

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES

CONSULTATION PAPER ON THE USE OF THE POWERS UNDER ARTICLE 8.2 OF COUNCIL REGULATION (EC) NO. 338/97 - TO PROHIBIT THE KEEPING OF CITES SPECIMENS

The Issue

1. The Government has been considering whether, and if so to what extent, it would be appropriate to use the powers available under Article 8.2 of Council Regulation (EC) No 338/97 to prohibit the keeping of certain species of wild fauna and flora. This paper sets out its conclusions on the key issues under consideration and seeks your view accordingly. We should particularly like to know whether there are any:

- a) individuals or small businesses that are likely to be adversely affected;
- b) potential conservation benefits from introducing possession controls for the types of specimens identified below;
- c) disadvantages in introducing such controls;
- d) resource implications either for Defra or other affected bodies; and
- e) any other potential uses that could be made of this power.

Comments are also invited on the points raised in the partial Regulatory Impact Assessment annexed to this document.

2. All comments should be sent to Mr Eddie O'Sullivan, Zone 1/16, Temple Quay House, 2 The Square, Temple Quay, Bristol BS 1 6EB (tel: 0117 3728591; email: eddie.o'sullivan@defra.gsi.gov.uk) by no later than 31 October 2005.

Application of the Powers under Article 8.2

3. Council Regulation (EC) No. 338/97 implements the provisions of the Convention on International Trade in Endangered Species (CITES) within the EU. Article 8.2 of this Regulation provides that EU member states may prohibit the holding of certain CITES specimens. This power would be exercised by means of a Statutory Instrument made under section 2.2 of the European Communities Act 1972.

4. The power is discretionary and aimed primarily at the keeping of live specimens of species listed in Annex A of the Council Regulation – i.e. the most endangered species. This is not to say that it cannot be applied to other CITES species, or to dead specimens, or parts or derivatives thereof, but given the presumption in favour of trade in these specimens, we would need to be satisfied that any measures to restrict the trade in such specimens are

proportionate and that it is not possible to achieve our objectives by other, less restrictive, means.

Potential Uses of the Power

5. Although some might feel it desirable to apply these powers to all CITES specimens, this could only be achieved at considerable cost and would be likely to divert resources from other more pressing conservation priorities. The Government therefore considers that it would be better to focus action on three key areas as follows:

- preventing the illegal trade in CITES specimens;
- restricting the keeping of non-native invasive species, where these pose a serious ecological threat to native European species or habitats; and
- protecting species at particular risk of illegal or unsustainable trade such as tigers, rhinos, primates, etc.

6. The constraints on the exercise of these powers will depend primarily on the extent to which it can be shown that they will not:

- take away scarce resources from other conservation priorities;
- place unreasonable burdens on the legitimate trade in CITES specimens; or
- place unreasonable restrictions on the right of individuals to the use and enjoyment of their property.

We should particularly welcome your views on these, or any other, potential negative impacts.

Preventing Illegal Trade in CITES Specimens

7. As a key step towards helping to prevent illegal trade in CITES specimens, it is proposed to prohibit the keeping of any CITES specimen that has been acquired illegally. The current Regulations only prohibit the keeping for sale of such specimens and this move will greatly strengthen the power of the enforcement authorities to seize specimens, which they have reasonable grounds to believe have been imported or held illegally.

8. We have a duty to monitor observance of the provisions of the Council Regulation and, where we have reason to believe these are being infringed, to take appropriate steps to secure compliance. Although commercial trade in specimens of endangered species listed in Annex A of the CITES Regulations is very strictly regulated, it is not an offence to possess such specimens, or to give them away. Consequently we have no means of monitoring the movement of specimens handed on in this way. Also, while the CITES Regulations provide for the free circulation of CITES specimens within the EU, this makes it very difficult for us to monitor what rare or conservation sensitive

species are moving into the UK market. There is therefore growing concern that unscrupulous traders are taking advantage of this gap in our knowledge to evade the strict controls on the commercial trade in CITES species.

9. One way to help close this information gap and to ensure that the Regulations were properly enforced would be to require all keepers of CITES specimens to notify the Secretary of State of the address where such specimens are being kept. This would then enable the relevant enforcement authorities to carry out checks to ensure that the specimens were lawfully acquired. We recognise that this may fall outside the power in Article 8.2 of the Council Regulation but believe that it falls within the general enforcement provisions which a member state is required to take in accordance with Articles 16 and 20 of that Regulation. Unfortunately such blanket controls tend to be indiscriminate, unwieldy and expensive to implement. They would also use up resources needed to support other more important enforcement functions.

Identification of High Risk Species

10. An alternative, and more effective, approach would be to identify those species at greatest risk of illegal trade and target the notification requirement on these. The Secretary of State therefore proposes, in consultation with her scientific advisors - the Joint Nature Conservation Committee (for animals) and the Royal Botanic Gardens at Kew (for plants) – to draw up two draft schedules:

- the first comprising a list of those animal and plant species considered most vulnerable to illegal trade as living specimens; and
- the second listing those species at greatest risk of illegal trade as dead specimens, or parts or derivatives thereof.

Once these lists have been agreed the keepers of such specimens would be required to notify the Secretary of State of the address where such specimens are being kept. Again this would be within the general enforcement powers. The powers under Article 8.2 would then be used to prohibit the holding of specimens kept contrary to this notification requirement. It is also important that these specimens can be clearly identified and we should therefore appreciate your views on whether we should require such specimens to be permanently marked and, if so, by what method.

11. In drawing up these lists the Secretary of State will seek to develop indicators to help identify those species at greatest risk of illegal or unsustainable trade. Possible risk factors to be considered will include whether the species:

- is subject to high levels of illegal trade;
- has a high commercial value;
- is already subject to stricter domestic measures;
- is rare in the wild and rarely bred in captivity;
- looks like a more endangered species;
- is banned from import into the EU, or in international trade generally;

- is subject to an import quota;
- is listed in Annex A of Council Regulation (EC) No. 338/97 or the IUCN red data list; or
- has a restricted distribution in the wild.

It is proposed to develop a scale of weightings for these different risk factors, with priority being given to those species which score the highest. Your views as to the risk factors to be taken into account and the weight to be given to them would therefore be much appreciated.

12. In developing the criteria set out at paragraph 11 above, it is possible that some species will be identified where the risk of illegal trade is so great that it is felt that the private keeping of these specimens should be prohibited in all but the most exceptional circumstances. The full lists of species to be included in these different categories have still to be identified and will be subject to a further consultation exercise. However, we have already identified a number of species which we believe should be subject to these controls and our recommendations on these are set out in more detail at paragraphs 14 -28 below. Your thoughts on these or any other potential candidates for listing would therefore be much appreciated.

13. Once the lists referred to at paragraphs 10 and 12 have been agreed, it would be an offence to keep specimens of these species contrary to the general prohibition or notification requirement and the specimens themselves would be liable to confiscation. Keepers of these specimens would also be required to be able to show that they were lawfully acquired and to make this evidence available for examination if requested to do so by the Secretary of State, or an authorised person. It is of course recognised that there will always be unforeseen circumstances where an exception to these general prohibitions might be justified. It is therefore also proposed that the Secretary of State should have reserve powers to exempt keepers from such general prohibitions where there are exceptional reasons for doing so.

Restricting the Keeping of Non-Native Invasive Species

14. Four species are currently listed in Annex B of the EU CITES Regulations on the grounds that they pose an ecological threat to indigenous species. These are

- the American bullfrog (*Rana catesbiana*);
- the ruddy duck (*Oxyura jamaicensis*);
- the red-eared terrapin (*Trachemys scripta elegans*) and;
- the painted terrapin (*Chrysemys picta*).

It is possible that other species may be added later if these can be shown to present a real and imminent threat for which urgent action is required.

15. As things currently stand there is nothing to prevent the keeping of specimens imported prior to a ban, or to prevent traders supplying the market from captive bred sources. In the case of the first three species referred to, there is clear documented evidence that these have escaped to the wild in the UK and pose a serious threat to native European fauna and flora. Although

we are not aware that any painted terrapins have escaped to the wild in this country, it is felt that the risk to the environment is of the same order as for the red-eared terrapin.

16. Both the American bullfrog and the Ruddy duck are, or have been, subject to eradication programmes and action clearly needs to be taken to reduce the risk that specimens of these species may escape to the wild in the future. For these reasons we therefore propose to use the powers under Article 8.2 to prohibit the keeping of specimens of these species. Red-eared terrapins are not currently subject to an eradication programme and we do not consider the threat to be sufficient to justify a similar prohibition at this time. We should nevertheless welcome comments on whether such action might be desirable in the future.

17. There are, however, a number of practical issues that arise from this decision that need to be addressed as follows:

- Zoological Gardens – these are already subject to regulation under the Zoo Licensing Act 1981 and risk losing their licence if they fail to prevent their animals escaping to the wild. It is therefore proposed that establishments licensed under the Zoo Licensing Act should be excluded from any general prohibition.
- Research establishments – we are satisfied that the industry is already sufficiently well regulated to ensure that the risk of animals escaping to the wild is small. We therefore propose that these establishments should also be excluded from any general prohibition.
- Existing keepers – we do not believe it would be practicable or desirable to confiscate those specimens of these species that have been acquired by the keeper prior to this ban coming into force. If such action were ever deemed to be necessary, it would have to be proportionate to the identified risk and integrated with, and complementary to, other management measures such as eradication of wild populations. We do, however, think that existing keepers should be required to ensure that their specimens are securely housed and prevented from acquiring or breeding replacement stock. Breeding or trading for commercial purposes should be prohibited and keepers required to inform the Secretary of State where their animals are being kept.
- Disposal of confiscated specimens – it is not anticipated that it will be necessary to seize large numbers of these prohibited species but where we do, and in the event that a suitable place of rescue cannot be found, humane disposal by euthanasia may be necessary as a final resort.
- Inspections – a series of random inspections will be carried out from time to time to ensure that the specimens are being kept securely.

- Penalties – it will be an offence to keep any American bullfrogs or Ruddy ducks contrary to the restrictions outlined above. Specimens kept contrary to these requirements may be confiscated.

Keeping of Sensitive Species

18. Powers are already available under Article 4.6.c of Council Regulation (EC) No. 338/97 to enable the European Commission to prohibit the import of CITES species on the grounds that they do not survive well in captivity. So far the Commission has only chosen to exercise this power in respect of wild taken specimens of certain tortoise species. Although the EU Scientific Review Group is looking to develop guidance for using these powers more widely, there is currently no agreement as to which other species might qualify for regulation under this power. It is therefore felt that it would not be appropriate to use the powers under Article 8.2 for this purpose, until there is some wider agreement as to which species do not survive well in captivity. We will review this matter again once the Scientific Review Group has completed its consideration of this matter but in the meantime would welcome any comments you may have on this issue.

Keeping of Primates

19. Primates require specialist care and housing and for this reason are not considered suitable for the general pet trade. The concern here is that an unregulated market may result in higher mortality and thereby encourage an unsustainable level of trade. For these reasons it is the Government's policy to restrict imports of primates to zoos, scientific institutions and specialist keepers. We also have to be satisfied that the keeper is suitably equipped to house and care for the specimens in question. Despite these controls, there is evidence that some primates still end up in the hands of persons who lack the appropriate accommodation or expertise to care for them.

20. Given that some of the rarer primate species are extremely valuable, there is also growing concern that these are being imported or sold illegally. Therefore in order to ensure that our existing controls are enforced effectively, we propose to limit the keeping of primates by private individuals to specialist keepers who are able to show that they have been lawfully acquired and that they are properly equipped to house and care for them.

21. The adoption of this policy raises a number of wider practical issues, however, that will need to be addressed as follows:

- Notification requirement – in order for this requirement to be policed effectively it is important that the enforcement authorities should know where these primates are being kept. It is therefore proposed that private keepers should be required to notify the Secretary of State of the address where their animals are kept. Failure to provide such notification would be an offence and could result in the animals being confiscated.
- Documentation requirements – primate keepers would also be required to be able to show that their specimens were lawfully acquired and to

make this evidence available for examination if requested to do so by the Secretary of State, or an authorised person. Failure to comply with such a request would also be an offence. Any specimens found to have been acquired unlawfully would of course be liable to confiscation.

- Evidence of expertise – primate keepers will also be expected to provide a certificate of competence (renewable every 5 years) to confirm that they are properly equipped to house and care for their animals. Failure to provide such a certificate will be an offence and the specimens concerned will be liable for confiscation.
- Guidance on standards of care – these will be provided by the Secretary of State, together with a list of suitably qualified experts on primate care who would be empowered to provide the required certificate of competence. Any fees for the provision of such a certificate would of course have to be met by the keeper.
- Dangerous Wild Animals Act licences – some 665 primates are currently licensed under this Act, which provides for an annual inspection scheme to ensure that the animals are kept securely and properly looked after but it does not check if they were lawfully acquired. We should therefore be grateful for your views as to how these proposed controls should apply to keepers licensed under this Act.

The Keeping of Tiger Parts & Derivatives

22. Tiger populations are under considerable pressure as a consequence of the illegal trade in their parts and derivatives and CITES Conference Resolution 9.13 (Rev) notes in particular that the Standing Committee has called upon all Parties to take such measures as are required to halt this illegal trade. As part of our contribution to this international effort, the UK has sought to eliminate the market for these products by prohibiting all commercial trade in tiger parts, including captive bred specimens and specimens acquired before the CITES Convention came into force. The only exception to this general prohibition is the sale of antique mounted tiger heads and skins acquired before 1 June 1947.

23. There is, however, nothing to prevent private individuals keeping captive bred or pre-Convention specimens for non-commercial purposes and, given the high commercial value of these commodities, some fear that this loophole provides an easy opportunity for unscrupulous traders to circumvent the controls on illegal trade. In the light of these concerns, and to help strengthen the enforcement of the existing prohibition on this trade, it is proposed to prohibit the keeping of any tiger parts and derivatives, except for those kept for research or educational purposes. Keepers of specimens acquired before this proposed ban comes into force would, still be able to keep them but would not be able to pass them on to someone else. They would also be expected to be able to show that these were lawfully acquired and to make this evidence available for examination if requested to do so by the Secretary of State, or an authorised person.

The Keeping of Bear Parts and Derivatives

24. Bear populations are under considerable pressure as a consequence of the illegal trade in their parts and derivatives and CITES Conference Resolution 10.8(rev) calls upon all Parties to take immediate action to address this illegal trade. As part of our contribution to this international effort, the UK has sought to eliminate the market for these products by prohibiting all commercial trade in bear bile, paws and gall bladders, including those obtained from captive bred or pre-Convention sources. However, there is currently nothing to prevent private individuals keeping these specimens for non-commercial purposes. In an effort to strengthen the enforcement of the existing prohibition on this trade and close any loopholes that may exist, it is proposed to prohibit the keeping of all specimens of bear bile, paws and gall bladders, except for those kept for research or educational purposes. We are not aware that any of these specimens have ever been lawfully imported into this country, but where a keeper can show that the specimens were lawfully acquired before the proposed ban comes into force they would be subject to the same exemption as is proposed for tiger products.

The Keeping of Rhino Parts and Derivatives

25. Rhinoceros populations are under considerable pressure as a consequence of the illegal trade in their parts and derivatives and CITES Conference Resolution 9.14 (Rev) urges all Parties to take effective measures to address this illegal trade. As part of our contribution to this international effort, the UK has sought to eliminate the market for these products by prohibiting all commercial trade in the unworked horn or parts or derivatives thereof, including those obtained from captive bred or pre-CITES specimens. The only exception to this general prohibition is the sale of worked antique specimens acquired before 1 June 1947.

26. There is, however, currently nothing to prevent private individuals keeping captive bred or pre-Convention specimens for non-commercial purposes and, given the high commercial value of these commodities, some fear that this loophole provides an easy opportunity for unscrupulous traders to circumvent the controls on illegal trade. In the light of these concerns, and to help strengthen the enforcement of the existing prohibition on this trade, it is proposed to prohibit the keeping of any rhino trophies or unworked rhino horn, or parts and derivatives, except for those kept for research or educational purposes. Keepers of specimens acquired before this proposed ban comes into force would, still be able to keep them but would not be able to pass them on to someone else. They would also be expected to be able to show that these were lawfully acquired and to make this evidence available for examination if requested to do so by the Secretary of State, or an authorised person. However, it is recognised that the CITES Parties themselves have agreed limited hunting quotas for some rhino populations and the proposed ban will therefore not apply to keepers of licensed hunting trophies.

27. Keepers of specimens acquired before this date would be required to be able to show that their specimens were lawfully acquired and to make this

evidence available for examination if requested to do so by the Secretary of State, or an authorised person.

The Keeping of Tibetan Antelope Parts and Derivatives

28. Tibetan antelope populations are under considerable pressure as a consequence of the illegal trade in their parts and derivatives, particularly in the shawls made from the fine hair of this species known as “shatoosh”. CITES Conference Resolution 11.8 (Rev) calls upon all Parties to take immediate action to eliminate this illegal trade. As part of our contribution to this international effort, the UK prohibits all commercial trade in these specimens but there is currently nothing to prevent private individuals keeping them for non-commercial purposes. In order to strengthen the enforcement of the existing prohibition on this trade and close any loopholes that may exist, it is proposed to prohibit the keeping of any hunting trophies, or products made from the hair of this species except for those kept for research or educational purposes. We are not aware that any of these specimens have ever been lawfully imported into this country, but where a keeper can show that the specimens were lawfully acquired before the proposed ban comes into force they would be subject to the same exemption as is proposed for tiger and rhinoceros horn products.

Summary of Recommendations

29. In the light of the recommendations set out above, and subject to the outcome of this consultation exercise, it is proposed that the Secretary of State should use the powers available under Article 8.2 to develop a three tier system of controls for the keeping of CITES specimens as follows:

- Level 1 – it is proposed to impose a general prohibition on the keeping of CITES specimens that have been acquired unlawfully. The Regulations would make it an offence to keep such specimens, which would be liable to confiscation.
- Level 2 – it is proposed to develop a list of CITES species and specimens at greatest risk of illegal or unsustainable trade, which it would be prohibited to keep without prior notification to the Secretary of State. Keepers would also be required to be able to show that their specimens were lawfully acquired and to make this evidence available for examination if requested to do so by the Secretary of State, or an authorised person. Failure to comply with either of these requirements would be an offence and the specimens concerned would be liable to confiscation.
- Level 3 - it is proposed to develop a list of highly threatened CITES species the keeping of which is prohibited in all but the most exceptional circumstances. It would be an offence to keep specimens of any of these species and specimens kept contrary to this prohibition would be confiscated.

It is proposed, however, that the Secretary of State should have reserve powers to waive these general prohibitions in exceptional cases.

30. Although the full list of species to be included in the second and third levels have yet to be agreed, an examination of our existing stricter measures in relation to the trade in certain CITES species and specimens would suggest a number of candidates for inclusion within this overall framework as follows:

- Keeping of non-native invasive species – it is proposed to prohibit the private keeping of the Ruddy duck and American Bullfrog and to invite comments on whether this should be extended to include the Red-eared terrapin. The ban would not apply to specimens acquired before the prohibition comes into force but such keepers would be subject to the notification/documentation requirements under level 2. They would also be required to ensure that their animals are kept securely and will not be permitted to breed or acquire replacement animals. It will be an offence to keep such specimens contrary to these restrictions and any animals held in contravention of these requirements will be liable to confiscation. Zoos and research establishments will be excluded from these prohibitions.
- Keeping of sensitive species – we do not consider it appropriate to use the powers under Article 8.2 to regulate the keeping of these species until there is wider agreement as to which species do not survive well in captivity. We will, however, revisit this issue once the Scientific Review Group has completed its consideration of this matter.
- Keeping of primates – it is proposed to restrict the private keeping of primates to specialist keepers who are able to show that they are properly equipped to house and care for them. Such keepers will be subject to the notification/documentation requirements at level 2 and would also be required to provide a certificate of competence to confirm that they are suitably equipped to house and care for their animals.
- Dead specimens - it is proposed to prohibit the keeping of:
 - all dead specimens, or parts or derivatives thereof, of tiger species, apart from antique mounted tiger skins and heads;
 - all bear bile, paws or gall bladders;
 - all rhino trophies or unworked rhino horns, or parts or derivatives thereof, apart from worked antique specimens or licensed hunting trophies; and
 - all hunting trophies or products made from the hair of the Tibetan antelope;

except for those kept for research or educational purposes. Keepers of specimens acquired before the ban comes into force would be required to be able to show that their specimens were lawfully acquired and to make

this evidence available for examination if requested to do so by the Secretary of State, or an authorised person. Failure to comply with such a request could result in the specimens being confiscated.

Your views and comments on these proposals would be much appreciated.

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