

26 June 2003

Canadian Comments on Draft FAO/ CITES MOU (February 2003)

General Comments:

1. The development of an MOU between CITES and FAO is a positive initiative. Canada believes that FAO can contribute significant scientific and technical expertise to the assessment of proposals under CITES to list, transfer or delist commercially-exploited aquatic species and would like to see this MOU as a framework under which this expertise could be provided.
2. We would suggest avoiding the use of treaty language as this is not a legally binding document. This would include words such as 1) "shall"; 2) "Articles"; 3) "in force"; 4) "amendments" 5) "agreement".
3. Canada understands the reference to "CITES" and "FAO" throughout the document to mean not just the Secretariats but the organizations as a whole. The Secretariats are mentioned specifically in later parts of the document. However, clarification for greater certainty is desirable in paragraph one. Canada would view it as undesirable to instruct Secretariats to elaborate a procedure which then was automatically assumed to have received assent from member governments of both organizations.

Text specific changes, with additional specific comments:

NOTING that the Food and Agriculture Organization of the United Nations (FAO) was founded in 1945, inter alia, to promote and recommend international action with respect to the conservation of natural resources and the adoption of improved methods of agricultural production and to furnish such technical assistance as Governments may request;

NOTING also that the mission of the Fisheries Department of FAO is to facilitate and secure the long-term sustainable development and utilization of the world's fisheries and aquaculture ;

Comment: The first preambular paragraph is drawn from the 1945 FAO Constitution. As the focus of this MOU is on marine species, it may be appropriate to also incorporate a more fisheries specific reference.

RECOGNIZING that the aims and purposes of CITES and FAO are related and **compatible in conformity with each other** and that...

Comments: Improved drafting.

RECALLING that article XV, paragraphs 1 and 2b of CITES require the Secretariat, for proposals to amend appendices I and II for marine species to “consult inter-governmental bodies having a function in relation to those species especially with a view to obtaining scientific data these bodies may be able to provide and to ensuring coordination with any conservation measures enforced by such bodies”.

Comments: Suggest insertion of new preambular paragraph 6. It is appropriate to reference the existing role for FAO in CITES work, especially as the provision is cited in paragraph one of the MOU.

CITES and FAO **have reached the following understanding on** ~~agree on the following~~ scope and methods of cooperation.

~~Article~~ Paragraph 1

Scientific evaluation of CITES listing proposals

CITES and FAO ~~shall~~ **will** develop a procedure for ensuring future FAO involvement in the scientific evaluation of proposals for listing, **delisting** or transferring commercially-exploited aquatic species in the CITES Appendices in accordance with Article XV, paragraphs 1 and 2(b) of the Convention. Once agreed **by the governing bodies of CITES and FAO**, the procedure ~~shall~~ **will** be annexed to and considered part of this MoU.

Comments:

-- The referenced CITES articles require the CITES Secretariat, for marine species, to consult with “intergovernmental bodies having a function in relation to those species especially with a view to obtaining scientific data these bodies may be able to provide and to ensuring coordination with any conservation measures enforced by such bodies”. The MOU deals only with the first portion of this (scientific data); it does not refer to coordination re: conservation measures. Coordination with conservation measures would be a very relevant consideration for any cooperation between CITES and bodies which manage fisheries.

-- FAO also looks at fisheries that are artisanal or subsistence. Species taken in these fisheries might not necessarily be considered commercially-exploited. While this MOU deals with commercially-exploited aquatic species, it should be understood that the obligation on CITES in its Convention to consult with relevant intergovernmental organizations is for all marine species; this MOU does not detract from any role FAO may have beyond that.

~~Article~~ Paragraph 2

Capacity Building for natural resource management

a) CITES and FAO ~~shall will~~ **[as appropriate] [in accordance with their respective mandates]** facilitate the provision of advice, technical assistance and training to developing countries and countries with economies in transition concerning the implementation of the Convention, **for example in connection with the CITES Review of Significant Trade pursuant to Resolution Conf. 12.8 and the making of non-detriment findings, as well as** ~~and~~ FAO Codes ~~and~~ ~~or~~ Plans of Action concerning the management of commercially-exploited aquatic species and related law enforcement efforts, ~~for example in connection with the CITES Review of Significant Trade pursuant to Resolution Conf. 12.8 the making of non-detriment findings under the Convention, the FAO Code of Conduct for Responsible Fisheries and the FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU).~~

Comments:

- Suggest modification of “as appropriate” or “in accordance with their mandate” so as to avoid suggestions that the organizations may start rendering advice and technical assistance in each other's areas of expertise.
- With regard to the FAO documents, there is no additional meaning brought by mentioning them again at the end of the paragraph. Suggest deletion. Also, it makes more sense to have the examples of CITES implementation follow the reference to the CITES Convention.

b) CITES and FAO ~~shall will~~ communicate and exchange information regularly and bring to each other's attention areas of concern where there is a role for CITES or FAO to play or where there are implementation difficulties that need to be taken into consideration and addressed.

~~Article~~ **Paragraph 3**

Technical and legal issues of common interest

CITES and FAO ~~shall will~~ identify and work together to address technical and legal issues of common interest.

~~Article~~ **Paragraph 4**

Coordination of work

a) The Secretariats of CITES and FAO ~~shall will~~ meet annually to discuss implementation of this MoU and to prepare joint work plans for carrying out specific activities. The results of these meetings ~~shall will~~ be provided to the CITES Standing Committee and the FAO Sub-committee on Fish Trade for review and input, **and where appropriate, approval.**

Comments:

- The terms “review and input” do not cover the need for “approval”, where appropriate, by member governments. This would be in conformity with the practice in FAO subsidiary bodies like

the Subcommittee on Fish Trade.

b) The Secretariats of CITES and FAO ~~shall~~ **will** periodically report on work completed under the MoU to meetings of the Conference of the Parties to CITES and the FAO Committee on Fisheries.

~~Article~~ Paragraph 5

General provisions

a) This MoU ~~will shall~~ take effect on the date of signature by both CITES and FAO. It **will continue to have effect** ~~shall remain in force~~ unless terminated by 90 days' written notice served by one upon the other, or replaced by another **arrangement agreement**. It may be amended by ~~the~~ written mutual **decision agreement** of CITES and FAO.

b) ~~Neither CITES nor FAO shall be legally or financially liable in any way for activities carried out jointly or independently.~~ Separate letters of agreement or other arrangements, with specific budgets and resource identification, will be concluded for individual activities involving the commitment of financial resources by either CITES or FAO.

Comment: Canada is confused as to the purpose of first sentence and wonders if any necessary protection against liability would already be found in other constituting documents of the organization. Suggest deletion of the first sentence.