

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

Twelfth meeting of the Conference of the Parties
Santiago (Chile), 3-15 November 2002

Interpretation and implementation of the Convention

Amendment of the Appendices

AMENDMENT OF THE APPENDICES WITH REGARD TO POPULATIONS

Introduction

1. At its 45th meeting (Paris, June 2001), the Standing Committee agreed that:

the Secretariat should take note of the interventions made at this meeting and prepare a document for consideration at the 12th meeting of the Conference of the Parties to ensure that there is no further confusion regarding the appropriate action to be taken when populations are transferred from one Appendix to another (taking into account any definition of 'population' in the documentation provided by the Criteria Working Group).

2. This decision of the Standing Committee followed a discussion of the way in which the Appendices were amended after the adoption of a proposal at the 11th meeting of the Conference of the Parties (CoP11) to transfer the Argentine population of *Araucaria araucana* from Appendix II to Appendix I. When amending the Appendices after CoP11, the Secretariat retained the name *Araucaria araucana* in Appendix II because there are many introduced populations of this species that had not been expressly transferred to Appendix I. The Secretariat's action was disputed. The Standing Committee subsequently endorsed the Secretariat's action at its 45th meeting (Paris, June 2001).
3. The purpose of this document is not to discuss whether the action of the Secretariat was correct but rather to suggest a definition of the term 'population' and related terms, to examine the principle that should be applied in cases where a population is transferred from one Appendix to another and to propose a policy for the future so that there is no misunderstanding.

Species that may be included in the Appendices

4. The term 'species' is defined in Article I, paragraph (a), of the Convention as:

any species, subspecies or geographically separate population thereof.

5. As a consequence, when Article II refers to the 'species' that may be included in the Appendices, it means that geographically separate populations may also be included. It is for this reason that the Conference of the Parties is able to include different populations in different Appendices, although in general this practice of 'split-listing' is discouraged. The Conference of the Parties has decided, in Resolution Conf. 9.24, Annex 3, under 'Split-listing', that:

Listing of a species in more than one Appendix should be avoided in general in view of the enforcement problems it creates. When split-listing does occur, this should generally be on the basis of national or continental populations, rather than subspecies. Split-listings that place some

populations of a species in the Appendices, and the rest outside the Appendices, should normally not be permitted.

6. There are nevertheless many cases in the Appendices where the Conference of the Parties has decided to specify that only certain national populations are included, or that certain national populations are excluded. These cases are covered by the annotations in the –100 series and the + 200 series. In fact, in some of the cases covered by these annotations, it is evident that the populations concerned are not, strictly speaking, geographically separate. Rather they are defined by national (or sub-national) boundaries, even if animals of the species concerned cross these boundaries of their own free will. This means that a ‘biological population’ of a species may be split between two Appendices and this has sometimes been the case. This in fact reflects the policy agreed to by the Conference of the Parties and referred to in paragraph 5 above, that listings of populations should be based on national or continental boundaries. This is a policy that makes sense because CITES controls are implemented on the basis of movements across national boundaries.
7. The significance of this is that the Conference of the Parties has in practice interpreted ‘geographically separate populations’ as meaning populations defined by national or continental boundaries or, in the case of whales, defined by geographical boundaries (or occasionally by other boundaries). It has thus decided that, when understanding the word ‘population’, what should be taken into account is the practical application of the Convention and that biological definitions of the term ‘population’ are not relevant.

What is a population?

8. As the Secretariat has indicated in its document on compliance with the Convention (CoP12 Doc. 26), in general a treaty should be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose.
9. Consequently to understand the ordinary meaning of the word ‘population’ in common parlance, we have used the New Shorter Oxford English Dictionary as a starting place. This provides several definitions of ‘population’. However, the two that are relevant to CITES are:
 - a) *The extent to which a place is populated or inhabited; the collective inhabitants of a country, town, area, etc.; a body of inhabitants.*
 - b) *A group of animals, plants or humans, among whose members interbreeding occurs.*
10. In applying these explanations to the term ‘geographically separate population’ used in Article I of the Convention, definition a) is helpful. When a geographically separate population is placed in the Appendices, what is being referred to is all the animals or plants (the collective inhabitants) of a species in a specified area. Definition b) is a layman’s definition of ‘population’ in a biological sense. But in trying to find a suitable definition for CITES it is not helpful because of the reference to interbreeding. If a population were reduced to one animal (as was the case, for example, for *Cyanopsitta spixii* and with *Geochelone nigra abingdoni*, both in Appendix I) or if for some other reason the animals or plants in a population were not breeding, definition b) would exclude it from being considered as a population. However, the collective animals or plants under consideration must still be considered as populations for CITES purposes.
11. The Standing Committee instructed the Secretariat, for the purposes of this review, to take into account any definition of population provided by the Criteria Working Group. The relevant explanation provided in the report of the Criteria Working Group (document CoP12 Doc. 58) is that:

‘Geographically separate population’ refers to parts of a species or a subspecies within particular geographical boundaries. This can also refer to populations or subpopulations, or, for the sake of convenience, to ‘stocks’ as the term is understood in fisheries management.

12. In view of the foregoing, a reasonable definition of 'geographically separate population' for CITES purposes and the definition used for the purposes of this discussion is simply:

all the live animals or plants of a particular species within a specified area, whether or not the animals or plants reproduce and whether or not they are indigenous.

13. The 'specified area', for CITES purposes, will usually be the territory of a State because, as is noted above, CITES controls are implemented on the basis of movements across national boundaries. However, areas have also been defined in other ways by the Conference. For example, the annotation relating to the vicuña *Vicugna vicugna* in Appendix II indicates that this Appendix includes the populations of certain provinces and 'conservation units' in addition to certain 'semi-captive populations'. Moreover, the Appendix-II population of the minke whale *Balaenoptera acutorostrata* is described in the CITES Appendices as the 'Population of West Greenland'. In fact this refers to the population described in the Schedule of the International Convention for the Regulation of Whaling as the 'West Greenland Stock', whose boundaries are defined as "East of a line through: 75° N 73° 30' W, 69° N 59° W, 61° N 59° W, 52° 20' N 42° W, and West of a line through: 52° 20' N 42° W, 59° N 42° W, 59° N 44° W, Kap Farvel". This is in accordance with Resolution Conf. 9.24, Annex 3, which states that: "For species outside the jurisdiction of any State, listing in the Appendices should use the terms used in other relevant international agreements, if any, to define the population. If no such international agreement exists, then the Appendices should define the population by region or by geographic coordinates."

What is a geographically separate population?

14. Returning to the question raised by the Standing Committee, if a species is included in Appendix II and one or more populations are transferred to Appendix I (or *vice versa*) the remaining populations stay in the Appendix where they were. This principle is self-evident but its application might not be straightforward because it might not always be clear whether there are any remaining populations and because there is a question over the status of introduced populations and contained populations (i.e. populations held under controlled conditions). The question has arisen how these should be treated under the Convention and whether they can be considered as 'populations' or as 'geographically separate populations' for CITES purposes.
15. The key questions are:
- Can introduced populations and contained populations be considered as 'geographically separate populations' for the purposes of Article I, paragraph (a), of the Convention and hence be included separately in the Appendices on the basis of their status?
 - If they can not be included separately, are they covered by species listings in the Appendices?
 - If they are covered by species listings, what status do they have when the populations of range States are individually transferred to another Appendix or are deleted from the Appendices?
 - If they are not covered by species listings, how can specimens from introduced and contained populations be distinguished in trade from specimens from range States?

Introduced populations

16. There are innumerable instances in which live specimens have been taken from a country where they occur naturally in the wild (i.e. from a range State) to another, where they do not, and where they have been released or escaped into the natural environment and so have formed an introduced population of the species (even if the introduction was accidental).
17. The Secretariat believes that, for the purposes of considering which populations may be considered as 'geographically separate', these introduced populations should be treated in the same way as the

populations of range States (i.e. States where the species occurs naturally). This means that if a species is included in one of the Appendices and the populations of range States are transferred from one Appendix to another, any introduced populations are not automatically transferred with them. If an entire species were transferred from one Appendix to another, any introduced populations would of course be included in the transfer. Moreover, the introduced population of a species in any State could be included separately in the Appendices and could be transferred from one Appendix to another, provided that the criteria for inclusion were met. (Naturally, the Conference of the Parties could decide to establish criteria for the listing of introduced populations that are different from those for others.)

18. The two most obvious alternative approaches would be:

option i) to treat introduced populations as extensions of (and hence dependent on) the populations from which the founder stock was taken; or

option ii) to decide that introduced populations may not be 'geographically separate populations' (or may not be 'populations' in terms of Article I, paragraph 1, of the Convention.

19. However, any such alternatives would deny the separate legal existence of introduced populations, deny the rights of States over the resources that occur in the territory under their jurisdiction and fail to take into account that the conservation status of an introduced population might be quite different from that of the population of the founder stock.

20. The approach in option i) would also give rise to practical implementation problems. An example of an introduction will serve to demonstrate this. The South African population of the southern white rhinoceros *Ceratotherium simum simum* is in Appendix II. All other populations of this subspecies are included in Appendix I. However, rhinoceroses have been exported from South Africa and introduced into several other African countries where the species had become extinct, including Botswana, Kenya, Namibia, Swaziland, Zambia, Zimbabwe and perhaps others. Some of these exports took place since the population of South Africa was transferred to Appendix II. In the latter case, the animals that were transferred obviously are from an Appendix-II population but they are now part of an Appendix-I population. Suppose they produce offspring and the population grows. Suppose that one of these States with introduced populations wishes to allow exports to foreign zoos for breeding programmes. Option i) suggests that the introduced population in the neighbouring State should be considered as 'dependent' on the South African population and therefore of an Appendix-II population. In practice, however, Parties consider them to be in Appendix I.

21. Option ii) would make it impossible to include introduced populations separately in the Appendices. However, there might be circumstances under which it were desirable to include an introduced population in the Appendices or to include range State populations in one Appendix and introduced populations in another. The Conference of the Parties has already agreed (in Resolution Conf. 9.24, Annex 3, regarding split-listing, that "Split-listings that place some populations of a species in the Appendices, and the rest outside the Appendices, should normally not be permitted." Consequently, the general principle to be applied is that, if one population is listed in the Appendices, the others should also be listed, including introduced populations, although not necessarily in the same Appendix. Two examples serve to illustrate issues that might arise in this connection.

a) The monkey puzzle tree *Araucaria araucana*, occurs naturally only in Argentina and Chile, whose populations are included in Appendix I of the Convention. There are introduced populations in temperate zone countries in many parts of the world. But the inclusion of the range-State populations in Appendix I does not itself appear to be a justification for including also the many introduced populations from which trade occurs. The latter populations are not threatened with extinction and do not meet the biological criteria for inclusion in Appendix I (see Resolution Conf. 9.24).

- b) At the end of the 19th century, the brown hare *Lepus capensis* was introduced from Europe to Argentina where it thrived. This introduced population grew so large that enormous volumes of meat and fur were exported from Argentina and, by the 1970s, this was a multi-million dollar industry. The populations of this species in the range States might not be considered as threatened but, if they were, and were included in Appendix I, this would not be a justification for including also the introduced population.

Contained populations

22. We use the term 'contained population' here to refer to animals and plants maintained in an artificial environment. It refers to all animals and plants that are effectively confined away from their natural environment, and not only animals held in 'a controlled environment' as defined in Resolution Conf. 10.16 (Rev.) and plants maintained 'under controlled conditions' as defined in Resolution Conf. 11.11. In practice, this means that contained populations are in fact introduced populations, but have been introduced into a contained environment rather than into the wild.
23. If a species is included in Appendix II and is transferred to Appendix I, it is clear that the contained population is (or populations are) then also in Appendix I. But what if only certain range State populations are transferred to Appendix I and others remain in Appendix II? Consider the case where specimens of an Appendix-II species are taken into a contained environment and, through breeding or propagation, a large contained population is established. The range State population that provided the founder stock is then transferred to Appendix I. What is the status of the contained population in the Appendices? What is its status if the founder stock includes specimens from both Appendix-I and Appendix-II populations? If specimens from the contained population are traded internationally, the permit will need to indicate in which Appendix the species is included. Of course, even if the species is in Appendix I, the captive-bred and artificially propagated specimens, if produced in accordance with the above-mentioned definitions, may be traded either as if they were in Appendix II (under Article VII, paragraph 4) or with a certificate of captive breeding (under Article VII, paragraph 5). However, many specimens in contained populations do not meet these definitions, for example because the founder stock was not legally acquired or because the legal acquisition can not be proved.
24. The Secretariat believes that contained populations should be treated in the same way as introduced populations. Thus it should be possible to include contained populations separately in the Appendices by specifying the contained population/s concerned. If the population of a species in a country is moved from one Appendix to another, it should be understood that this includes all specimens in the country, whether they are in a wild population or a contained population. However, in the case where named populations of certain States are transferred from one Appendix to another, but not an entire biological species, it should be clear that the contained populations outside of those States are not automatically transferred at the same time unless this is specified in the proposal. For example, if a species is included in Appendix II, and this species occurs in the wild in State A and State B, and the population of State A is transferred to Appendix I, it should be clear that what remains in Appendix II is the population of State B and all contained populations in other States. And if a proposal is then accepted to transfer the population of State B to Appendix I (and the proposal refers to that population and not to the remaining populations in Appendix II), then the contained populations would remain in Appendix II.

Conclusion and recommendation

25. There is a clear need for a resolution of the Conference of the Parties to prevent any ambiguity regarding the inclusion of geographically separate populations in the Appendices and to establish a policy regarding the amendment of the Appendices when the transfer of one or more populations of a species from one Appendix to another would leave only introduced populations or contained populations in one Appendix.
26. The Secretariat recommends that the Conference of the Parties adopt the draft resolution presented in the Annex to this document.

DRAFT RESOLUTION OF THE CONFERENCE OF THE PARTIES

Inclusion of geographically separate populations in the Appendices

RECALLING that Article I, paragraph 1(a), of the Convention defines 'species' as meaning "any species, subspecies or geographically separate population thereof";

RECOGNIZING that, as a consequence, geographically separate populations of species may be included in any of the Appendices to the Convention;

ACKNOWLEDGING that there is a need for clarity regarding the status of introduced and contained populations of species included in the Appendices and regarding the provisions applicable to specimens from such populations;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

ADOPTS the following definitions:

- a) a 'population' means all the live animals or plants of a particular species within a specified area, whether or not the animals or plants reproduce and whether or not they are indigenous, and includes introduced populations and contained populations;
- b) an 'introduced population' means a population established in the territory of a State where it does not naturally occur; and
- c) a 'contained population' means a population maintained in an artificial environment effectively confined away from the natural environment of the species; and

DECIDES that:

- a) only populations as defined in paragraph a) above may be considered as 'geographically separate populations' in accordance with Article I, paragraph a), of the Convention and may therefore be considered as 'species' for the purposes of the Convention, including introduced populations and contained populations; and
- b) when a proposal is made to include in the Appendices the population of a species of named States, or to delete them from the Appendices or to transfer them from one Appendix to another, the transfer shall not include any range State population, introduced population or contained population of any State other than the ones specified.