the EU sat on the fence, insisting on a ‘qualified’ closure.

In the end, a compromise recommendation was agreed that “all Parties and non-Parties in whose jurisdiction there is a legal domestic market for ivory *that is contributing to poaching or illegal trade*, take all necessary legislative, regulatory and enforcement measures to close their domestic markets for commercial trade in raw and worked ivory as a matter of urgency” (emphasis on the qualifying language added in italics). The qualification raised concerns, with China strongly opposing it. However, without it there likely would not have been a recommendation, given the EU’s position. The decision was still considered a breakthrough, and could signal a turning point in CITES elephant policy. China has since announced that it will close its ivory market—the largest in the world—by the end of 2017.

In the same working group, the constituencies for and against ivory trade were also divided on the issue of stockpile destruction. Much of the argument focused on the use of the word ‘destruction’. Parties failed to agree, but nevertheless a decision was reached directing the CITES Secretariat to develop practical guidance for the management of ivory stockpiles, including their ‘disposal’.

## **Restriction of trade in live elephant specimens**

The Working Document by AEC Parties sought to exclude the transfer of live elephants from the wild to places such as zoos by restricting live elephant exports to in situ conservation programmes or secure areas in the wild within their natural range. The rationale was that both

the transport conditions and removal from their social groups disrupts wild populations and has detrimental impacts on the physical and mental well-being of the affected animals. It was also argued that the term ‘appropriate and acceptable destination’ should be amended to reflect these potential impacts. The Working Document by the USA required that for such trade to be ‘appropriate and acceptable’, the Scientific Authorities of the State of import and the State of export must be satisfied that it would promote in situ conservation; it also touched on the establishment of basic welfare guidelines and the disposal of any ivory from elephants dying in captivity.

Consultations between the AEC and the USA and discussion on the floor led to some tightening of the provisions for ‘appropriate and acceptable destinations’, particularly for elephants and rhinos. Scientific Authorities must now be “satisfied that the trade [to ‘appropriate and acceptable destinations’] would promote in situ conservation”. Parties are also encouraged to stipulate that “rhinoceros horn or elephant ivory from those animals and from their progeny may not enter commercial trade and [nor rhinoceros and elephants] be sport hunted outside of their historic range”. In addition, the issue was referred to the CITES Animals Committee and Standing Committee for further discussion, with a report on recommendations due at CoP18, offering the opportunity for further measures and guidance to improve welfare conditions.

## **Amendments to the Appendix listings**

These diametrically opposed Proposals on elephants were the most controversial at CoP17. The AEC and supporting countries argued for a unified listing of all African elephants in Appendix I on the basis that the continental population faces a common and ongoing threat from the international ivory trade. They considered that national listings meet political rather than biological criteria, since the majority of elephant populations live in the transboundary areas of at least two neighbouring countries, including those in different Appendices. The species as a whole therefore meets the biological criteria, having suffered a 61% decline between 1980 and 2013 according to the IUCN African Elephant Database and should not be subdivided to suit national politics. It was also argued that split-listing is difficult to enforce, sustains demand for ivory, provides an incentive to stockpile poached ivory and enables laundering.

The main argument in favour of lifting restrictions on trade by removing annotations to the Appendix II listings was that elephants found within Botswana, Namibia, South Africa and Zimbabwe's national borders do not meet the biological criteria for Appendix I listing and should be eligible for regulated trade under CITES. It was also argued that CITES had exceeded its powers in agreeing to the moratorium, resurrecting an argument used unsuccessfully in 2007.

In a series of votes, all the Proposals were rejected, with the EU opposing each one. The Proposals to remove the annotations (amended by Japan) were considered together in one vote, in a secret ballot requested by Zimbabwe. Parties overwhelmingly rejected it, with 27 in favour, 100 against, and 9 abstaining. The AEC Proposal, considered in an open ballot, gained more support with 62 in favour, 71 against and 12 abstentions. The Minister of Environment, Wildlife and Tourism of Botswana cited the seriousness of the crisis and evidence that poaching networks are moving south, stating that no elephant populations should be considered secure and that Botswana would not ignore its responsibility to other African nations. Botswana, with 40% of all elephants in Africa, voluntarily offered to place their elephant populations on Appendix I. Although the AEC Proposal was not adopted, the high level of support it achieved, despite the EU's opposition, was encouraging for its proponents.

A key dynamic influencing the debate was concern that a vote in favour of the up-listing could lead Namibia, South Africa, Zimbabwe and Japan to invoke Article XXIII of the Convention and enter a reservation, which some argued could allow them to trade under Appendix II. Indeed, Namibia announced publicly that it would do so. Many observers considered this threat the real reason why the Appendix I Proposal was rejected by the EU, US and some other Parties.

## **Conclusions**

CoP17 marked a key point in CITES history, both for elephants and in the CoP's ability to address domestic trade. Considered together, the decisions taken represent a recognition that a legal ivory trade is the primary threat to elephant populations across the continent. Their impact, however, will

depend on Parties' will to implement them, and on follow up by CITES Committees in the period before the next CoP, to be held in Sri Lanka. Other decisions will increase international cooperation in law enforcement to fight wildlife crime and strengthen the compliance process on ivory trade through NIAPs. While measures are needed to close potential loopholes that could still allow ivory to enter markets, the decisions taken at CoP17 represent a large step towards safeguarding elephant populations and the ecosystems of which they are part.