

PAUL RICHARD

STAFF SECRETARY'S OFFICE

FILES RECEIVED IN RECORDS MANAGEMENT AT VARIOUS
TIMES, BOXED AND INVENTORIED ON 1-19-95

PELLEY AMENDMENT - CITES (RHINOS & TIGERS)

NLRB - 1994 REPUBLICAN APPOINTMENT

NLRB - RECESS APPOINTMENT

NLRB - WILLIAM GOULD NOMINATION

GAY { LESBIAN VICTORY FUND

DRAFT EXECUTIVE ORDER ON SECURITY CLASSIFICATION

ENCLOSURES FILED OVERSIZE ATTACHMENTS

4093

NARA 2898

from
PAUL
RICHARD
10/6/94

5/25/93 Pelly Amendment

Mike Young, Interior

Question of Presidential sanctions as

China, Taiwan, Korea, Yemen.

Commerce usually prepares a sanctions recommendation to accompany the certification.

⇒ TPRG

sanction must be consistent w/ GATT

wanted to have separation in the recommendations because
Sec'y has no discretion - President

Japan was a big trader until they joined CITES in 1980.

Wildlife products:	\$ 43 m	1990
	65.5 m	1991
	40 m	Korea
	28 m	Taiwan

China is a CITES member

Korea, Yemen are not. CITES secretariat pg don't cite Yemen.

Babbitt feels that US is leading CITES countries, not going out on limb.

- steps that lead to behavioral changes before sanctions.

State endorses sanctions if non-compliance.

China, Taiwan have 10,000 Kg stockpiled.

Can lead up to certification w/ public announcement.

- tigers - situation even worse than rhinos.

China had a stockpile

- 1) recommend setting forth what happens if no compliance
- 2) steps/ EC, whether countries will wait to see what we will do.

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

May 17, 1991

TO THE CONGRESS OF THE UNITED STATES:

On March 20, 1991, Secretary of the Interior Manuel Lujan and Secretary of Commerce Robert Mosbacher certified under section 8 of the Fishermen's Protective Act of 1967, as amended (Pelly Amendment), 22 U.S.C. 1978(a)(2), that nationals of Japan have engaged in trade in sea turtles that threatens the survival of two endangered species and severely diminishes the effectiveness of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), an international conservation program.

The certification by the Secretaries of the Interior and Commerce was made because Japan has allowed its nationals to import large amounts of raw hawksbill sea turtle shell and olive ridley sea turtle skin. All sea turtles were recognized as endangered by CITES on July 1, 1975, and listed on Appendix I of that convention, which prohibits all international trade in the listed products. When Japan joined CITES in 1981, it reserved on hawksbill and olive ridley sea turtles and continued to trade in them.

Since the certification, my Administration has held discussions with the Government of Japan in an effort to end its trade in sea turtles. The Government of Japan has responded by ending its trade in olive ridley sea turtles and announcing publicly its intent to withdraw its reservations to CITES on olive ridleys. It has also announced publicly its commitment to end all trade in hawksbill sea turtles by a date certain and make a decision in the near future on the specific date for ending the trade and for lifting its reservation to CITES for this species. Given these commitments, I have decided not to recommend specific measures to prohibit wildlife imports at this time pending an assessment within 30 days of the adequacy of Japan's actions to lift its reservation and bring to a conclusive end its trade in hawksbill sea turtles. Based on that assessment, an additional report will be made to the Congress.

GEORGE BUSH

THE WHITE HOUSE,

May 17, 1991.



THE SECRETARY OF THE INTERIOR
WASHINGTON

March 20, 1991

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

The Pelly Amendment to the Fishermen's Protective Act of 1967 (22 U.S.C. sec. 1978(a)(2)) requires the Secretary of Commerce or the Secretary of the Interior to make a certification to you if either determines that nationals of a foreign country, directly or indirectly, are engaged in trade or taking which diminishes the effectiveness of any international program for the conservation of endangered or threatened species. In this instance, both Secretaries share responsibility for protection of sea turtles, and the Secretary of the Interior serves as the U. S. Management Authority and Scientific Authority under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Based upon a review of the record compiled within the Interior Department, the Secretary of the Interior has determined that nationals of Japan are engaging in trade in sea turtle parts and products that diminishes the effectiveness of CITES. The Secretary of Commerce, based upon his review of the record compiled by both agencies, concurs that a certification of Japan is required due to continued Japanese trade in sea turtle parts and products.

This certification is based on the fact that Japan continues to import large amounts of raw sea turtle shell and sea turtle skins, diminishing the effectiveness of CITES. All sea turtles are listed in CITES Appendix I, which means that the species are threatened with extinction and no trade for commercial purposes is allowed. However, from 1987-1989, Japan imported the shells of more than 80,000 hawksbill sea turtles, and is expected to import another 18,000 individual hawksbill sea turtles in 1990. The enclosed documents provide additional details regarding the sources and extent of this trade.

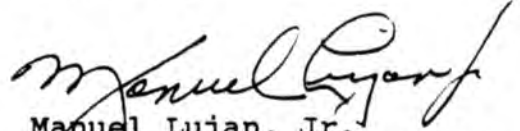
The Pelly Amendment provides that upon receipt of this certification, you may direct the Secretary of the Treasury to prohibit the importation of some or all wildlife products from the country involved into the United States.

The Secretaries of State and Treasury have been notified of this certification. We have also recommended to the Secretary of State that the Government of Japan be advised of this certification.

Sincerely,



Robert A. Mosbacher
Secretary of Commerce



Manuel Lujan, Jr.
Secretary of the Interior

APPENDIX A: OVERVIEW OF THE PELLY AMENDMENT

Major Provisions: The Pelly Amendment to the Fishermen's Protective Act of 1967, 22 U.S.C. §1978, as amended, states that when the Secretary of the Interior determines that nationals of a foreign country, directly or indirectly, are engaging in trade or taking which diminishes the effectiveness of any international program for endangered or threatened species, the Secretary making such finding shall certify such fact to the President. The Secretary of the Interior is required to certify a country that is engaged in trade determined to be diminishing the effectiveness of the Convention on International Trade in Endangered Species (CITES). The trade does not have to be in violation of an international convention or a country's domestic legislation in order to constitute "diminishing the effectiveness"; the test is the actual trade or taking.

Definitions: An international program is defined as any ban, restriction, regulation, or other measure in effect pursuant to a multilateral agreement in force with respect to the United States, the purpose of which is to protect endangered or threatened species of animals. International program as defined includes CITES, and CITES was the main focus of the wildlife provisions of the Pelly Amendment. Therefore, if the Secretary determines that the actions of a country's nationals are undermining CITES' efforts to protect endangered or threatened species, that country shall be certified.

History: Since 1974, the Department of Commerce has certified six different foreign countries, in five separate certification actions, all for diminishing the effectiveness of the International Convention for the Regulation of Whaling, which created the International Whaling Commission (IWC). The certifications were: Japan and the USSR, 1974; Chile, Peru and Korea, 1978; the USSR, 1985; Norway, 1986; and Japan, 1988. Although sanctions have never been imposed by the President, Pelly certifications and the threat of sanctions have been effective negotiating and diplomatic tools, particularly in bringing countries into compliance with the IWC and the international moratorium on commercial whaling.

The Department of the Interior has not certified any country under the Pelly Amendment, although it has been authorized to do so for more than 10 years. The current review of the sea turtle trade by Japan and Mexico is the first time the Department has given serious consideration to a Pelly Amendment certification process, and this is the first time it has been petitioned to do so by the public.

After Certification: Upon receipt of a Pelly certification, the President may direct the Secretary of the Treasury to prohibit the importation into the United States of wildlife products originating in the offending country. The President is required to notify Congress of any action taken pursuant to a Pelly Amendment certification. The President has complete discretion over the imposition of any Pelly Amendment sanctions, and as such Pelly Amendment certification can and has served as an important diplomatic negotiating tool. The actions of the Secretary are less discretionary, in that he is required to certify the countries found to be diminishing the effectiveness of the international program.

APPENDIX B: Japan and the Sea Turtle Trade

CITES Status of Sea Turtles: All sea turtles are listed on CITES Appendix I, which prohibits their trade for primarily commercial purposes. Japan currently has reservations on hawksbill sea turtles (traded for their shell, known in Japanese as "bekko") and olive ridley sea turtles (traded for their raw skin and tanned leather).

CITES allows countries that are Parties to take a reservation to a listing (within 90 days of the species' listing in an Appendix). Japan has reservations on several species, including hawksbill and olive ridley sea turtles. A resolution of the CITES Conference of the Parties requires that Japan treat these species as Appendix II species, when trading with other reserving Parties or non-Parties. Thus, trade in these species is not necessarily a violation of the Convention.

Summary of Japan's Sea Turtle Trade: From 1970-1986, Japan imported the shell of approximately 600,000 Hawksbill sea turtles. From 1984-1986, imports averaged 20,000-30,000 individuals per year. In 1990, Japan is expected to import the shell of approximately 18,000 individual Hawksbills. Japanese Customs statistics list 21 countries as sources of bekko in the past 10 years, and the price is now up to about \$225/kg. From 1981 (when it joined CITES) to 1989, the Japanese domestic bekko quota was 30,000 kg per year (representing 25-30,000 Hawksbills). The 1990 quota is now 20,000 kg (equivalent to about 18,000 turtles).

The Japanese government has stated that it will only trade in Hawksbills from countries that are not Parties to CITES, or from CITES Parties that have entered a reservation. As a Party, Japan should only allow imports of bekko that are accompanied by valid export documents. Several of the countries listed by Japan as being sources of bekko prohibit such exports. Thus, some of Japan's sea turtle imports are illegal and some are legal. The decision to recommend Pelly Amendment Certification is based not on the trade's legality, but the fact that it undermines both the spirit and effectiveness of CITES.

APPENDIX C

Imports of Raw Hawksbill Sea Turtle Shell into Japan: 1987-1989 (and the first 6 months of 1990)

(Average weight = 1.06 kg/ individual sea turtle)
(as reported in Japan Customs statistics)

Country:	kg bekko				
Non-parties	1987	1988	1989	Total	1990 (6 mo)
Antigua & Barbuda	317	146	562	1025	949
Barbados	14	-	372	386	147
Comoros Islands	2646	2159	969	5771	-(July 109)
Fiji	2191	817	2025	5033	716
Grenada	-	472	670	1142	354
Haiti	2867	4940	2427	10234	421
Jamaica	4504	3460	2371	10335	-
Maldives	3769	3743	2718	10230	500
Mexico	-	-	2123	2123	106 (Jan)
Solomon Islands	4833	3911	3709	12473	1466

CITES Parties (year of accession):

Brunei (1990)	50	286	2072	2408	1939
Cayman Islands (UK)	-	-	243	243	-
Cuba (1990)	5640	9533	5176	20349	2643
Saint Vincent (1988)	510	147	238	895	1010

TOTALS	29808	29614	25513	84935	10251
--------	-------	-------	-------	-------	-------

(note: totals include imports from countries exporting to Japan in 1987 and 1988, with no exports in 1989, but are not listed in the above table. Therefore, the totals for 1987 and 1988 are slightly higher than the sum of the country-by-country figures)

Total imports into Japan of bekko, 1981-1989: 248,727 kg (approximately 234,000 individual Hawksbills)

APPENDIX D: Countries Exporting Hawksbill Sea Turtle Shell

Countries reported by Japan to be countries of export for bekko shipments:

Country:

Non-parties

Legality of trade

Antigua & Barbuda	no information
Barbados	C: trade was regulated until 6/90, when it was banned; considering acceding to CITES
Comoros Islands	illegal
Fiji	C: trade is controlled, but data are not tabulated by species. Discrepancies exist between numbers reported exported and numbers reported imported by Japan (1987, 2008 vs 2191 kg; 1988, 174 vs 817 kg; 1989, 1095 vs 2025 kg). 1991: trade banned.
Grenada	no information
Haiti	legal with permits
Jamaica	illegal since 1982
Maldives	exports prohibited since 1977; small population
Mexico	C: illegal
Solomon Islands	legal only for turtles >60 cm

CITES Parties:

Brunei	banned without license; as of 1990, CITES Party without reservation
Cayman Islands (UK)	C: illegal; Due to a controversy that ensued when the UK was made aware of this shipment, the record was changed to indicate that the shipment came from Mexico. UK states shipment did not originate in the Cayman Islands.
Cuba	CITES reservation
Saint Vincent	C: CITES reservation; govt. says it isn't exporting. Sea turtles are protected; reservation may be dropped soon.

Note: C: Cable received; information confirmed by American Embassy. Otherwise, information is from non-governmental sources.

U.S. DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE

In re Petition of
the World Wildlife Fund and
the National Wildlife Federation
to Certify the Republic of Korea,
the People's Republic of China,
Yemen, and Taiwan under the Pelly
Amendment to the Fishermen's
Protective Act of 1967,
22 U.S.C. § 1978, as amended.

RECOMMENDED DECISION

INTRODUCTION

On November 12, 1992, the World Wildlife Fund and the National Wildlife Federation jointly petitioned the Secretary of the Interior to certify, under authority of the Pelly Amendment to the Fishermen's Protective Act of 1967, as amended,¹ that nationals of the Republic of Korea ("South Korea"), the Republic of Yemen ("Yemen"), the People's Republic of China and Taiwan are engaging in trade in rhinoceros horns and products which diminishes the effectiveness of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).² Before the Department received this petition, the Fish and Wildlife Service had been engaged in an ongoing investigation of the Asian trade in rhinoceros horns and products and tiger products, all of which are

¹ 22 U.S.C. § 1978 (1988), amended by Pub. L. No. 102-582, § 201, 106 Stat. 4900, 4904-05 (1992) [hereinafter referred to as the "Pelly Amendment"].

² 27 U.S.T. 108, T.I.A.S. No. 8249.

regulated under CITES as Appendix I specimens. This document summarizes the legal and factual framework of the Pelly Amendment and its application to the trade in rhinoceroses and tigers for the Asian countries mentioned above.

ISSUE PRESENTED

Whether the facts documented in the Department's administrative record support a finding by the Secretary that nationals of South Korea, Yemen, the People's Republic of China and Taiwan are engaging in trade of rhinoceros horns and products and/or tiger products which diminishes the effectiveness of CITES.

APPLICABLE LAW: THE PELLY AMENDMENT

Initially enacted to enhance the authority of the Secretary of Commerce to "quietly persuad[e] nations to adhere to the decisions of international fishery conservation bodies,"³ the Pelly Amendment was significantly expanded in 1978 to provide for the certification of, and possible limitations on trade with, countries where nationals are engaging in taking or trade which diminishes the effectiveness of any international program for the conservation of endangered or threatened species. The 1978 change was designed "to give the United States some leverage in reducing the alarming international trade in endangered and threatened species."⁴

³ H.R. Rep. No. 1029, 95th Cong., 2d Sess. 9 (1978).

⁴ Id.; see 124 Cong. Rec. 9280 (Apr. 10, 1978) (remarks of Reps. Leggett and Ruppe).

The Pelly Amendment process involves two stages: the decision on certification, and the subsequent decision on the imposition of import prohibitions. The Amendment provides that the Secretary of Commerce or the Secretary of the Interior "shall" issue a certification to the President when he:

finds that nationals of a foreign country, directly or indirectly, are engaging in trade or taking which diminishes the effectiveness of any international program for endangered or threatened species

22 U.S.C. § 1978(a)(2) (1988). When facts come to the attention of either Secretary indicating that cause for certification may exist, the Secretary must "promptly investigate" the alleged activity by foreign nationals, id. § 1978(a)(3)(B), and "promptly conclude" it and reach a decision on certification. Id. § 1978(a)(3)(C).

CITES, one of the international programs for endangered or threatened species covered by paragraph (a)(2),⁵ encompasses a system of import/export controls that apply to wildlife and plant species listed on one of three Appendices to the treaty. For species listed on Appendix I, such as the tiger (Panthera tigris) and rhinoceroses (Rhinocerotidae spp.), the highest level of

⁵ H.R. Rep. No. 1029, 95th Cong., 2d Sess. 10-11 (1978); 124 Cong. Rec. 9280-82 (Apr. 10, 1978). Under the Pelly Amendment, the phrase "international program for endangered or threatened species" includes:

any ban, restriction, regulation, or other measure in effect pursuant to a multilateral agreement which is in force with respect to the United States, the purpose of which is to protect endangered or threatened species of animals.

22 U.S.C. § 1978(h)(4) (1988), as amended by Pub. L. No. 102-582, § 201(b)(4), 106 Stat. 4900, 4905 (1992) (renumbering only).

protection is accorded, and trade for primarily commercial purposes is strictly prohibited.⁶

While 118 countries have acceded to CITES, some party countries maintain reservations for certain species on the Appendices. Also, approximately 50 independent countries are not parties. The Pelly Amendment is properly used to "extend the effect of the Convention [CITES]" to those countries, whether or not they have acceded to CITES, "whose nationals are acting in a manner which diminishes the effectiveness of the International Convention."⁷ The "offending country" need not, in other words, be a signatory to CITES to be a potential subject of a certification.⁸

After receiving the Secretary's certification, the President "may" impose import prohibitions on "any products from the offending country for any duration" as the President deems "appropriate" and consistent with the General Agreement on Tariffs and Trade.⁹ Within 60 days after receiving the Secretary's

⁶ CITES, Art. III, ¶ 3(c); see 16 U.S.C. § 1538(c)(1) (1988).

⁷ 124 Cong. Rec. 9280 (Apr. 10, 1978) (remarks of Rep. Ruppe).

⁸ The decision by the Secretary of the Interior and the Secretary of Commerce to certify Japan on March 20, 1991 cited the extensive trade by Japanese nationals in hawksbill and olive ridley sea turtles. At the time this trade was occurring, Japan had in place valid reservations from the CITES listings of these species. However, the existence of those reservations was irrelevant, for purposes of the Pelly Amendment, in determining whether the Japanese import trade was diminishing the effectiveness of CITES.

⁹ 22 U.S.C. § 1978(a)(4) (1988), as amended by Pub. L. No. 102-582, § 201(a)(1), 106 Stat. 4900, 4904 (1992). The High Seas Driftnet Fisheries Enforcement Act, Pub. L. No. 102-582, 106 Stat. 4900 (1992), expands the range of sanctions available under the Pelly Amendment, extending it to "any product" of the offending nation, instead of the former limitation to "wildlife products."

certification, "the President shall notify the Congress of any action taken by him pursuant to [the Secretary's] certification."¹⁰ This second stage of the Pelly Amendment process is committed to the President's unreviewable discretion. It has never been invoked, because in the cases where certifications have been submitted to the President, the United States and the offending country have successfully resolved the conservation issue.

STATEMENT OF FACTS

As stated above, the Department was petitioned by the World Wildlife Fund and the National Wildlife Federation on November 12, 1992 to certify four Asian countries under the Pelly Amendment for their trade in rhino horns and products. The Fish and Wildlife Service published a notice in the Federal Register on December 14, 1992 (57 Fed. Reg. 59122) to inform the public of a number of

Any import prohibition imposed by the President must, however, be consistent with GATT. It is important to note that this limitation affects only the President's decision on import sanctions; it does not affect the Secretary's certification decision in any way. See United States - Restrictions on Imports of Tuna, Report of the Panel, slip op. at 43 & 51 (1991) (GATT panel decision pending consideration by the GATT Council).

¹⁰ 22 U.S.C. § 1978(b) (1988). The President's report to Congress need only identify the status of the decision-making process on import restrictions. If no decision on sanctions has been made at the 60-day point, or if a decision is made that imposes import restrictions on some but not all wildlife products of the offending country, "the President shall inform the Congress of the reasons therefor." Id. In the case of the certification of Japan for its trade in sea turtles, the President's 60-day report to the Congress informed both houses of the status of negotiations with the Government of Japan. In that case, the negotiations succeeded in eliminating the trade by Japanese nationals in sea turtles and also won agreement by Japan to remove its reservations for the hawksbill and olive ridley sea turtle.

issues pertaining to rhinoceros conservation that were pending before the Department, including the Pelly Amendment petition.¹¹ Pursuant to that notice, a public meeting was held on January 21, 1993, and public comments were received through January 29, 1993.

In addition to the information received through the public process, the Fish and Wildlife Service carried out its investigation of the trade in rhinoceros horn and products in Asia. In the course of that investigation, which was ongoing at the time the petition was received by the Department, the Service also developed trade data regarding the Chinese and Taiwanese markets for tiger products, and a decision was made to include that data in the decision-making process for the Pelly Amendment certification.

The world's population of tigers has declined from perhaps 100,000 animals at the turn of the century to about 5,000 today, due to poaching for their skins and more recently for tiger bone medicinals. Populations of the world's five species of rhinoceroses, which exceeded 100,000 as recently as 1970, have plummeted to less than 10,000 animals today, and the rate of decline has dramatically increased in the past few years. In each

¹¹ The decision by the Fish and Wildlife Service to open a public process on the petitioned action was a voluntary administrative choice. The Interior Department has not adopted regulations to govern the Pelly Amendment process, although explicit statutory authority exists for that purpose. See 22 U.S.C. § 1978(g) (1988). The absence of substantive interpretive regulations does not preclude or affect in any way the Secretary's ability to proceed with Pelly Amendment certifications. See American Cetacean Soc'y v. Baldrige, 604 F. Supp. 1398, 1409 (D.D.C. 1985), aff'd sub nom., American Cetacean Soc'y v. Baldrige, 768 F.2d 426 (D.C. Cir. 1985), rev'd on other grounds sub nom., Japan Whaling Ass'n v. American Cetacean Soc'y, 478 U.S. 221 (1986).

case, the major market driving the poaching is the Asian medicinal trade, where rhino horn and tiger bone are prized ingredients of traditional medicines. Tiger skins, eyes, teeth, and even their genitalia also still command high prices on the illegal market.

The most recent data on tiger populations come from the Earth Island Institute of San Francisco and the Wildlife Conservation and Monitoring Center, based in Cambridge, England. The most recent data on rhino populations come from the TRAFFIC Network, also based in Cambridge. These data can be summarized as follows:

Tiger (Panthera tigris): About 5,000 animals remain in five extant subspecies, in scattered, disjunct populations from India northeast to Siberia and south to Indochina and Sumatra. Since the 1940's, three other subspecies have become extinct (the Bali tiger, the Javan tiger, and within the past decade, the Caspian tiger); now the South China tiger, with only 30-50 individuals, is in imminent danger, and the Siberian or Amur tiger, with a population of less than 400, is also declining rapidly.

Javan rhino (Rhinoceros sondaicus): Less than 80 animals remain, confined to a single isolated peninsula in Western Java, Indonesia. Among all of the world's remaining large mammals, this species is closest to extinction.

Sumatran rhino (Dicerorhinus sumatrensis): This species has been reduced to 500-900 animals, declining throughout Sumatra and the

Malay Peninsula due to deforestation and hunting, not only for their horn but also for their hide and even their blood, all of which are reputed to have medicinal properties.

Great one-horned rhino (Rhinoceros unicornis): About 2,000 remain in the Indian states of Assam and West Bengal and in Nepal, thought to be stable or even increasing in recent years; however, an April, 1993 report from the Nepalese government to the U.S. Embassy in Kathmandu documents the loss of seven rhinos to poachers so far in 1993, more than the past four years combined.

Black rhino (Diceros bicornis): This species is currently undergoing a catastrophic population decline. TRAFFIC International's July 1992 estimate was 2,400 animals, down from 3,500 a year before and 65,000 in 1970. Zimbabwe, which has the largest remaining population, also has the highest rate of poaching--its populations from have gone from 2,500 to less than 500 in the past three years.

White rhino (Ceratotherium simum): With over 5,000 individuals, the Southern subspecies (C. s. simum) in South Africa is the only rhino taxon which currently seems secure, though still vulnerable. The northern subspecies (C. s. cottoni) has been reduced to fewer than 30 animals in a single park in Zaire.

Because of their imperiled or vulnerable status, the tiger and all five rhino species are listed in Appendix I of the Convention on International Trade in Endangered Species (CITES), and all except the Southern subspecies of the white rhino are also now listed as endangered species under the U.S. Endangered Species Act.

At the third CITES Conference of the Parties in 1981 in India, recognizing that the Appendix I trade prohibitions had not stopped rhino poaching and illegal trade, the party countries adopted Resolution Conf. 3.11, calling on the CITES Secretariat to urge both party and non-party countries to halt all international trade in rhino products. When it became clear that this resolution had not been successful, at the Sixth Conference of the Parties in 1987, in Ottawa, Canada, the parties adopted a stronger Resolution Conf. 6.10, which called for a complete prohibition on all domestic and international trade in rhino products (other than legal hunting trophies); use of economic, political, and diplomatic pressure on countries continuing to allow trade; the destruction of all government and parastatal stocks of horn; increased law enforcement action against poachers and traders; encouragement of the use of substitutes for rhino horn; and development of rhino conservation strategies.

Actions taken to implement the Ottawa resolution were also not sufficient to stop the rhinos' decline. However, there was little opportunity for discussion of the rhino trade at the next CITES Conference in Switzerland in 1989, due to the time consumed by the debate on the status of the African elephant and the ivory trade.

The rhino discussion was resumed at the 1992 CITES Conference of the Parties in Kyoto, Japan, where the Southern African nations proposed to open up legal, sustainable trade in rhino horn removed from living animals as part of a captive breeding or ranching operation, in conjunction with the sale of stockpiles of rhino horn, as a means of raising funds for rhino conservation programs. These proposals were rejected because the majority of party countries felt that they did not meet CITES' criteria for such down-listing actions. Nevertheless, the parties engaged in a general discussion of the critical need for further action, ranging from innovative methods of legalizing (and hopefully controlling) the trade to the imposition of sanctions against the Asian rhino horn consuming countries and entities. No agreement was reached, and so the issue was carried over to CITES committees scheduled to meet later in the year.

At its June, 1992 meeting in Switzerland, the CITES Standing Committee adopted a resolution calling for a number of rhino conservation actions. The Fish and Wildlife Service, as a member of the Standing Committee, supported the adoption of this resolution, which recognized continued existence of stockpiles of rhino horn as "totally unacceptable to and incompatible with the implementation of the Convention". It called for direct action by responsible government agencies to acquire and destroy stocks of rhinoceros horn, warning that "failure to take such action would be viewed as a serious infraction, likely to result in a call for trade bans or other appropriate actions."

In August, the Executive Director of the United Nations Environment Programme (UNEP), at the urging of the CITES Secretary General, decided to convene a conference of rhino range states and potential donors (both governmental and non-governmental), to take place at the UNEP headquarters in Nairobi, Kenya, in January, 1993. UNEP also decided to send a Special Envoy, a rhino trade expert, on a mission to key rhino range states and consumers--including Zambia, Zimbabwe, South Africa, Namibia, Hong Kong, Taiwan, Korea, United Arab Emirates, and Yemen--to help close down the trade in illegal rhino horn. This mission was completed in December of 1992, and his preliminary report has been provided to the Fish and Wildlife Service by the U.S. Embassy in Kenya, where UNEP is located.

At the first Asian Regional CITES meeting in November, 1992, in Thailand, CITES parties recognized the Asian region's responsibility, as the primary consumer of rhino horn, for solving the problem. They called on all states in the region to implement Resolution Conf. 6.10 and the Standing Committee's June 1992 resolution.

At the same time, during its meeting in New Delhi in November, 1992, the International Union for the Conservation of Nature Cat Specialist Group determined that the demand for bones for Chinese medicine, rather than the fur trade, is now the driving force for poaching of tigers. The group called for "international efforts to persuade the Chinese and Taiwanese governments to stop their use and prevent imports of bones."

Further, in March, 1993, the CITES Standing Committee (the executive body which oversees CITES between biennial conferences of the parties) reached the conclusion that China and Taiwan are undermining the effectiveness of CITES with respect to their continued trade in rhinoceros horn and products. The Standing Committee called on all CITES parties to implement immediately any stricter domestic measures to confront this conservation problem.

In addition, the Standing Committee also took up the issue of the trade in tiger bone and other tiger parts during its March, 1993 meeting. As a result, the Committee reached the conclusion that the tiger trade is seriously threatening the existence of the species. The Committee asked for further information from knowledgeable sources and will evaluate the need for trade sanctions to address the tiger trade, as well as the rhino trade, during its September, 1993 meeting.

Tiger bone has been used for centuries in Chinese medicine, under the Mandarin name "hu gu". It is used to cure ulcers, rheumatic pains, typhoid fever, malaria, and burns, and it is also reputed to drive away devils, thus preventing nightmares. Tiger bone wine is used as a general tonic. Recent studies have indicated that tiger bone may have an anti-inflammatory and analgesic effect on rats, according to TRAFFIC USA.

Rhinoceros horn, known in Mandarin as "xi jiao", has an equally long history in Chinese medicine; there are records of rhino horn trade from Africa to Asia as early as 50 AD. It is used to treat many types of inflammation, with Asian horn considered to

be particularly potent. Various recent pharmacological studies have produced contradictory results about whether it has any fever-reducing effects. Rhino horn can also be used to fashion decorative items like knife handles.

A review of available information about the tiger and rhino horn trade in Taiwan, China, South Korea, and Yemen follows.

TAIWAN

Because Taiwan is considered by the United Nations and most countries of the world to be a province of China, not an independent country, it cannot join the U.N. or CITES. Over the past decade, the authorities in Taipei have enacted progressively more stringent laws directed towards the trade in endangered species products, culminating in a November, 1992 prohibition on trade and use of rhino horn. However, there is substantial evidence that none of these laws have been meaningfully enforced. Trade between Taiwan and mainland China's Fujian Province, as well as a thriving smuggling route from Taiwanese communities in South Africa to Taipei, are reported to involve large amounts of tiger bone and rhino horn.

Tiger Bone Trade in Taiwan

In 1986, use of tiger bone in manufactured medicines was outlawed in Taiwan, and the Wildlife Conservation Law of 1989 and its subsequent by-laws seemed to prohibit all trade in endangered species and their products. However, penalties under the law were very low and jail terms of less than 6 months could be paid off by

paying a small fine, according to several conservation groups which have visited Taiwan over the past two years. These groups have documented a lack of enforcement of the law's prohibitions with respect to the trade in tiger bones, penises, and other parts.

For example, during a 1992 survey in Taipei, Earthtrust found that 68 of 115 traditional pharmacies visited (59%) had tiger bones, teeth, and claws openly for sale, or offered to obtain them. Later that year, the Tiger Trust found that 20 of 32 pharmacies around the island had tiger products openly displayed. Tiger skins and skeletons were seen at taxidermy shops, and stocks of dried tiger penises for prized soup were displayed at restaurants. Prices ranged from \$933 per kilo of leg bone to \$1,600 for a skull to \$5,000 for a whole skeleton; tiger penis soup was priced at \$320 per serving (minimum order: 10 servings for \$3200).

TRAFFIC International also conducted a survey of pharmacies in Taipei in late 1992, finding 13 of 50 shops visited had tiger bone in stock (and two more were found to be falsely labelling bear or cow bone as tiger bone). Shop owners cited China as the most frequent source of bone. TRAFFIC also reported that twelve years ago, a single tiger wine brewery was reported by a Taiwanese trade magazine to be importing 2,000 kilograms of tiger bones annually (representing 100 to 200 tigers) to produce 100,000 bottles of wine.

Although Taiwan never had a native population of tigers, Earthtrust and Earth Island Institute have documented a captive population of 80 to 300 animals, presumably composed of animals

smuggled in from mainland China and Indochina. Several recent shipments of live tiger cubs from Thailand to Taiwan have been reported. As recently as 1986, public slaughters of live tigers were advertised in Taiwanese newspapers and attracted many spectators. Animals now being held in captivity are reportedly still slaughtered (in private) to supply parts for the medicinal and culinary trade.

Rhino Horn Trade in Taiwan

TRAFFIC International has obtained customs statistics indicating that over 9,500 kilograms of rhino horn were imported into Taiwan between 1966 and 1985, the year when import was supposedly prohibited by a decree of the Board of Foreign Trade. The 1989 Wildlife Conservation Law expanded the controls by prohibiting import, export, processing, trade, and attempts to sell or display the horns of endangered species, including rhino horn. A 1990 decree required registration of rhino horn stocks, and 1,470 kilograms were registered by 410 individuals and businesses. However, TRAFFIC International and the U.N. Special Envoy considered this to be only a fraction of total stocks, since possession of rhino horn remained legal and there was no penalty for failure to register.

In 1991, in order to test the effectiveness of the 1985-1990 controls, TRAFFIC made a new study of rhino horn in the Taiwanese marketplace. Their report, released in 1992, documented that 1,800 traditional pharmacies in Taiwan still sold rhino horn, with stockpiles estimated to be 3,712 to 8,943 kilograms, held not only

by pharmacies and doctors but increasingly by speculators. This stockpile could represent as many as 3,000 dead rhinoceroses. Horn was displayed and sold very openly, despite the laws supposedly prohibiting it, with retail prices ranging from \$54,000/kilogram for Asian horn (thought to be the most potent) to \$4,200/kilogram for African horn. Thus the total Taiwanese stockpile may be worth as much as \$50 million or more. Most African horn likely came to Taiwan from the large Taiwanese community in South Africa. In addition to the South Africa connections, Earth Island Institute maintains that smuggling routes also run from southeastern Russia, India and Nepal to the China coast and from Indochina through Bangkok and port cities such as Singapore and Hong Kong to Taiwan.

During his October, 1992 visit, the UNEP Special Envoy found that prices had increased slightly since the TRAFFIC study. His assessment of the situation was pessimistic, since officials in Taipei were unwilling to make any new commitments to enforce existing laws or take other actions to control the trade.

The Fish and Wildlife Service notified the authorities in Taipei of the WWF/NWF petition for Pelly Amendment certification through the American Institute of Taiwan in November of 1992. That same month, they adopted new regulations specific to rhino horn duplicating the prohibitions of the previous (1989/1990) law. Since then, representatives of Taiwan have met with Fish and Wildlife Service staff on several occasions, and they attended the Service's public meeting held on January 21, 1993, which covered the Pelly certification petition among other topics. Their

position is that measures they have taken to make import and trade illegal are all that they can be expected to do; confiscation or purchase of privately held stockpiles is not reasonable, in their view. Taiwanese health officials do concede that rhino horn is not an important medicinal, since it can be easily replaced by other drugs (e.g., aspirin).

Taiwan recently held public burnings of 42 rhinoceros horns confiscated by customs; however there is no indication that importers have been punished (other than by loss of the horn) or that there has been any enforcement of controls in the marketplace. Within the past few months, TRAFFIC, the UNEP Special Envoy, and the CITES Standing Committee have all reached the conclusion that imports of poached rhino horn into Taiwan are continuing unabated; it is likely that most poached rhino horn leaving Africa and Asia today continues to go to pharmacies and speculators in Taiwan.

CHINA

- China joined CITES in 1981 without taking any reservations to listed species, and the Chinese government claims that all of the tiger bone and rhino horn stocks in the country were legally obtained prior to China's accession. However, many conservation groups and international organizations, including the CITES Standing Committee, have disputed China's assertions.

Tiger Bone Trade in China

According to Earthtrust and the Tiger Trust, from the 1960's to 1977 China classified the tiger as a pest species and paid a

bounty for dead animals. This led to the decimation of the South China tiger, now the most highly endangered subspecies with as few as 30 animals remaining. The resulting easy availability of tiger bone and other parts also reportedly stimulated increased demand for tiger medicines. The Tiger Trust also maintains that the stockpiles of bone from this period were used up by the late 1980's, causing China to look to other countries for new supplies.

The Chinese Government's Hengdaohezi Breeding Center in Heilongjiang Province has documented 24 companies in China which export tiger bone medicines, including twelve types of tablets, seven brands of wine, and five confections (of powdered bone with syrup or honey). Annual exports were documented to be over 15,079 cartons of tablets, 31,500 bottles of wine, and 5,250 kilograms of confections, but Chinese CITES authorities do not currently know how much tiger bone is consumed annually in the manufacture of these products.

The IUCN Cat Specialist Group reported in its September, 1992 newsletter that the rapid decline of tigers in India's famous Ranthambhore Tiger Reserve (down from 44 in 1989 to only 15 three years later) was due to poaching for bones, which arrested poachers said were being smuggled through Nepal and Tibet into China. Since then, the New York Zoological Society in April 1993 reported that eight more animals have been lost to poachers, and the park's population will likely be extirpated by the end of 1993. The UNEP Special Envoy reported a similar rate of poaching of tigers in Nepal's Royal Chitwan National Park, with 25 animals taken in 1989

and 1990, again destined for China through Tibet, with poachers promised \$130 per kilogram of bone. According to the Cat Specialist Group, Nepal's tiger specialist reported this poaching to be a new phenomenon starting in 1991, probably indicating a new demand for bone in China.

Poaching for the bone trade is also decimating Russia's fast dwindling Siberian or Amur tigers. In November, 1992, the U.S. National Fish and Wildlife Foundation, which is funding a joint U.S./Russian tiger study team in Western Siberia, reported that the first Siberian tiger to be radio-collared during the study was lost to poachers; researchers were able to find two of her cubs, which otherwise were doomed, and send them to Omaha's Henry Doorly Zoo. Similarly, the IUCN Cat Specialist Group cites a Russian report that more than 20 Siberian tigers were poached during 1992 from the Lazo Reserve northeast of Vladivostok, with poached animals being sold to Chinese buyers.

TRAFFIC International has reported smuggling of poached tigers from India and Nepal through Tibet into China, and the Earth Island Institute maintains that smuggling routes also run from southeastern Russia, India and Nepal to the China coast. All of these reports are consistent with the Tiger Trust's theory that China's domestic stockpile of tiger bone was exhausted in the late 1980's, causing buyers to search for sources outside the country.

At the CITES Conference of the Parties in Japan in 1992, China proposed a legalized trade in parts from tigers now being captive bred at a facility in Hengdachezi. Because of inadequate

documentation, China eventually withdrew the proposal, but it will likely be resubmitted for consideration at the 1994 Conference of the Parties to be held in the United States.

Rhino Horn Trade in China

Although China was bound by CITES' trade prohibitions upon its accession in 1981, TRAFFIC International has reported that during the next four years China imported 11,054 kilograms of rhino horn, believed to come primarily from Yemen. In 1988, a registration program identified stocks totalling 9,874 kilograms of rhino horn. Government representatives attending the CITES Asian Regional meeting in Thailand in 1992 acknowledged a remaining inventory of more than 8,000 kilograms. The UNEP Special Envoy and TRAFFIC International have estimated an even larger stock of up to 10,000 kilograms, a 15-year supply at current rates of use.

State-owned pharmaceutical firms manufacture and sell a number of existing products which include rhinoceros horn, though the government reports that it no longer allows development of any new rhino horn products. Until early 1993, these products were legally exported to Chinese communities all over the world (including the United States, where the Fish and Wildlife Service periodically intercepts and seizes them). Meaningful assessment and control of the trade are further undermined by China's admission that it allows medicines to be labelled as containing rhino horn even if they have none.

Imports of poached horn are suspected to come from populations in India, Nepal and Bhutan through Tibet, as well as from Africa in

part by way of Taiwan. Smuggling of wildlife products across the Straits of Taiwan in both directions is vigorous and includes trade in rhino horn, paralleling the overall increase in trade between China and Taiwan according to a 1991 study by TRAFFIC-USA.

The U.S. Embassy in Beijing has discussed the Pelly certification petition and review with the Chinese Ministry of Forestry, which is their CITES Management Authority, and the Ministry of Public Health, which regulates internal use of rhino horn medicines. Their response was that rhino horn is a very important medicine in China, for which there is no easy substitute; China believes that destruction of present stockpiles would not be acceptable to the Chinese people given the long tradition of use of rhinoceros horn in Chinese medicine. In March, the Deputy Director of the Fish and Wildlife Service met with the leader of a Chinese scientific delegation to express the Service's great concern about China's continuing involvement in the rhino horn trade.

That same week, representatives of China attended the CITES Standing Committee meeting. They still maintained that Chinese stockpiles of rhino horn are pre-Convention and thus should be exempt from the CITES resolutions calling for their destruction. They did announce that China has just implemented a ban on legal exports of rhino horn medicines, though they have no means of controlling illegal exports (unlike imports, there are typically no customs control points or inspections for exports). Thus, it is likely that Chinese rhino horn products will continue to move all

over the world as long as they continue to be available in the domestic marketplace.

More recently, as a result of the Standing Committee decision to press China for an end to all rhino horn trade and the impending possibility of U.S. Pelly Amendment certification, the U.S. Embassy in Beijing in April, 1993 reported that the Chinese government has begun reconsideration of its entire rhino horn policy. This process, which will involve a search for consensus among eight different ministries, may take "several months," according to Embassy sources, with no guarantee as to what outcome will be reached.

REPUBLIC OF KOREA (SOUTH KOREA)

Among independent countries which are not yet parties to CITES, South Korea has the largest economy and the highest volume of international trade. The U.S. has been urging South Korea to become a party for many years; despite many promises, there has been no meaningful action until this year. The few details which are available regarding Korean involvement in the tiger and rhino trade are discussed below.

Tiger Bone Trade in Korea

According to TRAFFIC International, South Korea imported 1,700 kg. of tiger bones between 1985 and 1990 (representing approximately 50 dead tigers). Little else is known about Korea's involvement in the trade.

Rhino Horn Trade in Korea

According to TRAFFIC International, imports of rhino horn into South Korea totalled 2,857 kilograms from 1970 to 1983, the year that South Korea banned rhino horn use. Imports were prohibited in 1986, but there was no requirement for registration of stocks and thus no effective enforcement. A 1988 survey by TRAFFIC International found that 86% of pharmacies in Seoul, and 64% in the country as a whole, sold rhino horn products, an increase over the prevalence of horn found in previous surveys despite the bans. The World Wildlife Fund also maintained in its November, 1992 petition that South Korea continued to be the destination for horn from Africa and Asia.

However, since the Fish and Wildlife Service began its review of the rhino and tiger trade, Korea has initiated what appears to be a major policy shift. The U.S. Embassy in Seoul informed the Korean government of the WWF/NWF petition in November of 1992. Representatives of the Korean Embassy in Washington have subsequently met several times with staff of the Fish and Wildlife Service and Department of State and attended the January, 1992 public meeting, accompanied by officials from Seoul. They reported that the Ministry of Health and Social Affairs and the police had just completed surprise inspections in 364 stores all over Korea, turning up no rhinoceros horn; annual inspections are to be conducted from now on. In addition, Korea has invited governmental and nongovernmental organizations to inspect its shops, announced or unannounced; TRAFFIC USA and WWF-US have each scheduled such inspections in early May.

An official Korean statement received from their embassy in February, 1993, says additional stringent measures will be taken to eliminate illegal import and domestic trade, and that a public awareness campaign in the media will be continued to increase public knowledge of endangered species and to discourage rhinoceros horn use. The traditional medicine community has expressed its support for banning the use of rhinoceros horn, and the government does not believe that horn substitutes are necessary since in their view the horn is not efficacious.

In addition, during the Fish and Wildlife Service's January public meeting, Korean representatives publicly stated that they will join CITES in the first half of 1993. According to the U.S. Embassy in Seoul, the Korean press has encouraged the government to end all trade in endangered species, and the Embassy is convinced that the government is making a good faith effort to achieve that result. The Service has just been informed that the Korean government has made arrangements for the CITES Secretary General to come to Seoul on May 5 to meet with appropriate ministers and to address the Korean parliament, which will be considering CITES accession legislation later that week.

REPUBLIC OF YEMEN

What we now know as the Republic of Yemen was created in 1990 by the union of South Yemen (or Aden) and North Yemen. Yemen is not a party to CITES but has recently promised to become a member, as discussed below.

Tiger Bone Trade in Yemen

Yemen has never had any known involvement in the tiger trade.

Rhino Horn Trade in Yemen

In the Persian Gulf, the major market for rhinoceros horn is in Yemen where the horn has been used to make ceremonial dagger handles, known as "jambiya". TRAFFIC International has compiled official South and North Yemeni statistics showing imports of large quantities of rhino horn from 1956 through 1977 (as much as 3,275 kilograms per year). After that, declared imports gradually declined to 120 kilograms in 1990. Actual annual imports may have been much larger, however, since a 70% import duty created a large incentive for smuggling. Even the declared imports likely represent the death of at least 12,750 African rhinos during the 1970's--nearly twice the size of the current remaining populations of African black and white rhinos.

However, Yemen has undertaken a major policy shift since November of 1992, when the U.S. Embassy gave the government notification of the WWF/NWF Pelly Amendment petition simultaneously with the visit of the UNEP Special Envoy. In December, the government issued a decree prohibiting trade of rhinoceros horn that has not been processed into dagger handles. All unprocessed horn must be registered and marked, and the government has authority to inspect for and confiscate any illegal rhinoceros horn. In January of 1993, the government held an educational seminar for traders and manufacturers of the dagger handles, with participation by the UNEP Special Envoy, and most significantly the

government made an official announcement that it will move quickly to join CITES.

The CITES Secretariat has confirmed that Yemen has made inquiries about the process of CITES accession and is optimistic that it will happen later this year. The U.S. Embassy and the UNEP Special Envoy have both reported that Yemen is continuing to make good progress towards implementation of this major policy change, expressing their beliefs that Pelly certification would be counterproductive at this time.

DISCUSSION

The facts obtained by the Service during the course of its investigation and during its public process, as well as the recent action of the CITES Standing Committee, lead inexorably to the conclusion that the trade by nationals of China and Taiwan are diminishing the effectiveness of CITES and thereby harming efforts to conserve rhinoceroses and tigers. Certifications are therefore recommended for both the People's Republic of China and Taiwan.¹²

¹² A review of the Service's record indicates that a certification is not appropriate at this time for the Republic of Korea or the Republic of Yemen.

In light of Korea's willingness to allow foreign inspection of the domestic horn trade, its stated intention of joining CITES by June 1993, and the lack of reliable data on such trade, a decision on certification should be delayed. By July 1993, there will be a better understanding of Korea's role in the trade and of its intention of becoming a member of CITES.

Yemen is not a party to CITES but has recently promised to become a member, and the CITES Secretariat is optimistic that Yemen will make good on this promise. Pelly certification at this time is believed to be inappropriate in light of Yemen's compliance with

While Taiwan can not join CITES,¹³ it ostensibly requires similar documentation as that required by CITES for import or export of CITES-listed species.¹⁴ Taiwan recently held public burnings of 42 confiscated rhinoceros horns. Despite this public show of action, however, the U.N. Environment Programme expert and the TRAFFIC Network have presented persuasive evidence that Taiwanese enforcement is ineffective and that imports of poached rhinoceros horn have continued unabated. Most poached rhinoceros horn leaving Africa and Asia today continues to go to speculators in Taiwan. The authorities in Taipei continue to take the position that confiscation and destruction of rhinoceros horn stockpiles is not reasonable, which directly conflicts with the conservation goals of two resolutions of the CITES Conference of the Parties and one Standing Committee resolution. A thriving trade in tiger bone is also still carried on in the country. Thus the actions of Taiwanese nationals are undermining the effectiveness of CITES.

the recommendations of the United Nations Environment Programme's special envoy to issue the decree prohibiting trade in rhinoceros horn, and its commitment to the CITES Secretariat to become a member of CITES. However, Yemen's implementation of the decree and their progress towards CITES membership must be carefully monitored over the next few months.

¹³ Because the CITES Secretariat, which administers the treaty, is provided by the Executive Director of the United Nations Environment Programme, CITES, Art. XII, ¶ 1, CITES is administered in accordance with United Nations policies. Therefore, since Taiwan is not recognized as an independent country by the United Nations, it can not accede to CITES.

¹⁴ The United States, in processing wildlife or plant shipments from Taiwan, requires the presentation of non-party documentation from the Management Authority of Taiwan in accordance with CITES, Article X.

Rhinoceros horn medicines are exported out of China to Chinese communities around the world; some even make their way illegally into the United States. Although China is now trying to limit the use of these medicines to its domestic market and to prohibit export, it is unlikely to succeed so long as large stocks of horn and medicines continue to be available within the country; not even highly developed countries can successfully control their exports (unlike imports, there are typically no customs control points or inspections for exports). The worldwide availability of rhinoceros horn and tiger bone products from China is fueling the demand for poached rhinoceros horn and tiger parts, and will continue to do so as long as China has a state-sanctioned industry involved in manufacturing and selling rhinoceros horn medicines. These actions of China are undermining the effectiveness of CITES, and will continue to do so until China decides to stop all trade and permanently remove its stocks from the marketplace.

The Pelly Amendment does not impose a judicially-enforceable time frame within which the Secretary of the Interior must take action when facts come to his attention regarding foreign trade that may diminish the effectiveness of CITES.¹⁵ The duty to

¹⁵ The decision on whether to certify a nation under 22 U.S.C. § 1978(a)(2) (1988) requires some element of judgment. The phrase "diminishes the effectiveness of" was not defined by Congress; according to the Supreme Court, the statutory language is not so specific as to provide grounds for a mandamus action to compel agency action. Japan Whaling Ass'n v. American Cetacean Soc'y, 478 U.S. 221, 233 (1986). Nonetheless, the Supreme Court found that agency action under § 1978(a)(2) is reviewable under the Administrative Procedure Act, 5 U.S.C. § 706. 478 U.S. at 230 n.4.

certify upon a sufficient factual showing is, however, mandatory;¹⁶ that is, the Pelly Amendment is explicit that the Secretary "shall" certify if certain factual findings are made. 22 U.S.C. § 1978(a)(2) (1988). A civil suit under the Administrative Procedure Act, 5 U.S.C. § 706 (1988), may be brought to "compel agency action unlawfully withheld or unreasonably delayed."¹⁷

The factual findings identified in this recommended decision provide ample justification for the certification of China and Taiwan for their trade in rhinoceroses and tigers. The existence of this firm factual record limits the ability of the Secretary to delay any decision on certification.¹⁸ Once put on notice of these factual findings, in other words, Secretarial delay could be challenged under the Administrative Procedure Act.

¹⁶ H.R. Rep. No. 1029, 95th Cong., 2d Sess. 11 (1978).

¹⁷ 5 U.S.C. § 706(1) (1988). Likewise, a Secretarial decision declining to certify a country under the Pelly Amendment could be challenged under the Administrative Procedure Act as "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A) (1988).

¹⁸ One court has suggested that the Secretary's decision on certification must be based on conservation factors only. Greenpeace, U.S.A. v. Mosbacher, 719 F. Supp. 21, 24 (D.D.C. 1989) (dictum).

CONCLUSION

For the reasons set out above, the Fish and Wildlife Service recommends that the Secretary certify the People's Republic of China and Taiwan under the Pelly Amendment for their trade in rhinoceros horn and products and tiger products.

Respectfully submitted,

U.S. FISH AND WILDLIFE SERVICE
Office of Management Authority

By: _____
Marshall Jones, Chief

OFFICE OF THE SOLICITOR
Division of Conservation and
Wildlife
Branch of Fish and Wildlife

By: _____
W. Michael Young, Attorney

Date: _____

FWS/OMA
21 May 93

CITES Decisions Regarding Plight of the Rhinoceros

Conf. 3.11 (1981)

- * Non-parties prevent commercial import or export of rhino products.
- * Ban sale of government and parastatal stocks of rhino products; Parties record stocks in annual reports.

Conf.6.10 (1987)

- * Prohibit all sales and trade, internal and international, including personal effects, excluding trophies.
- * Destroy government and parastatal stocks, support with funds for rhino conservation.
- * Give special anti-smuggling instructions to all law enforcement agencies.
- * Increase penalties and firm action against middlemen and poachers.
- * Use economic, political and diplomatic pressure on countries continuing to allow or "passively" allow horn trade.
- * Encourage substitutes
- * Encourage development of national and continental rhino conservation strategies.

Standing Committee Resolution (June 1992)

- * Market countries, especially China, take prompt and strong action to control illegal trade, mount media campaigns as to plight of rhino, look for substitutes.
- * Take direct action to acquire and destroy rhino horn. Failure to take action a serious infraction.

First Asian Regional Meeting Resolution (November 1992)

- * Consuming countries suppress and eliminate domestic trade.
- * Urges compliance with all resolutions especially Conf.6.10 and Standing Committee resolution of June 1992.

Standing Committee (SC) Decision (March 1993)

- * Restates operative paragraphs of Conf.6.10 and SC Resolution of June 1992
- * Chairman send letters to China, South Korea, Yemen and Taipei expressing SC's concern including:
 - toleration of imports and/or engaging in internal commercial trade.
 - failure to prohibit sales and commercial trade (internal and international).
 - failure to destroy government and parastatal stocks.
 - failure to take firm action against middlemen and poachers.

SC Chairman's Letter to China (March 1993)

- * Restates operative paragraphs of Conf 6.10 urging:
 - prohibition of all sales and commercial trade, internal and international.
 - destruction of all government and parastatal stocks.
 - firm action again middlemen and poachers.
- * Quotes last paragraph of SC Resolution of June 1992 including calling for "direct action to acquire and destroy rhinoceros horn."
- * If next SC deems China's action to meet above inadequate, then Parties should not accept CITES documents from China.

Standing Committee Chairman's Letter to South Korea (March 1993)

- * Same as China's above, except:
 - expresses concern that actions by non-Parties should not undermine CITES nor contribute to rhino's decline.

Standing Committee Chairman's Letter to Yemen (March 1993)

- * Same as South Korea's above except:
 - "encourages" Yemen to meet concerns.



THE SECRETARY OF THE INTERIOR
WASHINGTON

MAY 21 1993

Memorandum

To: Director, National Security Council

From: Secretary of the Interior *[Signature]*

Subject: Pelly Amendment Certification Plan

In response to my April 30 memorandum to the President addressing my proposal to certify China and Taiwan under the Pelly Amendment for trade in rhino horn and tiger bone, members of your staff contacted my staff to request an action plan outlining what would happen after certification.

Since 1974, thirty previous certifications of twenty-one different countries have produced excellent results, demonstrating the power of Pelly certification as a conservation tool. For example, in the only previous certification pursued by this department--a joint certification with the Department of Commerce against Japan for its involvement in the sea turtle trade--Japan soon agreed to end its involvement in the trade without the need for imposition of sanctions.

The case now before us is unfortunately more complex, and the outcome of unilateral application of U.S. measures less certain. For this reason I believe that we must pursue a multilateral approach. Fortunately, the vehicle for such an approach is at hand. Since 1985, the party nations to the Convention on International Trade in Endangered Species (CITES) have adopted a series of resolutions calling for an end to the rhino horn trade and destruction of all existing stockpiles of illegally taken horn. In 1992, the CITES Standing Committee reiterated these resolutions and called on offending countries to end the trade or face the possibility of CITES trade sanctions.

At its most recent meeting, in March of this year, the Standing Committee issued a specific ultimatum, calling on Asian countries to end the trade and destroy rhino horn stocks before its next meeting, scheduled to take place in September. The Committee also directed the CITES Secretariat to provide a report on the trade in tiger bone for the upcoming meeting, so that it can similarly review the effects of this trade. Trade sanctions will be taken up by the Committee if responses received from Asian countries on rhino horn and tiger bone trade are judged to be inadequate. Meanwhile, the Committee has called on all CITES parties to implement immediately any stricter domestic measures to confront conservation problems posed by the rhino trade. The Pelly Amendment is a stricter domestic measure available to the United States to address this trade.

Taking all of these considerations into account, we have prepared the attached plan for actions which should be taken after certification. It emphasizes the need for the U.S. to provide strong leadership for a multilateral CITES effort to halt this trade and save these species from extirpation of their remaining wild populations. Implementation of the plan after certification will require

continued close cooperation between my Department and the Department of State--as there has already been at every step in our Pelly review so far--and for as much participation by your office and the U.S. Trade Representative's Office as you desire.

The plan includes tight deadlines, driven by the need for us to complete all actions by August, in preparation for the September meeting of the CITES Standing Committee. Prompt initiation of the plan will be required for us to meet these deadlines. Thus I am pleased that your staff has now organized a meeting on this certification and pending certifications by the Department of Commerce, to take place next week. My staff will be prepared to explain any aspects of the attached plan, as well as the draft Pelly certification brief previously submitted to you, during this meeting. The staff contacts in this department for these actions will be Fish and Wildlife Service Assistant Director Michael J. Spear and CITES Management Authority Chief Marshall P. Jones, telephone 208-4646.

Attachments

DEPARTMENT OF INTERIOR
PELLEY AMENDMENT CERTIFICATION OF CHINA AND TAIWAN
BACKGROUND INFORMATION AND ACTION PLAN

BACKGROUND NOTES ON PELLEY AMENDMENT

Pelley Certification involves:

- o **Mandatory certification** by the Secretary if facts indicate that actions by nationals of any country are undermining the effectiveness of CITES or any other international programs for endangered species.
- o **Discretionary import sanctions** by the President against the offending country if it fails to come into compliance with the international program. Any products from the offending country may be prohibited, "to the extent consistent with the GATT".
- o **Report to Congress** from the President 60 days after certification, explaining what decision has been made regarding trade sanctions. In previous certifications, this 60-day report has often been a progress report of ongoing negotiations, rather than a final decision. There is no legal requirement for further reports, but in the past periodic additional reporting--e.g. at 60-day intervals--has been done. This would fit well with the timetable in the accompanying plan.
- o **Taiwan**, though not strictly a "country" but rather an "entity" (legally, still a province of China) is certifiable (see attached list).
- o **Copy of the Pelley Amendment** (with 1992 amendments) is at Attachment 1.

Summary of Previous Certification:

- o In 30 previous certifications of 20 countries (including Taiwan, but not China) by Commerce and Interior, trade sanctions have never been imposed. For example, in the 1991 sea turtle trade certification of Japan by Interior and Commerce, the censure associated with certification, combined with the threat of sanctions, was sufficient to produce a change in policies (i.e. Japan's agreement to abandon the sea turtle trade after 90 days of post-certification discussions). See Attachment 2 for a list of previous certifications, prepared by the Department of Commerce.

Summary of Present Situation:

- o In the case of China and Taiwan, the Fish and Wildlife Service has compiled a record of all available information from its own files, and from a petition received from the World Wildlife Fund and the National Wildlife Federation, documenting the extensive tiger bone and rhino horn trades.
- o **Effect of trade on rhinos and tigers has been devastating;** already highly endangered species, they have experienced catastrophic rates of decline in the 1990s due to poaching for markets in Asia.

- =
- o **Korea and Yemen, also involved in recent trade, will not be certified right now, due to their pledges for CITES accession and elimination of rhino and tiger trade. Their progress is being closely monitored, however, in cooperation with the CITES Secretariat; if there is a reversal of present positive trends, certification of either or both could be added to the China and Taiwan processes.**

Summary of CITES Actions:

- o **The CITES Standing Committee at its March 1993 meeting also recognized the seriousness of the tiger and rhino declines and the role of Asian countries in them, calling in March 1993 for all CITES parties to use "stricter domestic measures" (e.g. Pelly) now to press China and Taiwan to end the rhino trade. See Attachment 3 for the decision documents.**
- o **The CITES Standing Committee plan involves:**
 - **Warning letters from the Committee Chair in April 1993 (exactly parallel to Pelly certification) giving China, Taiwan, Korea, and Yemen an ultimatum for compliance with previous CITES resolutions which call for an end to all rhino trade, domestic and international, and destruction of stocks. See Attachment 4 for the letters.**
 - **Consideration of trade sanctions at the September 1993 meeting if offending countries have not complied with the resolutions. The Committee has authority to call for sanctions on trade in specimens and products of CITES-listed species to and from offending countries.**
 - **Review of the tiger bone trade this summer, with results to be added to the rhino horn considerations at the September meeting.**

Coordination of Pelly Certification Plan:

- o **Attached plan is designed for strong U.S. leadership. After certification, it will involve:**
 - **full participation by the State Department in all actions, and as much participation by the National Security Council and the U.S. Trade Representative's Office as they desire;**
 - **close coordination with CITES, through the Secretary General in Switzerland and the Standing Committee Chair in New Zealand.**

ACTION PLAN FOR PELY CERTIFICATION OF CHINA AND TAIWAN

MAY 1993: Certification to the President and Notifications to China and Taiwan

- o **Notifications will go to the Chinese Embassy and the Taiwanese Coordination Council** in Washington simultaneously with certification and with parallel notices through our Embassy in Beijing and the American Institute of Taiwan in Taipei. A news release will go out the next day, taking a firm but not strident tone, emphasizing that U.S. actions are in support of CITES and are designed to address the desperate declines of tigers and rhinos, with the hope that Beijing and Taipei will change their policies and comply with CITES resolutions.
- o **Certification will not come as a surprise**, since there have been repeated official communications and meetings with both China and Taiwan about the possibility since November 1992.

JUNE/JULY: Responses from China and Taiwan

- o **Meetings in Washington:** Chinese Embassy and Taiwan Coordination Council in Washington will likely request meetings involving their Washington staff and perhaps CITES management and foreign affairs/trade officials from Beijing and Taipei, respectively. In any meetings, we will emphasize the need for immediate action not only in response to our Pelly certification, but also to the April ultimatum from the CITES Standing Committee chairman.
- o **Meetings in China and Taiwan:** We will refuse any requests from Ministries in Beijing and Taipei for meetings and/or "site inspections" on their turf, until they make some clear commitments for positive action; they have more to gain than we do from orchestrated site visits unless they have something new and bold to show us. In that case, a joint visit with the CITES Secretariat and/or Standing Committee Chairman (from New Zealand) would be preferable to a unilateral visit.
- o **Formal responses to the CITES Standing Committee** from China and Taiwan would be due in July. We would ask for the same responses to be officially provided to us.

JULY 31: President's 60-day Report to Congress

- o **Report would be based on review of responses** to certification and to the CITES Standing Committee.
 - This could be just a progress report, as noted in background information, since there may not have been enough time since certification for a final decision. A followup report could be provided in August or September (30-60 days later) as discussed below.

- Alternatively, a final decision on trade sanctions could have been reached at this point if there has been either dramatic progress or no likelihood of progress at all in either or both countries.

AUGUST: Development of U.S. Position on Trade Sanctions and Preparation for September CITES Standing Committee Meeting

- o U.S. position would be based on evaluation of Chinese and Taiwanese responses to Pelly certification and the Standing Committee ultimatum, as well as on the CITES Secretariat's evaluation of their responses (which likely will not be available until mid-August).
- o Options for evaluating adequacy of Chinese and Taiwanese responses would range from insistence on destruction of stocks, as well as enforcement of an end to all trade, to acceptance of enforcement only on new imports, with existing stocks grandfathered.
 - Tiger trade could be halted quickly, if they make demonstrated commitments to stopping smuggling and domestic trade.
 - Rhino trade will be more difficult to resolve, because of the existence of huge stocks of horn. We estimate the odds as 50/50 for a satisfactory Chinese response, and perhaps only 25/75 for a satisfactory answer from Taiwan.
 - See Attachment 5 for a discussion of policy options for rhino horn stocks.
- o U.S. decision on trade sanctions could be announced to Congress and public prior to September Standing Committee meeting, or it could be kept quiet depending on which strategy at the time is judged to be likely to be more effective in influencing other CITES parties. Generally, U.S. leadership is very effective in CITES forums when we are able to take a firm public position and explain it logically.
- o Pelly now allows imports bans on any product, "to the extent consistent with the GATT". However, neither China nor Taiwan is a party to GATT.
 - See Attachment 6 for a summary of value of wildlife imports from each country, from Fish and Wildlife Service import and export declarations, showing total value of \$65 million in wildlife trade with China and \$23 million with Taiwan. Additional data would be compiled from U.S. Customs if other products were to be considered for sanctions.
- o To gain CITES support for the final U.S. position, we would work strenuously with CITES authorities in key countries. These include:
 - Chair (New Zealand, from Oceania Region) and Vice Chair (Trinidad and Tobago, from Caribbean/Latin American Region), both of whom are usually very sympathetic to U.S. positions;

- **Regional committee members** Canada (North America) Sweden (Europe), Thailand (Asia), Senegal (Africa), Switzerland (Depositary country) and Japan (Previous Host);
- **Other active/influential/affected parties** (United Kingdom, Germany, France, and Netherlands in Europe; Mexico in North America; Namibia, Malawi, Cameroon, and Kenya in Africa; Israel and India in Asia).

SEPTEMBER 6-8: CITES Standing Committee Meeting in Belgium

o **Committee will review the responses** from the Asian countries, and the Secretariat's evaluation of them, in deciding what action to take. Its options include:

- **Maximum trade sanctions:** The Committee has authority to call for a ban on all CITES trade to and from offending countries, directly or indirectly.
 - Technically, this would involve CITES parties not issuing CITES permits for export to offending countries and not honoring CITES permits issued by offending countries for their own exports, for all trade involving CITES-listed specimens and products.
 - A similar ban was imposed on Thailand in 1991; the U.S. implemented this ban through an administrative enforcement notice without need for Pelly certification.
 - The Committee is generally agreed to have no authority to address trade in non-CITES-listed specimens. (However, the Committee has called on all CITES parties to implement stricter domestic measures which, for the United States, would include the Pelly Amendment.)
- **Intermediate sanctions:** The Committee can call for a ban on trade in CITES-listed specimens and products going directly to or from the offending country; reexports and reimports going through intermediary countries would not be affected.
 - A ban of this type on Italy in 1992 was lifted in 1993, after strong U.S. and CITES Secretariat pressure on Rome government produced complete reorganization of their CITES implementation process (sanctions were not actually implemented).
- **Postponement of action:** If the Committee cannot agree on what action to take, it could postpone a decision until the next Standing Committee meeting, which would likely be next Spring or Summer in Switzerland.
- **Resolution of problem:** If the Committee decides that China and/or Taiwan are substantially in compliance with the ultimatum, all consideration of trade sanctions would be ended.

MID-SEPTEMBER: Final Report to Congress

- o A final report to Congress, if one was not already sent in July or August (see discussions above), would communicate the final decision about trade sanctions, based on the Chinese and Taiwanese responses to certification, the Standing Committee's decision, and all other relevant information.

**THE PELLY AMENDMENT
TO THE FISHERMEN'S PROTECTIVE ACT
Title 22, United States Code, Section 1978**

§ 1978. Restriction on importation of fishery or wildlife products from countries which violate international fishery or endangered or threatened species programs

(a) Certification to President

(1) When the Secretary of Commerce determines that nationals of a foreign country, directly or indirectly, are conducting fishing operations in a manner or under circumstances which diminish the effectiveness of an international fishery conservation program, the Secretary of Commerce shall certify such fact to the President.

(2) When the Secretary of Commerce or the Secretary of the Interior finds that nationals of a foreign country, directly or indirectly, are engaging in trade or taking which diminishes the effectiveness of any international program for endangered or threatened species, the Secretary making such finding shall certify such fact to the President.

(3) In administering this subsection, the Secretary of Commerce or the Secretary of the Interior, as appropriate, shall—

(A) periodically monitor the activities of foreign nationals that may affect the international programs referred to in paragraphs (1) and (2);

(B) promptly investigate any activity by foreign nationals that, in the opinion of the Secretary, may be cause for certification under paragraph (1) or (2); and

(C) promptly conclude and reach a decision with respect to any investigation commenced under subparagraph (B).

(4) Upon receipt of any certification made under paragraph (1) or (2), the President may direct the Secretary of the Treasury to prohibit the bringing or the importation into the United States of ~~fish products (if the certification is made under paragraph (1)) or wildlife products (if the certification is made under paragraph (2))~~ *any products from the offending nation for any duration* from the offending country for such duration as the President determines appropriate and to the extent that such prohibition is sanctioned by the General Agreement on Tariffs and Trade.

(b) Notification to Congress

Within sixty days following certification by the Secretary of Commerce or the Secretary of the Interior, the President shall notify the Congress of any action taken by him pursuant to such certification. In the event the President fails to direct the Secretary of the Treasury to prohibit the importation of fish products or wildlife products of the offending country, or if such prohibition does not cover all fish products or wildlife products of the offending country, the President shall inform the Congress of the reasons therefor.

(c) Importation of ~~fish~~ products from offending country prohibited

It shall be unlawful for any person subject to the jurisdiction of the United States knowingly to bring or import into, or cause to be imported into, the United States ~~any fish products or wildlife~~ products prohibited by the Secretary of the Treasury pursuant to this section.

(d) Periodic review by Secretary of Commerce or Secretary of the Interior; termination of certification; notice

After making a certification to the President under subsection (a) of this section, the Secretary of Commerce or the Secretary of the Interior, as the case may be, shall periodically review the activities of the nationals of the offending country to determine if the reasons for which the certification was made no longer prevail. Upon determining that such reasons no longer prevail, the Secretary concerned shall terminate the certification and publish notice thereof, together with a statement of the facts on which such determination is based, in the Federal Register.

(e) Penalties; forfeiture; customs laws

(1) Any person violating the provisions of this section shall be fined not more than \$10,000 for the first violation, and not more than \$25,000 for each subsequent violation.

(2) All ~~fish products and wildlife~~ products brought or imported into the United States in violation of this section, or the monetary value thereof, may be forfeited.

(3) All provisions of law relating to the seizure, judicial forfeiture, and condemnation of a cargo for violation of the customs laws, the disposition of such cargo or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as such provisions of law are applicable and not inconsistent with this section.

(f) Enforcement

(1) Enforcement of the provisions of this section prohibiting the bringing or importation of fish products and wildlife products into the United States shall be the responsibility of the Secretary of the Treasury.

(2) The judges of the United States district courts, and United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this chapter and regulations issued thereunder.

(3) Any person authorized to carry out enforcement activities hereunder shall have the power to execute any warrant or process issued by any officer or court of competent jurisdiction for the enforcement of this section.

(4) Such person so authorized shall have the power—

(A) with or without a warrant or other process, to arrest any persons subject to the jurisdiction of the United States committing in his presence or view a violation of this section or the regulations issued thereunder;

(B) with or without a warrant or other process, to search any vessel or other conveyance subject to the jurisdiction of the United States, and, if as a result of such search he has reasonable cause to believe that such vessel or other conveyance or any person on board is engaging in operations in violation of this section or the regulations issued thereunder, then to arrest such person.

(5) Such person so authorized, may seize, whenever and wherever lawfully found, all ~~fish products and wildlife~~ products brought or imported into the United States in violation of this section or the regulations issued thereunder. ~~Fish products and wildlife~~ products so seized may be disposed of pursuant to the order of a court of competent jurisdiction, or, if perishable, in a manner prescribed by regulations promulgated by the Secretary of the Treasury after consultation with the Secretary of Health and Human Services.

(g) Regulations

The Secretary of the Treasury, the Secretary of Commerce, and the Secretary of the Interior are each authorized to prescribe such regulations as he determines necessary to carry out the provisions of this section.

(h) Definitions

As used in this section—

(1) The term "person" means any individual, partnership, corporation, or association.

(2) The term "United States", ~~when used in a geographical sense means the continental United States, Alaska, Hawaii, Puerto Rico, and the United States Virgin Islands.~~

(3) The term "international fishery conservation program" means any ban, restriction, regulation, or other measure in effect pursuant to a multilateral agreement which is in force with respect to the United States, the purpose of which is to conserve or protect the living resources of the sea.

(4) The term "fish products" means any aquatic species (including marine mammals and plants) and all products thereof exported from an offending country, whether or not taken by fishing vessels of such country, or packed, processed, or otherwise prepared for export in such country or within the jurisdiction thereof.

(5) The term "international program for endangered or threatened species" means any ban, restriction, regulation, or other measure in effect pursuant to a multilateral agreement which is in force with respect to the United States, the purpose of which is to protect endangered or threatened species of animals.

(6) The term "wildlife products" means fish (other than those to which paragraph (4) applies) and wild animals, and parts (including eggs) thereof, taken within an offending country and all products of any such fish and wild animals, or parts thereof, whether or not such products are packed, processed, or otherwise prepared for export in such country or within the jurisdiction thereof. Such term does not include any wild animal or fish if brought or imported into the United States for scientific research.

(7) The term "taking" means—

(A) for purposes of subsection (a)(2) of this section—

(i) to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or

(ii) to attempt to engage in any such conduct with respect to,

animals to which an international program for endangered or threatened species applies; and

(B) for purposes of paragraph (6), any conduct described in subparagraph (A)(i), whether or not such conduct is legal under the laws of the offending country, undertaken with respect to any wild animal.

MR 30 20 10:14 100/100/100

7.2/2

History of Pelly Amendment Certifications

Twenty-one foreign countries have been certified under the Pelly Amendment on a total of 30 occasions, all except one by the Secretary of Commerce (one jointly by the Secretaries of Commerce and of the Interior). Several of these were also certifications under the Packwood-Magnuson Amendment (P-M), under which TALFF sanctions are mandatory. Sanctions have never been imposed by the President under the Pelly Amendment. Presidential decisions with regard to the imposition of Pelly sanctions have been based in every case primarily on conservation grounds.

	<u>YEAR</u>	<u>Cause</u>	<u>P-M too?</u>	<u>P-M Sanctions?</u>
Japan	1974	commercial whaling	n/a	n/a
USSR	1974	commercial whaling	n/a	n/a
Chile	1978	commercial whaling	n/a	n/a
Peru	1978	commercial whaling	n/a	n/a
Korea	1978	commercial whaling	n/a	n/a
USSR	1985	commercial whaling	n/a	n/a
Norway	1986	commercial whaling	yes	yes
Japan	1988	research whaling	n/a	n/a
Korea	1989	no DN agreement	yes	yes
Taiwan	1989	no DN agreement	n/a	n/a
Norway	1990	research whaling	n/a	n/a
Japan	1991	turtle trade	n/a	n/a
Korea	1991	DN violations	n/a	n/a
Taiwan	1991	DN violations	n/a	n/a
Mexico	1991	tuna/porpoise	n/a	n/a
Venezuela	1991	tuna/porpoise	n/a	n/a
Vanuatu	1991	tuna/porpoise	n/a	n/a
Costa Rica	1991	tuna/porpoise	n/a	n/a
France	1991	tuna/porpoise	n/a	n/a
Italy	1991	tuna/porpoise	n/a	n/a
Panama	1991	tuna/porpoise	n/a	n/a
Japan	1991	tuna/porpoise	n/a	n/a
Norway	1992	research whaling	n/a	n/a
Canada	1992	tuna/porpoise	n/a	n/a
Colombia	1992	tuna/porpoise	n/a	n/a
Malaysia	1992	tuna/porpoise	n/a	n/a
Singapore	1992	tuna/porpoise	n/a	n/a
Spain	1992	tuna/porpoise	n/a	n/a
UK	1992	tuna/porpoise	n/a	n/a
Netherlands			n/a	n/a
Antilles	1992	tuna/porpoise	n/a	n/a

January 5, 1993

Attachment 2

OF WILD FAUNA AND FLORA

SECRETARIAT

5 rue du Maupas

Case postale 78

CH-1000 LAUSANNE 9, Switzerland

Telephone: (021) 20 00 81

Telex: (021) 20 00 84

Telex: 454584 cns en

Telegrams:

CITES LAUSANNE

Our ref.:
Your ref.:

NOTIFICATION TO THE PARTIES

No. 738

Lausanne, 20 April 1993

CONCERNING:

Decisions of the Standing Committee on Rhinoceroses and Tiger

At its 29th meeting, 1-5 March 1993, the Standing Committee discussed the trade-related problems of conservation of rhinoceros species (*Rhinocerotidae*) and the tiger (*Panthera tigris*). Taking into account the information available from Parties, non-governmental organizations, UNEP and the Secretariat, the Standing Committee adopted decisions on actions that should be taken for the conservation of these species within the scope of CITES. The decisions of the Standing Committee are attached to this Notification.

Attachment 3

Decision of the Standing Committee on the Tiger
Washington, D.C., 1-5 March 1993

The Standing Committee:

1. Acknowledging that the most recent population estimates for all remaining populations of *Panthera tigris* give rise to the most serious concern, due to poaching and smuggling of tigers and tiger parts and derivatives to sustain markets for traditional medicines;
2. Expressing its deep concern over the critical problem of tiger conservation;

decided to:

3. Call upon all Parties to the Convention, and on consumers, whether Parties or non-Parties, to take such measures as are required to halt the illegal trade in tigers and tiger parts and derivatives;
4. Ask the relevant authorities to provide full reports to the Standing Committee through the Secretariat, by July, on the measures they are taking to stop the illegal trade in tigers and tiger parts and derivatives;
5. Ask the Animals Committee and the IUCN/SSC Cat Specialist Group to report to the Secretariat before the next meeting of the Standing Committee on the plight of the tiger and on further measures that may be taken in the context of CITES to halt the decline in this species;
6. Ask the Secretariat to refer the matter of tiger conservation to range States, with a request to know what action is being taken to conserve tiger populations, and what assistance CITES might be able to provide;
7. Ask the Secretariat, having taken advice from the IUCN/SSC Cat Specialist Group, to give information on the plight of the tiger to the news media so as to bring world attention to bear on this matter;
8. Review progress in tiger recovery at its next meeting and to make recommendations for concerted action by CITES Parties if there is no evidence that range and consumer States are taking the action necessary to improve tiger conservation.

Notification No. 738

page 3

Decision of the Standing Committee on Rhinoceroses

Washington, D.C., 1-5 March 1993

The Standing Committee:

1. Acknowledges the desperate situation faced by African and Asian rhinoceros populations;
2. Acknowledges repeated calls for action by various resolutions of the Conference of the Parties and by the Standing Committee on the need for strengthened enforcement measures to reverse the downward trend in rhinoceros populations;
3. is conscious that the Conference of the Parties in Resolution Conf. 6.10 urges all Parties to:
 - prohibit all internal and international sales of, and commercial trade in, rhinoceros parts and derivatives;
 - destroy all government and parastatal stocks of rhinoceros horn; and
 - take firm action against middlemen and poachers involved in trafficking in horn;
4. Notes that the Conference of the Parties in Resolution Conf. 6.10 recommends that Parties:
 - use all appropriate means (including economic, political and diplomatic) to exert pressure on countries continuing to allow trade in rhinoceros horn (including the 'passive' allowance of such trade), to take the necessary action to prohibit such trade and to enforce such a prohibition;
5. Acknowledges that Annex 2 of the Summary Report of the 28th meeting of the Standing Committee stated that it:
 - "regards the existence of substantial illegal stockpiles of rhinoceros horn in some countries, including Parties to the Convention, as totally unacceptable to and incompatible with implementation of the Convention, and accordingly calls for direct action to acquire and destroy rhinoceros horn on the part of government agencies responsible for CITES matters. It notes that failure to take such action would be viewed as a serious infraction, likely to result in a call for trade bans or other appropriate actions";
6. Reviewed the report of the Secretariat (document SC.29.16 and its annexes), and findings of the UNEP Special Envoy as reported by the UNEP Representative at the 29th meeting of the Standing Committee, in particular information that several governments and entities:
 - a) continue to tolerate imports and/or engage in internal commercial trade in rhinoceros horn;
 - b) have not, in accordance with the recommendations of Resolution Conf. 6.10 and Annex 2 of the Summary Report of the 28th meeting of the Standing Committee:
 - i) enacted, enforced and implemented prohibitions on all sales of, and commercial trade, internal and international, in rhinoceros parts and derivatives;

i) destroyed all government and parastatal stocks of rhinoceros horn; and

ii) taken firm action against middlemen involved in trafficking in horn;

is convinced that the failure to implement measures pursuant to the above is a serious threat to the survival of rhinoceros species and undermines the effectiveness of the Convention; the efforts of range States to protect their rhinoceros populations; and the development of alternative conservation measures for the species; and

- a. Directs the Chairman to send letters to the Governments of China, the Republic of Korea, and Yemen, informing them of the concerns of the Standing Committee noted above, and of the decision taken by the Standing Committee; urges all Parties to strengthen their enforcement and implementation efforts to conserve rhinoceros species; and strongly encourages Parties to immediately take stricter domestic measures in this regard. The Chairman is also directed to send a letter to the authorities issuing CITES-equivalent documents in Taipei.



20 11 93 07 24
20 11 93 07 24
20 11 93 07 24

23 NOV 1993 17:12 CITES SECRETARIAT



CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES
OF WILD FAUNA AND FLORA



SECRETARIAT

8, rue du Marais
Case postale 78
CH-1000 Lausanne 8, Switzerland

Telex: 654584 CITES
Tel.: (021) 20 00 81
Telefax: 21/20 00 84

Telegrams:
CITES Lausanne

Out Tel.:
Your ref.:

The Minister
Ministry of Agriculture
and Water Resources
SANA'A
Yemen

Lausanne, 19 March 1993

Honourable Minister,

At the meeting of the Standing Committee held in Washington, D.C., 1-5 March 1993, the Standing Committee received information from the CITES Secretariat and the United Nations Environment Programme (UNEP) and discussed the desperate situation facing African and Asian rhinoceros populations. The Standing Committee wishes to draw your attention to repeated calls for action by various resolutions of the Conference of the Parties and the Standing Committee on the need for strengthened enforcement measures to reverse the downward trend in populations of these species.

At its sixth meeting, in July 1987, the Conference of the Parties adopted Resolution Conf. 6.10 which urged all Parties to:

prohibit all sales, and commercial trade, internal and international, in rhinoceros parts and derivatives;

destroy all government and parastatal stocks of rhinoceros horn; and

take firm action against middlemen and poachers involved in trafficking in horn.

In Annex 2 of the Summary Report of the 22th meeting of the Standing Committee, the Standing Committee stated that it:

"regards the existence of substantial illegal stockpiles of rhinoceros horn in some countries, including Parties to the Convention, as totally unacceptable to and incompatible with implementation of the Convention, and accordingly calls for direct action to acquire and destroy rhinoceros horn on the part of government agencies responsible for CITES matters. It notes that failure to take such action would be viewed as a serious infraction, likely to result in a call for trade bans or other appropriate actions."

.../2

23 NOV '93 17:12 CITES SECRETORINT

2.3

3/7

- 2 -

We recognize that Yemen is not yet a Party to CITES. However, we are concerned that the actions of non-Parties should not undermine the enforcement of CITES nor contribute to the continuing decline in populations of rhinoceros.

At the 29th meeting of the Standing Committee meeting, the observer from UNEP reported: that the Foreign Ministry of Yemen had issued instructions for Yemen to accede to CITES; that the Grand Mufti had issued a fatwa proscribing the use of rhinoceros horn; and that the Government of Yemen had held an educational seminar on rhinoceros conservation and substitutes for rhinoceros horn.

The Standing Committee acknowledges the measures that have been taken by your Government, but feels that they are not sufficient to meet the concerns expressed by the Parties and to bring the poaching of rhinoceros to an end. In fact the Report of the Secretariat to the Committee's 29th meeting, and the findings of the UNEP Special Envoy as reported by the UNEP observer to the meeting, informed us that sales of and trade in rhinoceros specimens were continuing in Yemen. The Standing Committee of CITES therefore encourages you to meet the concerns expressed by the Parties, to help bring the poaching of rhinoceros to an end.

The Standing Committee wishes to advise you that it has requested the CITES Secretariat to report to us by July 1993 on actions taken pursuant to the above. The Standing Committee will consider the report and further developments at its next meeting, planned for September 1993. If it considers the action taken inadequate, the Standing Committee will direct the Secretariat to notify the Parties that they should not accept or issue documents for trade with Yemen in specimens of CITES-listed species.

The Standing Committee wishes to emphasize that the failure to implement measures pursuant to the above is a serious threat to the survival of rhinoceros species and undermines: the effectiveness of the Convention; the efforts of range states to protect their rhinoceros populations; and the development of alternative conservation measures for the species.

Yours faithfully,



Murray Hosking
Chairman
CITES Standing Committee

23 NOV '93 17:13 CITES SECRETARIAT

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES
OF WILD FAUNA AND FLORA

SECRETARIAT

6, rue du Marais
Case postale 78
CH-1000 Lausanne 8, SwitzerlandTél.: 464586 ext. 21
Tél.: (031) 26 00 81
Téléc.: 21/20 00 84Télégrammes:
CITES LausanneOur ref.:
Your ref.:The Director
Export Promotion Division
Forestry Administration
207 Chaongyangri-dong
Dongdaemun-ku
SEOUL
République de Corée

Lausanne, 19 March 1993

Dear Sir,

At the meeting of the Standing Committee held in Washington, D.C., 1-5 March 1993, the Standing Committee received information from the CITES Secretariat and the United Nations Environment Programme (UNEP) and discussed the desperate situation facing African and Asian rhinoceros populations. The Standing Committee wishes to draw your attention to repeated calls for action by various resolutions of the Conference of the Parties and the Standing Committee on the need for strengthened enforcement measures to reverse the downward trend in populations of these species.

At its sixth meeting, in July 1987, the Conference of the Parties adopted Resolution Conf. 8.10 which urged all Parties to:

prohibit all sales, and commercial trade, internal and international, in rhinoceros parts and derivatives;

destroy all government and parastatal stocks of rhinoceros horn; and

take firm action against middlemen and poachers involved in trafficking in horn.

In Annex 2 of the Summary Report of the 28th meeting of the Standing Committee, the Standing Committee stated that it:

"regards the existence of substantial illegal stockpiles of rhinoceros horn in some countries, including Parties to the Convention, as totally unacceptable to and incompatible with implementation of the Convention, and accordingly calls for direct action to acquire and destroy rhinoceros horn on the part of government agencies responsible for CITES matters. It notes that failure to take such action would be viewed as a serious infraction, likely to result in a call for trade bans or other appropriate actions."

.../2

23 AVR '93 17:12 CITES SECRETARIAT

P.5

- 2 -

5/7

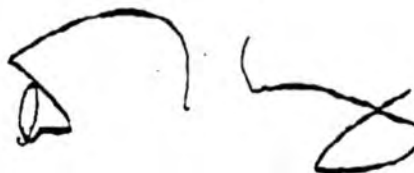
We recognize that the Republic of Korea is not yet a Party to CITES. However, we are concerned that the actions of non-Parties should not undermine the enforcement of CITES nor contribute to the continuing decline in populations of rhinoceros.

The Standing Committee has taken note of the Republic of Korea's paper on rhinoceros presented to the 29th meeting of the Committee. It acknowledges that certain measures have been taken by your Government, but feels that these measures are not sufficient to meet the concerns expressed by the Parties and to bring the poaching of rhinoceros to an end. In fact the Report of the Secretariat to the Committee's 29th meeting, and the findings of the UNEP Special Envoy, as reported by the UNEP observer at the meeting, informed us that sales of and trade in rhinoceros specimens were continuing in the Republic of Korea.

Therefore, the Standing Committee wishes to advise you that it has requested the CITES Secretariat to report to us by July 1993 on actions taken pursuant to the above. The Standing Committee will consider the report and further developments at its next meeting, planned for September 1993. If it considers the action taken inadequate, the Standing Committee will direct the Secretariat to notify the Parties that they should not accept or issue documents for trade with the Republic of Korea in specimens of CITES-listed species.

The Standing Committee wishes to emphasize that the failure to implement measures pursuant to the above is a serious threat to the survival of rhinoceros species and undermines: the effectiveness of the Convention; the efforts of range states to protect their rhinoceros populations; and the development of alternative conservation measures for the species.

Yours faithfully,



Murray Hosking
Chairman
CITES Standing Committee

—23 AVR '93 17:14 CITES SECRETARIAT

P.6



CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES
OF WILD FAUNA AND FLORA



47

SECRETARIAT

6, rue du Marais
Case postale 78
CH-1000 Lausanne 8, Switzerland

Telex: 454000 CITES CH
Tel.: (021) 20 00 51
Telefax: 21/20 00 54

Telegrams:
CITES Lausanne

Our ref.:
Your ref.:

The People's Republic of China
Endangered Species of Wild
Fauna and Flora Import and
Export Administrative Office
Ministry of Forestry
P.O. Box 100714
Hepingli
Beijing
China

Lausanne, 17 March 1993

Dear Sir,

At the meeting of the Standing Committee held in Washington, D.C., 15 March 1993, the Standing Committee received information from the CITES Secretariat and the United Nations Environment Programme (UNEP) and discussed the desperate situation facing African and Asian rhinoceros populations. The Standing Committee wishes to draw your attention to repeated calls for action by various resolutions of the Conference of the Parties and the Standing Committee on the need for strengthened enforcement measures to reverse the downward trend in populations of these species. The Standing Committee reminds you that Resolution Conf. 6.10 urges all Parties to:

prohibit all sales of, and commercial trade, internal and international, in rhinoceros parts and derivatives;

destroy all government and parastatal stocks of rhinoceros horn; and

take firm action against middlemen and poachers involved in trafficking in horn.

In Annex 2 of the Summary Report of the 28th meeting of the Standing Committee, the Standing Committee stated that it:

"regards the existence of substantial illegal stockpiles of rhinoceros horn in some countries, including Parties to the Convention, as totally unacceptable to and incompatible with implementation of the Convention, and accordingly calls for direct action to acquire and destroy rhinoceros horn on the part of government agencies responsible for CITES matters. It notes that failure to take such action would be viewed as a serious infraction, likely to result in a call for trade bans or other appropriate actions."

.../2

33 NVR '93 17:14 CITES SECRETARIAT

P.7

7/7

. 2 .

The Report of the Secretariat to the 29th meeting of the Standing Committee (document SC. 29.16 and its annexes), and findings of the UNEP Special Envoy as reported by the UNEP Representative to the Standing Committee, informed us that your Government continues to engage in internal commercial trade in rhinoceros parts and derivatives, and has not, in accordance with the recommendations of Resolution Conf. 8.10 and Annex 2 of the Summary Report of the 28th meeting of the Standing Committee: enacted, enforced and implemented prohibitions on all sales and commercial trade, internal and international, in rhinoceros parts and derivatives; or destroyed all government and parastatal stocks of rhinoceros horn.

The Standing Committee has taken note of the China's position paper on rhinoceros, presented at the 29th meeting of the Standing Committee. It acknowledges that certain measures have been taken by the Government of China, but feels that these measures are not sufficient to meet the concerns expressed by the Parties and to bring the poaching of rhinoceros to an end.

Therefore, the Standing Committee wishes to advise you that it has requested the Secretariat to report to us by July 1993 on actions taken pursuant to the above. The Standing Committee will consider the report and further developments at its next meeting, planned for September 1993 and, if it considers the action taken inadequate, the Standing Committee will direct the Secretariat to notify the Parties that they should not accept or issue documents for trade with China in specimens of CITES-listed species.

The Standing Committee wishes to emphasize that the failure to implement measures pursuant to the above is a serious threat to the survival of rhinoceros species and undermines: the effectiveness of the Convention; the efforts of range states to protect their rhinoceros populations; and the development of alternative conservation measures for the species.

Yours faithfully,



Murray Hosking
Chairman
CITES Standing Committee

OPTIONS FOR ASSESSING CHINA AND TAIWAN'S RESPONSES
TO PELY CERTIFICATION AND CITES CALLS FOR ACTION

POLICY OPTION 1 -- Insist on destruction of existing rhino horn stocks, as called for in CITES resolutions, and complete elimination of rhino and tiger trade: China and Taiwan would have to acquire and destroy their stocks of rhinoceros horn (with the exception of art objects), strengthen their laws and enforcement programs with demonstrated actions against internal trafficking and elimination of all rhino horn and tiger bone trade from the marketplace, and mount or increase government sponsored education programs.

Pro: This would be full compliance with previous CITES resolutions and the March, 1993, decision of the CITES Standing Committee. It would have a major effect throughout Asia and Africa, and poaching would likely show a quick decrease as the word spread. Chinese stocks are already possessed by government controlled factories, so their destruction could be done as a matter of government policy. Taiwan acknowledges that a significant portion of the stocks are probably of illegal origin; it has already burned some horn confiscated by customs, and reportedly has more burning planned (though there have been no prosecutions for internal trafficking by medicine shops).

Even if the long term goal is possible opening of a sustainable trade, removal of illegally acquired stockpiles from the marketplace would be essential in order to start with clean shelves; otherwise subsequent enforcement would be impossible.

Con: Some will argue that education can be accomplished by other methods besides destroying a valuable commodity. Safekeeping by the government could also have an educational effect and it would facilitate enforcement of a ban on possession. Taiwanese stocks are in private hands, so confiscation would involve legal action, if allowed under existing law, and/or a buyout of stocks.

POLICY OPTION 2 -- Accept removal of stocks from circulation and manufacture, but not their destruction, with other actions as in Option 1: This option would be the same as Option 1 except that we would acquiesce to removal of all stocks from circulation and some type of secured storage, rather than their destruction. Other law enforcement and education measures would still be required.

Pro: This may make it easier for Taiwan to acquire the stocks from a legal and practical standpoint, and would not involve destruction of such a valuable commodity. If accompanied by measures showing that domestic markets have been eliminated, including strict enforcement of domestic prohibitions on trafficking and crackdowns on smuggling, it could produce a beneficial reduction in the trade.

Attachment 5

Con: Failure to require destruction would fall significantly short of meeting the requirements of CITES decisions. It would reduce the impact on public opinion and on those users of rhinoceros horn around the world, lessening the possibilities of ending poaching. A potentially costly international monitoring system would be needed to ensure that horn was continuing to be kept out of circulation; many speculators would likely feel that the horn is too valuable to keep safely and that failure to destroy would indicate eventual resumption of trade, giving them an incentive to continue smuggling for speculation.

POLICY OPTION 3 -- No action on stocks: China and Taiwan devote more resources to enforcing their current laws and institute major public education campaigns against the uses of rhinoceros horn and tiger bone, but domestic possession and/or use continues to be allowed.

Pro: China and Taiwan have been ratcheting up their laws and law enforcement in recent years and need more time for implementation and mounting major public relations campaigns.

Con: Given the high prices for horn, anything short of acquisition and destruction of stocks will not be effective. Time is running out for the rhinoceros.

VALUE OF U.S. IMPORTS OF WILDLIFE PRODUCTS FROM TAIWAN,
CHINA, SOUTH KOREA, YEMEN IN 1991

China:

CITES Exports to the U.S.	\$ 20,777,710
Non-CITES Exports to the U.S.	39,469,666

Total	60,247,376
CITES Re-exports to the U.S.	549,530
Non-CITES Re-exports to the U.S.	4,783,121

Total	5,332,651
Grand Total of All Chinese Wildlife Product Exports to the U.S.	\$65,580,027

Taiwan:

CITES Exports to U.S.	\$ 375,230
Non-CITES Exports to U.S.	5,929,340

Total	6,304,570
CITES Re-exports to U.S.	4,938,492
Non-CITES Re-exports to U.S.	12,079,075

Total	17,017,567
Grand Total of All Taiwanese Wildlife Product Exports to the U.S.	\$ 23,322,137

Korea:

CITES Exports to U.S.	\$ 799
Non-CITES Exports to U.S.	20,265,874

Total	20,265,874
CITES Re-exports to U.S.	55,285
Non-CITES Re-exports to U.S.	20,510,432

Total	20,565,717
Grand Total of All Korean Wildlife Product Exports to the U.S.	\$ 40,831,591

Attachment 6

Yemen:

CITES Exports to U.S.	\$	14,720
Non-CITES Exports to U.S.		83

Total		14,803
CITES Re-exports to U.S.		0
Non-CITES Re-exports to U.S.		0

Total		0
Grand Total of All Yemeni Wildlife		
Product Exports to the U.S.	\$	14,803