

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



Fifty-eighth meeting of the Standing Committee
Geneva (Switzerland), 6-10 July 2009

FAO RESPONSE TO DOCUMENT SC58 DOC. 43

The attached document has been submitted by the Secretariat at the request of FAO*.

* *The geographical designations employed in this document do not imply the expression of any opinion whatsoever on the part of the CITES Secretariat or the United Nations Environment Programme concerning the legal status of any country, territory, or area, or concerning the delimitation of its frontiers or boundaries. The responsibility for the contents of the document rests exclusively with its author.*

منظمة
الغذية والزراعة
للأمم المتحدة

联合国
粮 食 及
农 业 组 织

Food and Agriculture
Organization of the
United Nations



Organisation des
Nations Unies pour
l'alimentation et
l'agriculture

Продовольственная и
сельскохозяйственная
организация
Объединенных Наций

Organización de las
Naciones Unidas para la
Agricultura y la
Alimentación

Viale delle Terme di Caracalla, 00153 Rome, Italy

Fax: +39 0657053020

Tel: +39 0657056109

www.fao.org

**FAO RESPONSE TO DOCUMENT SC58 Doc.43
PREPARED BY THE CITES SECRETARIAT FOR DISCUSSION AT THE
FIFTY-EIGHTH MEETING OF THE STANDING COMMITTEE**

FAO expresses its surprise and disappointment at the simplistic and retrogressive interpretation of paragraph B of Annex 2 a submitted with document SC58 Doc. 43 by the CITES Secretariat to the fifty-eighth Meeting of the CITES Standing Committee, meeting in Geneva, 6–10 July 2009. In the view of the FAO Secretariat, this proposal attempts to replace “sound and relevant scientific information”¹ with loose and subjective reasoning, a repetition of the approach adopted by the CITES Secretariat in 2007 when it published its recommendations (found in CoP14 Annex 2 Doc. 68) on listing proposals to CoP14 addressing commercially-exploited aquatic species.

In a letter of 14 May 2007 sent to the CITES Secretary-General, Mr Willem Wijnstekers, Mr Ichiro Nomura, Assistant Director-General of the FAO Fisheries and Aquaculture Department stated that the CITES Secretariat recommendations contained in CoP14 Annex 2 Doc. 68 “sets a precedent that potentially negates all the progress and consensus developed on the criteria, including Annex 5, over the last five or more years and that contributed to the agreement and signature of an MOU [in 2006]”. The same can be said of the interpretation of the criteria proposed by the CITES Secretariat in SC58 Doc. 43.

Background

Some of the relevant background to the current listing criteria may be useful for CITES Parties in evaluating the above mentioned recommendation from the CITES Secretariat. During the tenth session of the CITES Conference of Parties (CoP 10, Harare, Zimbabwe, 9–20 June 1997) concern was expressed that some fish species exploited on a large scale and subject to international trade might qualify for being listed in CITES annexes but, at the same meeting, concern was also expressed that the general CITES criteria might not be appropriate to deal with exploited and managed fishery resources. Some FAO Members brought these concerns to the attention of FAO which led to the Organization undertaking a thorough review of the criteria in use at the time, working with experts in fish biology and ecology and fisheries, and formulating recommendations for improvements to them. This process was carried out in full cooperation with CITES and fed into the review that CITES was then undertaking into the Res. Conf. 9.24 listing criteria which were valid at that time. FAO served on the CITES Criteria Working Group that was initially charged with undertaking the CITES review and participated throughout the Convention’s extensive and rigorous review process. The major FAO recommendations for commercially-exploited aquatic species were accepted by CITES when the revised criteria were adopted by CoP 13 in Bangkok in 2004.

¹ Preambular text of Res Conf. 9.24 (Rev. CoP14)

These recommendations include important aspects and text of Annexes 2 a and 5, as well as in some other sections.

The Res. Conf. 9.24 (Rev. CoP14) criteria were therefore formulated and adopted after a lengthy and rigorous process. In the case of commercially-exploited aquatic species, the recommendations were based on the expertise and enormous experience of FAO, greatly assisted by the large number of experts that had participated in their formulation. These recommendations were taken seriously and respected throughout the CITES review process, up to and including the adoption of the revised criteria by CITES CoP 13 in 2004.

Interpreting the Text of Annex 2 a

With this background, the view of the CITES Secretariat expressed in SC58 Doc. 43 is as surprising as it is indefensible. The argument posed by the CITES Secretariat is that differences in the interpretation of paragraph B of Annex 2 a were the cause of the differing recommendations of the CITES Secretariat and the FAO Expert Advisory Panel on the relevant proposals to CoP14.

The interpretation of Annex 2 a applied by the FAO ad hoc Expert Advisory Panel is described in document CoP14 Inf. 64. With reference to that document, the CITES Secretariat correctly note (paragraph 8 of SC58 Doc. 43) that according to FAO, the word "reducing" in Annex 2 a, paragraph B must be taken to be referring to a "decline" and that paragraph B must therefore be read in conjunction with and interpreted according to the definition of "decline" in Annex 5. However, the CITES Secretariat then go on to state (paragraph 9 of the same document) that "In the view of the Secretariat, the definition of the term "decline" given in Annex 5 of Resolution Conf. 9.24 (Rev. CoP14) is not relevant in the consideration of whether a species meets the criterion, as the term is used neither directly nor indirectly in Annex 2 a, paragraph B of that Resolution."

This attempted interpretation by the CITES Secretariat fails on a number of substantial counts:

- 1) It contradicts the instruction in the opening paragraph of Annex 2 a that "The following criteria [i.e. paragraphs A and B] must be read in conjunction with the definitions, explanations and guidelines listed in Annex 5, including the footnote with respect to application of the definition of "decline" for commercially exploited aquatic species."¹
- 2) The interpretation put forward by the CITES Secretariat attempts to focus only on one word (i.e. "reducing" instead of "decline"). As such it is highly selective and, by failing to read the word "reducing" as part of and in the context of the whole paragraph it goes against the clear meaning of paragraph B. In contrast to the CITES Secretariat suggestion, when read as a whole, paragraph B means that the harvest is not merely declining but declining to the level "at which its survival might be threatened".

¹ Insert in square brackets and underlining added here for clarity.

- 3) Even if one focuses on that single word (i.e. reducing instead of decline) as proposed by the CITES Secretariat, the terms “reduce” and “decline” cannot be separated. The Oxford English Dictionary¹ provides the following definitions:
- Decline: to become smaller, weaker, or less in quality or quantity.
 - Reduce: to make or become smaller or less in amount, degree, or size.

The act of reducing must therefore result in a decline and the Annex 5 definitions of decline must also be applicable to the term “reducing”.

- 4) The effective equivalence of “reducing” and “decline” is even made explicit in Annex 5 of Res. Conf. 9.24 (Rev. CoP14) where the definition of “decline” starts with the explanation “A decline is a reduction...”. Therefore the CITES Secretariat claim that “...the term (i.e. decline) is used neither directly nor indirectly in Annex 2 a, paragraph B of that Resolution.” is clearly mistaken (underlining added in this document).

Apart from attempting to discredit the FAO interpretation of the Annex 2 a criteria, the CITES Secretariat provided no alternative interpretation of paragraph B and only referred to a “similar view” having been expressed by the delegation of Germany on behalf of the European Community and its Member States in document CoP14 Inf. 48. That document was submitted to CoP14 as a response by the proponents to the FAO Expert Advisory Panel’s recommendation that *Lamna nasus* and *Squalus acanthias*, proposed by the delegation of Germany for listing on Appendix II, did not meet the biological decline criteria for listing on Appendix II. In document CoP14 Inf. 48, the authors argued that “The FAO panel’s assessment of the shark listing proposals differ in its conclusions from those of the proponents because the panel has used a different interpretation of the CITES criteria and guidelines when evaluating the same data”. It goes on to present the proponent’s interpretation of both paragraphs A and B (p.3-4 of CoP14 Inf. 48).

In the view of the FAO Secretariat, the interpretation from the delegation of Germany is also fundamentally flawed in its interpretation of paragraphs A and B and is simply inconsistent with the text of both paragraphs. Further, it states that paragraph B addresses unsustainable harvesting but fails to link this to a decline (either a current and ongoing decline or a historical decline) or to describe any alternative means for detecting and measuring unsustainability. In contrast, the Res. Conf. 9.24 (Rev. CoP14) criteria read in conjunction with the definitions, explanations and guidelines listed in Annex 5 and correctly applied, provide clear and scientifically-based guidelines on detecting unsustainability through declines in the abundance, area of distribution or area of habitat, and on when such declines are severe enough to consider listing a species.

Conclusions

The FAO recommendations on criteria for listing commercially-exploited aquatic species as included in Res. Conf. 9.24 (Rev. CoP14) were based on a wealth of experience and accumulated knowledge in fish stock assessment, fisheries management (with both successful and unsuccessful examples), aquatic biology and population dynamics. They were carefully

¹ <http://www.askoxford.com/dictionaries/?view=uk>

developed and reviewed by a large group of leading experts from different backgrounds and expertise before being adopted by FAO and forwarded to CITES. They encompass the precautionary approach and provide realistic margins for error, strengthened by consideration of vulnerability and mitigating factors (see footnote in Annex 5 of Res. Conf. 9.24 (Rev. CoP14)). The view of the FAO Secretariat is therefore that they provide the best scientifically sound and defensible guidance available to assist CITES Parties in implementing the goals of the Convention with respect to commercially-exploited aquatic species.

In contrast, in SC58 Doc. 43 the CITES Secretariat does not offer any alternative interpretation while the interpretation put forward in CoP14 Inf. 48 does not stand up to applicable approaches to legal interpretation or scientific examination. In addition, the interpretation of paragraph B suggested by the delegation of Germany is so vague and broad that it could cover any case where “Parties consider there is a significant likelihood” that overfishing to supply international trade is occurring. With such a wide and imprecise interpretation, the FAO Secretariat would consider that the implementation of its ad hoc Expert Advisory Panel risks becoming a futile exercise because it would have no realistic and measurable criteria against which to evaluate proposals.

It is therefore the view of the FAO Secretariat that the denial by the CITES Secretariat of the link between the definition of the term “decline” in Annex 5 and the text of paragraph B of Annex 2 a, without offering any alternative, and the attempted interpretation of Annex 2 a provided in CoP14 Inf. 48 cannot be substantiated either scientifically or through the literal or contextual approaches to interpretation of the applicable provisions. The CITES Secretariat’s view is not only misleading and erroneous for the reasons set out above (on how the applicable criteria should be interpreted and applied) but also lacks the scientific approach, reasoning and other related intelligent processes employed by the CITES Parties when they adopted Res. Conf. 9.24 (Rev. CoP14) and by the FAO ad hoc Expert Advisory Panel in making its findings.

Recommendation

The recommendation of the FAO Secretariat is therefore that the Standing Committee should endorse the Res. Conf. 9.24 (Rev. CoP14) criteria, written and read as a whole including the definitions, explanations and guidelines listed in Annex 5, as explained in CoP14 Inf. 64 and applied by the FAO ad hoc Expert Advisory Panel. This will allow the effective application of the Convention to commercially-exploited aquatic species and taxonomic groups that need and will benefit from the extra protection offered by CITES.