

Amend the annotation for African Elephant *Loxodonta africana*

Proposed amendment: (additional text underlined, deleted text struckthrough):

h) no further proposals to allow trade in elephant ivory from any populations already in Appendix II shall be submitted to the Conference of the Parties for the period from CoP14 and ending nine years from the date of the single sale of ivory that is to take place in accordance with provisions in paragraphs g) i), g) ii), g) iii), g) vi) and g) vii). In addition, such further proposals shall be dealt with in accordance with Decisions 14.77 and 14.78 (Rev. CoP15).

Proponent: Burkina Faso and Kenya

Background: The African Elephant *Loxodonta africana* was included in Appendix II in 1977 and transferred to Appendix I in 1989. The populations of Botswana, Namibia and Zimbabwe were transferred to Appendix II in 1997, and the population of South Africa in 2000. These transfers were subject to detailed annotations that were further modified during subsequent meetings of the Conference of the Parties. The current annotation was agreed at CoP14. With regard to trade in raw ivory, it allowed those African Elephant range States whose populations are already included in Appendix II to dispose of agreed quantities of stockpiled ivory in a one-off sale, under a series of restrictions. One of these restrictions is that included in the paragraph proposed for amendment here, namely that those range States (Botswana, Namibia, South Africa and Zimbabwe) should not submit further proposals to allow trade in elephant ivory for a period of nine years after the single sale of their ivory stockpiles. This restriction does not apply to other African Elephant range States, which all have their elephant populations in Appendix I and can therefore submit proposals concerning trade in African Elephant ivory. The sale of ivory in question took place in November 2008. The current annotation therefore applies until November 2017.

The proponents believe that the agreement reached during discussions among the African Elephant range States at CoP14 was that no proposals for trade in elephant ivory would be submitted by any range State until at least nine years had elapsed after the one-off sale of ivory from Botswana, Namibia and South Africa. They believe that the amendment proposed here, if adopted, would make this clear.

Discussion: There are three issues with this proposal. The first concerns whether it is appropriately dealt with as a proposed amendment to the Appendices; the second with the interpretation of the wording; and the third with whether it would be practical in whatever form it were considered.

Appropriateness as an annotation under *Resolution Conf. 11.21 (Rev. CoP15)*

The Appendices comprise lists of species the trade in specimens of which is regulated under the Convention. Many of the entries in the Appendices are annotated to specify or clarify the type of specimen actually regulated, this being allowed in some cases under the Convention. At CoP11 and again at CoP14, the Parties considered the use of annotations in the Appendices, producing *Resolution Conf. 11.21 (Rev. CoP15)*. They recognised two kinds of annotations: reference annotations and substantive annotations.

Reference annotations are for information purposes only and include those relating to nomenclature and whether a species is possibly extinct or not. Substantive annotations are considered to be integral parts of the species listing. There are two kinds. One specifies the inclusion or exclusion of designated geographically separate populations, subspecies, species, groups of species, or higher taxa, which may include export quotas. The other

specifies the types of specimen or export quota. No other kind of annotation is recognised, nor is it easy to see how any other kind of substantive annotation could be regarded as consistent with the provisions of the Convention as they currently stand.

As noted in the Analysis for CoP15, the paragraph in question does not conform to either of the two kinds of recognised annotation and is therefore not in conformity with *Resolution Conf. 11.21 (Rev. CoP15)*. The proposed amendment would not alter this.

Wording of the proposed amendment

Retaining a reference to the past (“the period from CoP14”) in a substantively changed annotation, as would occur if the current proposal were adopted, would render the annotation nonsensical – Parties cannot agree not to do something (or to do something) in the past. This could be resolved by altering the phrasing simply to refer to the date in question (“no proposals shall be submitted to the Conference of the Parties..... until November 2017 at the earliest”).

It is questionable whether the proposed amendment would achieve the proponent’s aim. If adopted, the amendment would now read “no proposals to allow trade in elephant ivory from any populations in Appendix II....”. But the proposals that the amendment is intended to address are for populations in Appendix I, not II, at the time that transfer and trade are proposed. The proposal (CoP 16 Prop. 11) from the United Republic of Tanzania at CoP16 is a case in point.

Practicality of implementation

The Parties could, in theory, agree to the substance of this proposal in a Resolution or Decision, rather than as an annotation to the Appendices. Even if they were to do so, it is difficult to see how this would prevent a Party submitting a relevant proposal under the terms of Articles XV and XVI of the Convention text at any time, should it decide to do so. Unless the text of the Convention were amended (as is allowed by Article XVII), it would appear that the Secretariat and the Parties would then be obliged to follow the procedures set out in the appropriate Articles to consider, and if necessary vote, on the proposal.

Moreover, were the substance of this proposal to be accepted as a Decision, a Resolution or an annotation to the Appendices, any Party could submit a revised version for consideration at any meeting of the CoP (or, if an annotation, at any time), creating a challenge to its sustained implementation. This proposal is itself intended to amend an annotation that was agreed at CoP14 to stand for nine years from the time of sale of the ivory referred to in paragraph g) of annotation 5 (i.e. until Nov 2017, as the sale took place in Nov 2008), demonstrating the difficulty of sustaining an agreement of this kind.