

## Crocodile Specialist Group Steering Committee Meeting

### Double Tree Hilton, Darwin, Australia

(15 April 2024)

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#### Legal Affairs

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I am pleased to once again report that the CSG has not been a party to any litigation nor has the CSG been called as an expert in any formal legal proceedings since our prior report in Chetumal, Mexico on 4 July 2022. However, our members continue to provide evidence for governmental agencies associated with regulation of crocodilians. For example:

1. In Australia, the Department of Climate Change, Energy, Environment and Water (DCCEEW) has initiated a process to review the Code of Practice on the Humane Treatment of Wild and Farmed Australian Crocodiles in conjunction with the State/Territory Governments of Queensland, Western Australia and the Northern Territory. The Code set forth standards for the humane capture, restraining and housing of both wild and farmed crocodiles in Australia. In July 2023, an independent review of the Code began, to ensure the Australian crocodile farming industry continues to be managed to world class standards. Stakeholder input will be received and the review is anticipated to be finalized later this year.
2. The Northern Territory Crocodile Management Program for *C. porosus* is currently under review (2024).
3. The saltwater crocodile population and the frequency of fatal attacks on people are both increasing in Timor-Leste. Community-based monitoring has been encouraged by the Government to collect data on crocodile habitat and attacks. Crocodiles are culturally very important to locals in Timor Leste and so a new management program could integrate stakeholders with traditional elders and community members.
4. The South African National Biodiversity Institute (SANBI) is currently working on a national Non-Detriment Finding (NDF) for Nile crocodiles to address CITES issues. CSG members have collaborated with SANBI and provided guidance and recommendations regarding same. The NDF will be presented to the Scientific Authority of South Africa later this year.
5. There have been increased instances of human-crocodile interactions in southern Guatemala in recent years involving *C. acutus*. Collaborators (including CSG members) worked with the Protected Areas Council of Guatemala (CONAP) to create a new conservation management plan in 2023. This plan will be implemented in parts of Guatemala later this year.

#### Industry finally prevails against the State of California (USA)

Recall that Plaintiffs, various businesses and industry members engaged in the distribution and sale of products made from alligator and crocodile parts, mounted their legal challenge against the Attorney General of California and the Director of the California Department of Fish and Wildlife, in December 2019. They sued to enjoin the enforcement of provisions of California Penal Code

sections 653o and 653p, which were scheduled to take effect 1 January 2020. Those provisions criminalized the sale and possession for sale of alligator and crocodile parts in California. Plaintiffs claimed, inter alia, that the California law was preempted by federal law (the ESA and CITES), which regulated and permitted those activities. Moreover, on the issue of consumptive utilization of crocodilians, California totally ignored the very real conservation issues (sustained utilization) in favor of creating moral outrage.

Chief United States District Judge Kimberly Mueller ruled on 13 October 2020, that Defendants were enjoined from enforcing California Penal Code Section 653o and 653r in connection with the importation, possession, or sale of American alligator bodies, parts, or products thereof, and of the bodies, parts, or products of CITES Appendix II-listed Saltwater and Nile crocodiles, until the final disposition of the case. The opinion was lauded by attorneys for the plaintiffs as being a “victory for... jobs and conservation efforts that would not have been possible without the great partnership by state officials, landowners, farmers and retailers.”

In March 2023, the California Court issued its final opinion, holding that Under the Supremacy Clause of the United State Constitution, California Penal Code Sections 653o and 653r were unenforceable and unconstitutional as applied to the importation, possession or sale of American alligator bodies, parts, or products thereof, and of the bodies, parts or products of Saltwater crocodiles and Nile crocodiles subject to 50 C.F.R. s. 17.42. The State of California did not appeal. Accordingly, it remains generally legal to sell and trade alligator, Saltwater crocodile and Nile crocodile products in the state of California.

Christy Plott and Brett Sparks deserve significant accolades for their work, strategy and management of the litigation on behalf of industry.

#### New Alligator Hunting Rules approved in Florida (USA)

At its February 2024 meeting, the Florida Fish and Wildlife Conservation Commission (FWC) approved rule changes to establish a special-use alligator harvest opportunity, which will take effect for the 2024 alligator harvest season. The new opportunity will complement the existing statewide alligator hunt and create a flexible alternative that allows permittees to hunt at multiple alligator management units during a longer season than the statewide hunt. The 2024 application period will run from 3 May to 3 June.

The number of permittees will be established annually by FWC and will be selected through a random drawing process. Up to two alligators may be harvested per permit and selected permittees will be allowed to hunt at any legally accessible alligator management unit from August 15 to December 31. This is an 8-week extension of the Florida alligator hunt. This will give license holders a new opportunity to hunt at multiple alligator management units throughout the state.

#### CITES and the impact of AR NGOs

I offer this for discussion purposes. It is a theme that is only increasing and will continue to present challenges for those who seek legal, ethical and responsible sustained utilization of wildlife. There is little argument that the world is in the midst of a global biodiversity crisis. Many argue that AR NGOs have become too powerful within CITES, disallowing trade in favor of protectionism. Why? The answer lies in ideology rather than evidence.

### ***It's about hunting***

For example, a significant part of the southern African recipe for wildlife conservation success involves granting landowners and communities that live outside formally protected areas the right to sell regulated numbers of animals to hunters. This provides incentives for people living on the land to tolerate wildlife that can be dangerous or difficult to live with. Wildlife thus becomes a valuable and, if managed well, renewable resource that is protected by those people.

It is this facet of conservation - scientifically managed, fee-paid hunting - that runs counter to animal-protectionist ideology. Never mind what a century of research and results have proven all over the globe. Sustainable wildlife use has contributed significantly to rural incomes through direct payments, meat distribution and employment. It also motivates local people to become wildlife custodians and to invest in their own anti-poaching efforts, thus sharing the burden of conservation with their governments.

### ***NGOs @ CITES***

Consider the ideological position of several large, well-funded international non-governmental organisations such as the Humane Society International, the International Fund for Animal Welfare and Born Free. Their stance is made clear by their consistent and forceful lobbying against the legal international trade in wildlife that is regulated by CITES. Increasingly, this stance reflects Western sentiments towards the sustainable use of wildlife.

CITES has been in force since 1975 and now includes 184 member nations, or "Parties." Its original purpose was not to prohibit the international wildlife trade, but to ensure that it is sustainable. A two-thirds-majority vote at a CITES Conference of the Parties, is required to change the trading status of any given species. In theory, these decisions should be based on clear CITES criteria and guided by the latest scientific evidence of whether a particular species is threatened by international trade. In practice, however, anti-sustainable use animal-rights NGOs - despite their status as "observers" with no voting rights - increasingly base their considerable influence at CITES CoPs on their protectionist dogma. This puts them in direct conflict with countries that use hunting tourism as part of their proven strategy to conserve wildlife while supporting rural livelihoods. Hunting by international clients involves exporting and importing animal parts, which falls under CITES jurisdiction. In recent years, some Western countries have been pressured by animal-protectionist NGOs to ban the import of African hunting trophies, which would in effect stop hunting.

### ***Ideology vs. science***

AR NGOs do not win votes for their side by presenting scientific evidence that meet CITES criteria, but rather by using their financial, social and political muscle.

As Parties to CITES, the European Union, the UK and the US - from whence nearly all international hunters come - face sustained and increasingly effective lobbying and media pressure by animal-protectionist groups to oppose any sustainable-use (hunting) proposals brought by countries around the globe. These NGOs also wield significant financial influence in countries of the AEC, the African Elephant Coalition, by bankrolling their conservation ministries (especially Kenya) and the expenses of AEC representatives travelling to CITES conferences.

The European Union, with its huge CITES voting power as a bloc of now 27 countries, has seen significant declines in many of its native species and struggles to accept the return of predators such as wolves and bears. Yet this large collection of states with mostly poor conservation records continues to impose its ill-informed wildlife strategies on states by easily outvoting them at CITES conferences.

The USA and Canada now have perhaps the world's best record of maintaining their wildlife, thanks largely to the century-old North American Model of Wildlife Conservation, which is based on hunting. However, as in Europe and the UK, their CITES delegations are under great pressure from legislators, celebrities and citizens who are against hunting.

### ***Frustration & alienation***

At the CoP in Switzerland in 2019, all of the proposals put forward by SADC members were rejected. The animal-rights NGOs won the day by wielding their influence over the African Elephant Coalition and successfully lobbying Western nations to support their positions.

An anti-use, anti-trade platform contradicts the UN's Declaration on the Rights of Indigenous Peoples, the Convention on Biological Diversity and the official position of the IUCN, which all recognize the rights of Indigenous peoples to the sustainable use of their natural resources.

In response, some Parties are seriously questioning the benefits of remaining in CITES.

*(This is an edited version of an article by Max Abensperg-Traun, who coordinated national and international CITES issues for the Austrian Ministry of Sustainability and Tourism from 2003 until 2019. He is now an independent consultant. He worked as a game ranger and safari guide in Zimbabwe in the 1970s and from 1981-97 he studied and worked as a conservation biologist in Australia. His original paper appeared in INDABA Vol. 106/20, the magazine of the Southern Africa Documentation and Cooperation Centre, based in Vienna.)*

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