

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



Fifteenth meeting of the Conference of the Parties
Doha (Qatar), 13-25 March 2010

Interpretation and implementation of the Convention

Trade control and marking

INTRODUCTION FROM THE SEA

1. This document has been prepared by the Secretariat, in consultation with the Chair of the Standing Committee.
2. Resolution Conf. 14.6 on Introduction from the sea, adopted at the 14th meeting of the Conference of the Parties (CoP14, The Hague, 2007), provides a definition of the phrase 'marine environment not under the jurisdiction of any State' contained in Article I, paragraph (e), of the Convention. It was envisaged that the Resolution would be further elaborated as Parties reached agreement on other aspects of a uniform understanding and application of the type of CITES trade called 'introduction from the sea'.
3. Decision 14.48, adopted at CoP14, states as follows:

Directed to the Standing Committee

14.48 *The Standing Committee shall:*

- a) *at its 57th meeting (SC57), establish a working group on Introduction from the Sea, which shall work primarily through electronic means, to consider a definition for 'transportation into a State', clarification of the term 'State of introduction' and the process for issuing a certificate of introduction from the sea as well as other issues identified for further consideration in the final report of the CITES Workshop on Introduction from the Sea Issues (Geneva, 3 November – 2 December 2005);*
 - b) *include in the working group representatives of CITES authorities and fishery authorities from each of the six CITES regions and request the participation of the United Nations Division for Ocean Affairs and the Law of the Sea, the Food and Agriculture Organization of the United Nations, two regional fishery bodies, the fishing industry, and intergovernmental organizations and non-governmental organizations with CITES and fishery expertise;*
 - c) *contingent on the availability of external funding, convene a meeting of the working group between SC57 and SC58; and*
 - d) *ask the working group to prepare a discussion paper and draft revised resolution for consideration by the Standing Committee at SC58 and for consideration at the 15th meeting of the Conference of the Parties.*
4. At its 57th meeting (Geneva, July 2008), the Standing Committee agreed to establish a Working Group on Introduction from the Sea, chaired by the Chairman of the Standing Committee. During an informal meeting held in the margins of SC57, the Working Group agreed that it would work electronically for the most part. The Chair agreed to put forward, with the Secretariat's help, a 'rolling text' (not a formal Chairman's text) which would provide a point of departure for future substantive discussions. The rolling

text would draw a great deal on the terms of reference given in Decision 14.48 and the outstanding questions included in the report of the IFS workshop held in 2005.

5. The Secretariat provided the rolling text to Working Group members on 16 September 2008 via electronic mail and invited comments on the document. By the end of December 2008, input had been received from Germany, Mexico, Oceania, the United States of America, the European Commission, the Division of Ocean Affairs and Law of the Sea, the Food and Agriculture Organization of the United Nations, IWMC, Species Management Specialists, SSN/IELP and TRAFFIC/WWF. No responses were received from any countries in three of the six CITES regions, that is, Africa, Asia or Central and South America and the Caribbean.
6. A report on the Working Group's progress was provided by the Secretariat, in consultation with the Chair of the Working Group, to the 58th meeting of the Standing Committee (Geneva, July 2009). The Committee agreed to the recommendation contained in paragraph 11 of document SC58 Doc. 24, which read as follows: "to review the discussion document and draft revised resolution, when they are made available by the Working Group, and to provide input by electronic or other means. The Chair of the Working Group and the Secretariat will then make any revisions that might be necessary and submit both documents, on behalf of the Standing Committee, for consideration by the Conference of the Parties at its 15th meeting."
7. On 5 August 2009, the Secretariat provided Working Group members with a revised version of the rolling text via electronic mail, which incorporated the comments that had been received on the initial rolling text. The revised rolling text, a *Compilation of comments on initial rolling text of 16 September 2008* and a *Chronology of IFS-related discussions to date*, served as the basis for discussion in a face-to-face meeting of the Working Group held in Geneva from 14 to 16 September 2009.
8. In their comments on the initial rolling text, several Working Group members proposed that the Group focus on defining the phrase 'State of introduction', which appears in Articles III, IV and XIV of the Convention, with the ultimate aim of adding the resulting definition to Resolution Conf. 14.6. This approach would allow the Working Group to postpone temporarily any definition of the phrase 'transportation into a State', which appears in Article I of the Convention, and consideration of a range of potentially complex procedural questions involving introduction from the sea. Reaching agreement on the 'State of introduction' could very well facilitate the handling of those other matters.
9. As there is a link between defining the phrase 'State of introduction' and defining the phrase 'transportation into a State', the written comments of Working Group members often addressed or related to both. There was a suggestion that the two could not be easily separated. Similarly, consideration of who should issue a certificate of introduction from the sea and when such a certificate should be issued had relevance for defining the phrase 'State of introduction'.
10. The legislative history of the Convention shows that there were a number of discussions related to introduction from the sea. For example, negotiators seem to have considered whether: there is a difference between 'introduction from the sea' and other forms of CITES trade; proposed controls for introduction from the sea were direct conservation measures to be undertaken by a single State, which was moving specimens from an area outside national jurisdiction to an area within national jurisdiction; and an 'artificial' definition of State-of-origin had to be introduced in order to bring marine species with no State of origin within the framework of the Convention.
11. Some of the key legal issues identified by the Working Group, relevant to defining the phrase 'State of introduction', were whether a vessel can be viewed as the State itself and whether 'introduction' is a process rather than a single or simple act.
12. During its September 2009 meeting Working Group members agreed on a draft discussion paper and draft revised resolution for consideration by the Standing Committee, through electronic mail. Comments received from Standing Committee members have been incorporated into these documents by the Working Group Chair, with the assistance of the Secretariat, and the documents are now being submitted on behalf of the Standing Committee for consideration at this meeting.
13. A draft revision of Resolution Conf. 14.6 on *Introduction from the Sea* is contained in Annex 1 to this document. A draft revision of Decision 14.48 is contained in Annex 2 to this document. The report of the September 2009 meeting of the Working Group is contained in Annex 3 to this document. A compilation of all comments on the initial rolling text, received from Working Group members, is contained in Annex 4 (in the original language of submission) to this document.

Recommendations

14. The Standing Committee recommends that the Conference of the Parties determine how to resolve the bracketed text within the draft revision of Resolution Conf. 14.6 contained in Annex 1 to this document and adopt the resulting revised Resolution.
15. The Standing Committee further recommends that the Conference of the Parties adopt the draft revision of Decision 14.48 contained in Annex 2 to this document.

DRAFT REVISION OF RESOLUTION CONF. 14.6

NB: Text to be deleted is ~~crossed out~~. Proposed new text is underlined.

TAKING INTO ACCOUNT the CITES Workshop on Introduction from the Sea Issues (Geneva, 30 November-2 December 2005) held pursuant to Decision 13.18 of the Conference of the Parties and the meeting of the Standing Committee Working Group on Introduction from the Sea (Geneva, 14-16 September 2009) held pursuant to Decision 14.48 of the Conference of the Parties;

RECALLING that 'introduction from the sea' is defined in Article I, paragraph e), of the Convention as "transportation into a State of specimens of any species which were taken in the marine environment not under the jurisdiction of any State";

RECALLING ALSO that Article XIV, paragraph 6, of the Convention provides that "Nothing in the present Convention shall prejudice the codification and development of the law of the sea by the United Nations Conference on the Law of the Sea";

RECALLING FURTHER that Article III, paragraph 5, and Article IV, paragraphs 6 and 7, of the Convention, provide a framework to regulate the introduction from the sea of specimens of species included in Appendices I and II, respectively;

NOTING that 'State of introduction' is not defined in the Convention and that Article III, paragraph 5, and Article IV, paragraph 6, and Article XIV, paragraph 5, place certain obligations on the State of introduction;

DESIRING that both flag States and port States cooperate in a manner that supports and complies with the provisions of the Convention related to introduction from the sea;

DESIRING ALSO that States consult and cooperate with relevant Regional Fisheries Management Organizations when issuing certificates of introduction from the sea;

NOTING the progress made through the Food and Agriculture Organization of the United Nations on measures to promote responsible fisheries [in particular, the adoption of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing] *bracketed text to be added or dropped depending on the outcome of the FAO Conference in November 2009;*

RECOGNIZING the need for a common understanding of the provisions of the Convention relating to introduction from the sea in order to facilitate the standard implementation of trade controls for specimens introduced from the sea and improve the accuracy of CITES trade data;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

AGREES that 'the marine environment not under the jurisdiction of any State' means those marine areas beyond the areas subject to the sovereignty or sovereign rights of a State consistent with international law, as reflected in the United Nations Convention on the Law of the Sea;

[FURTHER AGREES that 'the State of introduction' means the [port State] [flag State].];

[RECOMMENDS that a Management Authority of the State of introduction, prior to issuing a certificate of introduction from the sea, [be satisfied] [take into account] not only that the provisions of the Convention are met but also that the specimen was or will be acquired in a manner consistent with applicable measures for the conservation and management of living marine resources, including those of Regional Fisheries Management Organizations or arrangements, and with international law]; and

[RECOMMENDS FURTHER that Parties respond in a timely manner to any request for information necessary for issuing a certificate of introduction from the sea or verifying the authenticity and validity of such a certificate.]

DRAFT REVISION OF DECISION 14.48

NB: Text to be deleted is ~~crossed out~~. Proposed new text is underlined.

Decision 14.48 (Rev. CoP15)

Directed to the Standing Committee

14.48—The Standing Committee shall:

- a) ~~at its 57th meeting (SC57), establish a~~ extend operation of the working group on Introduction from the Sea, established at SC57, which with the understanding that it shall continue to work primarily through electronic means, to consider a definition for 'transportation into a State', clarification of the term 'State of introduction' and the process for issuing a certificate of introduction from the sea as well as other issues identified for further consideration in the final report of the CITES Workshop on Introduction from the Sea Issues (Geneva, 30 November – 2 December 2005) and the final report of the meeting of the working group held in Geneva from 14 to 16 September 2009;
- b) ~~include in~~ ensure that the working group includes representatives of CITES authorities and fishery authorities from each of the six CITES regions and obtains input from ~~request the participation of the United Nations Division for Ocean Affairs and the Law of the Sea, the Food and Agriculture Organization of the United Nations, two regional fishery bodies, and the fishing industry, and intergovernmental organizations and non-governmental organizations with CITES and fishery expertise; and~~
- e) ~~contingent on the availability of external funding, convene a meeting of the working group between SC57 and SC58; and~~
- ec) ask the working group to prepare a discussion paper and draft revised resolution for consideration by the Standing Committee at SC58 62 and for consideration at the 156th meeting of the Conference of the Parties.

Directed to the Secretariat

The Secretariat shall, contingent on the availability of external funding, convene a meeting of the working group between SC57 61 and SC58 62;

Meeting of CITES Standing Committee Working Group
on Introduction from the Sea
(Geneva, 14-16 September 2009)

REPORT

1. The meeting of the Working Group was organized in accordance with Decision 14.48 of the Conference of the Parties to CITES, with external funds provided by the European Union. It was chaired by Ambassador Cristian Maquieira of Chile (Chair of the CITES Standing Committee). The following Working Group members attended the meeting: government experts from Australia (on behalf of Oceania), Canada, Germany, Iceland, Japan, Mexico, New Zealand, Norway and the United States representing CITES authorities, fishery departments and ministries of foreign affairs; intergovernmental representatives from the Food and Agriculture Organization of the United Nations (FAO), the European Commission and the CITES Secretariat; and non-governmental representatives from IWMC World Conservation Trust, International Environmental Law Project/Species Survival Network and the World Wide Fund for Nature (also representing TRAFFIC and IUCN). Invited observers from the International Commission for the Conservation of Atlantic Tunas (ICCAT) and the North East Atlantic Fisheries Commission (NEAFC) also participated in the meeting. The following Working Group members (Argentina, Chile, China, the Islamic Republic of Iran, the United Nations Division for Ocean Affairs and the Law of the Sea, the United Nations Environment Programme and the Pew Charitable Trusts) and invited observers (secretariats of the Convention on Biological Diversity, the Memorandum of Understanding on the Conservation and Management of Marine Turtles and Their Habitat of the Indian Ocean and South-east Asia (an agreement under the Convention on the Conservation of Migratory Species of Wild Animals) and the South East Atlantic Fisheries Organization sent their regrets. A complete list of meeting participants is attached.
2. The Secretary-General of CITES welcomed meeting participants to Geneva and the Chair explained that they were picking up work that had begun four years ago. At that time, progress had been made on defining 'the marine environment not under the jurisdiction of any State' and there had been initial discussions on the issue of 'introduction'. The revised rolling text of 31 July 2009 now offered a good basis for the Working Group to give a clear sense of direction for defining 'the State of introduction' – even though the positions of various members were varied and strongly held.
3. Material made available to meeting participants included the: provisional agenda; chronology of IFS-related discussions to date; revised rolling text and written comments from WG members; initial rolling text and consolidated written comments from WG members; Resolution Conf. 14.6; Decision 14.48; ICCAT recommendation on catch documentation; NEAFC powerpoint presentation; Secretariat powerpoint presentation providing an overview of discussions to date on introduction from the sea; FAO Secretariat's powerpoint presentation on the draft Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing and the full text of the Chairperson's draft Agreement of 27 August 2009.
4. The Executive Secretary of NEAFC explained that it has had a compliance/enforcement scheme for high seas fishing since 2000, which has been expanded over the years. A list of vessels involved in illegal, unreported and unregulated (IUU) fishing was created in 2005 and the original number of 26 active vessels has now been reduced to 2. There is an ongoing effort to prevent or discourage 'freeriders'. A Port State Compliance System has existed since 1 May 2007, based on guidance provided by FAO. The skipper has to apply for each landing (there is a list of possible ports). The port State sends the application to the flag State for confirmation of the quota. The port State then decides whether to accept the application (it may decline even if the flag State confirms the quota because of the total sovereignty it is allowed to exercise over its ports) and relevant documents are placed on the NEAFC website. With regard to communication between flag and port States, flag States do respond (within 3 days) to port State requests for information. Most NEAFC members are developed countries, so it has had quite a bit of success with managing fisheries. CITES as a global rather than a regional system, and other regional fisheries management organizations (RFMOs), may have different levels of capacity among their Parties.
5. The Executive Secretary of ICCAT explained that it has committees on statistics and research as well as compliance and there are panels for the major fish species. In addition, there is a permanent working group on non-Contracting Parties which catch tuna. When the list of vessels involved in IUU fishing was initiated in 1999, there were over 200 vessels on the list. Now there were less than 10. Quota allocation criteria were adopted in 2001 and there are trade and other sanctions for non-compliance. Under the trade

sanctions, ICCAT members refuse to import tuna from concerned countries. ICCAT also designates closed fishing areas and seasons. Bluefin catch documents are the only ones accepted. There is an observer programme for transshipment and reporting. ICCAT conservation and management measures have led to recovery in swordfish and some improvement in the status of Bigeye tuna. On the other hand, ICCAT members have encountered some difficulties with the management of bluefin tuna in the past and adopted a multi-year management programme in 2006, amended in 2008, to rebuild the stock while strengthening monitoring and control measures over bluefin catch and trade. The ICCAT Convention does not expressly cover shark species but is nevertheless able to contribute to their conservation and management.

6. It was announced that a new European Union (EU) regulation on IUU fishing would go into effect on 1 January 2010, which requires all fish and fish products to be accompanied by a valid catch certificate before they can enter the EU.
7. The WG recognized that 'introduction from the sea' is one of four types of trade regulated under the Convention. It requires a unique approach, however, because it is not 'typical' trade. Unlike an export and import between two different States, introduction from the sea may involve a single State's acquisition of CITES specimens from the marine environment not under the jurisdiction of any State.
8. The WG had extensive discussions on six options for 'State of introduction' that had been identified by WG members and elaborated in the revised rolling text of 31 July 2009. In considering these options, members stressed the need to agree on an option which was both legally consistent with the Convention and pragmatic (e.g. simple and straightforward in terms of procedure, cost-effective, least burdensome in terms of paperwork and administration, reflective of actual fishery practice, etc.). Noting that the Convention did not define 'State of introduction', a few members suggested that it was flexible enough to fit many desired policy options. The WG's aim, therefore, should be to identify a practical IFS regime which would also be legally consistent with the Convention.
9. It was noted that the issue of whether a port State or flag State should issue an IFS certificate seemed to matter very little when the same State fulfilled both functions. Complications arise, however, when the flag State and port State are different. Could determination of the State of introduction be contingent on circumstances and require resolution on a case-by-case basis? If so, who should decide which State is better under the circumstances and is there a need for decisionmaking criteria or a presumptive State of introduction?
10. One WG member said that IFS has been understood as a special set of rules which are imposed on its own vessels and that the landing of CITES specimens by other States at its ports is treated as an import, no matter where those specimens were taken.
11. A question was posed as to whether the State of introduction was 'making' the introduction or 'receiving' the introduction. As both options seem possible, certain questions were raised. Which option is more suitable in terms of the time when an IFS certificate should be issued? As the purpose of the IFS certificate is to assist in regulating trade, is it better for the flag or port State to issue the certificate?
12. The Working Group recognized that the process for making and communicating non-detriment findings for the introduction of CITES specimens from the sea requires further consideration. The port State, as the entry point to trade, might be in a better position to make a non-detriment finding (NDF). A port State could also request the flag State to provide certain information. On the other hand, it was mentioned that some port States may not have the capacity to make a non-detriment finding or may have difficulties accessing the information needed to issue an IFS certificate. Some members expressed concern that the unilateral making of NDFs for one species by multiple States could result in the cumulative trade of a species being detrimental to its survival. The importance of consultation and cooperation between a State of introduction and the relevant RFMO, in the making of a non-detriment finding, was recognized.
13. Several WG members stated that, based on their interpretation of the Convention, the State issuing the IFS certificate should also make the non-detriment finding on which it was based. However, some members were of the view that nothing in the Convention prevented a State from designating another State as a Management or Scientific Authority. Another member suggested that it might be possible for one State to make the non-detriment finding and for another to issue the IFS certificate. Various sources of information for the non-detriment finding might be used but, if a State had no real connection to the introduction, it might be inappropriate for it to be responsible for issuing the IFS certificate. The State of introduction should obtain the information needed for a non-detriment finding from wherever possible, and is the flag or port State in the better situation to do this?

14. It was suggested that a State should ask its Scientific Authority to investigate whether a non-detriment finding can be made regarding a certain species to be introduced from the sea. A non-detriment finding may be based on fishing effort rather than quantity. If the Scientific Authority cannot find enough evidence to justify such a finding, then the State will have to forego introduction of that species.
15. It was agreed that the State of introduction had a responsibility to ensure that any IFS certificate that was issued was authentic and reliable. By issuing an IFS certificate, the State of introduction may also bear additional responsibilities in case the introduction is found to be inconsistent with the Convention. Some WG members felt that this could pose a problem when the State of introduction is different from the flag State of the vessel concerned.
16. It was noted that CITES requires a different document for each trade transaction (e.g. IFS, export, re-export). Under some RFMOs, similar processes may also be in place to regulate the catch and trade.
17. Some CITES specimens may be taken in accordance with a convention, treaty or agreement described in Article XIV, paragraph 4, of the Convention. In this case, Article XIV, paragraph 5, requires any export of such specimens to be accompanied by a certificate of accordance from a Management Authority of the State of introduction. Working Group members found that their differing interpretations of Article XIV showed there were some sequence-related issues which required further consideration and clarification.

Port State

18. A number of WG members considered that introduction from the sea occurs upon transportation into a port State. It is at this point where specimens acquired in the marine environment not under the jurisdiction of any State first enter into the chain of trade, with respect to the Convention. Therefore, this is the point at which CITES controls initially come into effect for such specimens. Generally, and depending on national legislation, the landing of the specimens (i.e. in the port State) provides a logical time at which the type and quantity of any CITES specimens acquired in the marine environment not under the jurisdiction of any State can be considered as having been introduced from the sea in accordance with the Convention.
19. While the flag State has the primary responsibility to ensure that its fishing vessels do not engage in IUU fishing, such vessel controls have often proved to be ineffective. Certain fishing vessels identified as engaging in IUU fishing use flags of convenience. Some flag States are unable or unwilling to effectively exercise control over their fishing vessels. Some WG members expressed the view that the current inadequate level of control over vessels of 'fishing entities' and the introduction from the sea of specimens by such vessels would undermine the envisaged monitoring mechanism under the Convention, if the flag State were to be the State of introduction. As such, a key rationale for FAO Member States to develop the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing was to combat inadequate or ineffective flag State controls. Similarly, some WG members contended that requiring the port State to issue an IFS certificate might add an additional layer of rigour to the control of IUU fishing.
20. It was acknowledged that there were certain 'ports of convenience', though no formal lists exist similar to RFMO lists of vessels involved in IUU fishing. Opting for the port State as the State of introduction would mean that the flag State would not be responsible for issuing the IFS certificate and could also encourage operators to choose ports of convenience to land their products; according to some members, this might actually reinforce ports and flags of convenience. Concern was also expressed about a port State refusing to issue an IFS certificate on the basis of its own policies and/or stricter domestic measures.
21. In the understanding of some WG members, if the flag State were considered the State of introduction then a certificate of accordance issued by the flag State pursuant to Article XIV, paragraph 5, of the Convention would be required for any export of the specimen from the port State.

Flag State

22. With regard to the flag State as the State of introduction, it was suggested that this approach reflected the responsibility of States with vessels fishing in the high seas, under international law [e.g. the United Nations Convention on the Law of the Sea (UNCLOS), the UN Fish Stocks Agreement and the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas). The primary role of flag State in such a situation is also recognized in the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing that is under development in the FAO. It was suggested that it is more practical for the

flag State to issue the IFS certificate, particularly when it is a member of an RFMO. The flag State could be in a better position than the port State to make a non-detriment finding as it exercises jurisdiction over its vessels on the high seas and is best placed to have all required information pertaining to their harvesting activities. Concerns were raised, however, about flags of convenience and 'fishing entities' (political entities which are not widely recognized by the international community but which have fishing fleets). If a flag State does not make a non-detriment finding (thereby preventing issuance of an IFS certificate), the vessel operator could change flag States until it found a flag State willing to make the NDF.

23. Some WG members mentioned that their support for the flag State is contingent on whether the Convention can be legally interpreted to allow issuance of an IFS certificate by the flag State. Several members noted that it is the responsibility of the flag State to authorize vessels to fish in accordance with international law – including the Convention, for Parties to it (e.g. the requirement, of a non-detriment finding by the State of introduction, which might be the flag State).
24. In the view of some WG members, if introduced specimens are then exported into a different State's port, the port State role as importer is to inspect accompanying documents to verify that an authentic and valid IFS certificate and export permit were issued and that the catch corresponds at a maximum to what is permitted by the IFS certificate. Other members expressed disagreement with this view.
25. According to some WG members, making the port State responsible for the actions of a vessel not flying its flag seems difficult. If the port State refuses to issue an IFS certificate, there may be a right to appeal but this could be difficult for the vessel to exercise in practice. If an IFS certificate is issued before a vessel goes out, it may already know where it will fish and then land its catch. It is usual practice under national law for a flag State to authorize a vessel to fish for a designated time period, particular species and certain quantities. Government inspectors may be on board each vessel to certify the catch that is made. Some RFMOs also provide for advance authorization of allowable catch for certain species based on scientific evidence about the stock. It was noted that catch and trade documentation under some RFMOs for some species is issued and validated by the flag State and its accuracy has to be validated by the port State as a condition for accepting the landing.
26. If the IFS certificate, on the basis of a non-detriment finding, is issued by the flag State, the port State may refuse or seize any landed specimens at port should the introduction quantity exceed the amount authorized by the certificate.

Port State, with possibility of flag State under agreement with port State, or vice versa

27. Most members of the group agreed that a workable solution would require that a particular State (flag State or port State) be the presumptive "State of introduction". Otherwise, in the absence of such clarity, it was felt there could be disputes about which State was responsible for making the required findings and issuing certificates of introduction.
28. Regardless whether the port State or flag State was presumed to be the State of introduction, most members of the group agreed that there should be flexibility to consider the other State as the 'State of introduction' in some circumstances. It was felt by these members that flexibility to deviate from the presumption was necessary to promote the effectiveness and practicability of the Convention in light of the highly varied potential circumstances of introduction from the sea (with diverse flags, ports, capacities, species, locations of harvest, membership in CITES and/or regional fisheries bodies, mandates and management roles of regional fisheries bodies, 'fishing entities', etc.). One member expressed the contrary view that the State of introduction should be either always the flag State or always the port State, with cooperation between the two States.
29. Several members of the group expressed support for prior agreements between port States and flag States as the mechanism for shifting who would issue a certificate of introduction. For example, some members supported a framework under which the port State was the presumptive State of introduction, but under which that port State should be able to rely on the flag State to issue a certificate of introduction if the Management Authority of the port State has agreed that a Management Authority of the flag State could do so in such circumstances.
30. In this regard, the following questions were raised: which State was best equipped to make the relevant findings and issue the certificate; how might it be decided which State in a given circumstance was best equipped; and what manner of cooperation would be best?, Port States seemed best able to determine whether they could fulfill responsibilities for issuing certificates adequately, but would it instead be better to

rely on a flag State in a given context? Prior agreements (or arrangements), which could elaborate on the nature and circumstances of collaboration between the States, could also facilitate clarity as to when the State of introduction is not the presumptive State. One WG member noted that there might be a large number of arrangements under this scheme. Some members noted that they did not support a prior-agreement approach at this juncture, due to its complexity. Another member expressed interest in this prior-agreement approach, but with flag States rather than port States as the presumptive State of introduction. Several members of the group suggested potential alternative bases for shifting from the presumptive State, such as membership status in RMFOs or listings by species.

Port State and/or flag State

31. One WG member strongly suggested allowing either the port State or the flag State to issue an IFS certificate. The Convention appears to allow for this in not defining the State of introduction and Parties are currently using both approaches to issue IFS certificates.
32. Another WG member mentioned that there may not be any need to specify a particular State of introduction and that the respective responsibilities of port and flag States could simply be set out.
33. Other WG members considered that it was necessary to clearly identify either the port State or flag State as the State of introduction, though some thought that this could be done via a presumption which allowed for certain flexibility. The Working Group therefore rejected the option of simply allowing either the port State or the flag State to issue an IFS certificate.

Port State for Appendix I specimens and flag State for Appendix II specimens

34. Some WG members said that this option was too confusing and too fragmented. The possibility of reservations, split-listings and look-alike species presented additional concerns about potential complications. For these reasons, the WG decided to reject this option.

Port State or flag State and Regional Fishery Body

35. Most of the high seas are now covered by an RFMO. Of the 37 marine-related Regional Fishery Bodies that exist, however, only 18 have the mandate under a legally-binding agreement to conserve and manage fisheries. The approach taken towards introduction from the sea should be consistent with the latest developments in RFMOs and FAO.
36. Due to their institutional structure (i.e. role of the regional fishery body *vis-à-vis* the secretariat and its members), there may be limited scope for RFMOs to serve as either Management or Scientific Authorities designated by Parties under Article IX of the Convention. They should nevertheless be consulted in relation to introductions from the sea involving their areas and species and be considered as regular partners for cooperation with CITES authorities.
37. It was suggested that RFMOs could contribute to CITES in three main areas: documentation systems (these have evolved from being limited to catch statistics to now providing catch, transshipment and trade documents); the making of non-detriment findings (RFMO activities could be relevant criteria for such a finding); and a potential role under Article XIV, paragraphs 4 and 5, of the Convention. With regard to the last item, some WG members were of the opinion that the mere existence of an agreement does not satisfy Article XIV, paragraph 4, and that there is also a need for action regarding the protection of a particular marine species listed in Appendix II of CITES. The question of contribution by CITES to RFMOs was also raised.
38. To some WG members it seems desirable to, and there is scope for, more closely aligning the IFS certificate with RFMO and FAO catch and trade-related documents. This should be further considered by the Parties.
39. Based on the above considerations, the Working Group decided that it was not necessarily feasible at this stage to have IFS certificates issued in conjunction with Regional Fishery Bodies and therefore rejected this option.

Conclusions

40. As a result of its discussions, the Working Group developed a set of proposed revisions to Resolution Conf. 14.6 and these are reflected below. Proposed revisions to the preamble provide references to the WG meeting, the absence of a definition in the Convention for 'State of introduction', the need for cooperation between flag and port States in fulfilling the Convention's provisions on introduction from the sea, the need for consultation and cooperation with RFMOs and the anticipated adoption of a new FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.
41. Although there was agreement regarding the need for cooperation among involved States, differing views were expressed on the merits of considering the State of introduction to be the port State or the flag State, or some combination of both, in which case there were various views on the appropriate circumstances under which a non-presumptive State could be the State of introduction. In light of this discussion, the Chair proposed simplifying the language of the draft Resolution to say that the State of introduction is the "[port State][flag State]," and the group agreed on the understanding that this simplification was not intended to prejudice discussion of options involving a combination of the two States depending on the circumstances.
42. Another proposed revision to the operative paragraphs of the Resolution recommends that a Management Authority of the State of introduction ensure or consider the application not only of the Convention but also other relevant measures and international law. Some WG members were concerned that this provision might be seen as adding a legal acquisition requirement to introduction from the sea, which would go beyond the Convention. Other WG members expressed concern that this provision might be seen as allowing compliance with an RFMO's conservation and management measures to suffice as a non-detriment finding.
43. A final proposed revision to the Resolution recommends that the Parties communicate in a timely manner when exchanging information related to an IFS certificate. This was seen by its proponents as necessary to ensure compliance with recommendations to Parties [reflected in Resolution Conf. 12.3 (Rev. CoP14) and elsewhere] that they verify the authenticity of CITES documents. Some WG members noted that communication between Parties regarding CITES documents is already a common practice but underlined that, in the case of IFS certificates, timely responses to requests for information were especially important. A few members suggested that this provision seemed to reduce the degree of deference that would ordinarily be given to the CITES documentation issued by a Party, as it implied that one State might double-check the basis on which another State issued a CITES document.
44. The WG's inability to reach consensus on whether the port or flag State is the 'State of introduction' has implications for the other two elements of its mandate under Decision 14.48. Specifically, it was not possible to reach clear consensus on an interpretation of 'transportation into a State' and on the way in which IFS certificates should be issued without first having decided which State is the State of introduction. Accordingly, the WG's mandate might be continued under a revised version of Decision 14.48.
45. The WG agreed that the Secretariat would, on the WG's behalf, prepare a discussion document, revised resolution and revised decision for electronic review by the Standing Committee and subsequent transmission to the 15th meeting of the Conference of the Parties.

Proposed revisions to Resolution Conf. 14.6

TAKING INTO ACCOUNT the CITES Workshop on Introduction from the Sea Issues (Geneva, 30 November - 2 December 2005) held pursuant to Decision 13.18 of the Conference of the Parties and the meeting of the Standing Committee Working Group on Introduction from the Sea (Geneva, 14-16 September 2009) held pursuant to Decision 14.48 of the Conference of the Parties;

RECALLING that 'introduction from the sea' is defined in Article I, paragraph e), of the Convention as "transportation into a State of specimens of any species which were taken in the marine environment not under the jurisdiction of any State";

RECALLING ALSO that Article XIV, paragraph 6, of the Convention provides that "Nothing in the present Convention shall prejudice the codification and development of the law of the sea by the United Nations Conference on the Law of the Sea";

RECALLING FURTHER that Article III, paragraph 5, and Article IV, paragraphs 6 and 7, of the Convention, provide a framework to regulate the introduction from the sea of specimens of species included in Appendices I and II, respectively;

NOTING that 'State of introduction' is not defined in the Convention and that Article III, paragraph 5, and Article IV, paragraph 6, and Article XIV, paragraph 5, place certain obligations on the State of introduction;

DESIRING that both flag States and port States cooperate in a manner that supports and complies with the provisions of the Convention related to introduction from the sea;

DESIRING ALSO that States consult and cooperate with relevant Regional Fisheries Management Organizations when issuing certificates of introduction from the sea;

NOTING the progress made through the Food and Agriculture Organization of the United Nations on measures to promote responsible fisheries [in particular, the adoption of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing] *bracketed text to be added or dropped depending on the outcome of the FAO Conference in November 2009;*

RECOGNIZING the need for a common understanding of the provisions of the Convention relating to introduction from the sea in order to facilitate the standard implementation of trade controls for specimens introduced from the sea and improve the accuracy of CITES trade data;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

AGREES that 'the marine environment not under the jurisdiction of any State' means those marine areas beyond the areas subject to the sovereignty or sovereign rights of a State consistent with international law, as reflected in the United Nations Convention on the Law of the Sea;

[FURTHER AGREES that 'the State of introduction' means the [port State] [flag State].];

[RECOMMENDS that a Management Authority of the State of introduction, prior to issuing a certificate of introduction from the sea, [be satisfied] [take into account] not only that the provisions of the Convention are met but also that the specimen was or will be acquired in a manner consistent with applicable measures for the conservation and management of living marine resources, including those of Regional Fisheries Management Organizations or arrangements, and with international law]; and

[RECOMMENDS FURTHER that Parties respond in a timely manner to any request for information necessary for issuing a certificate of introduction from the sea or verifying the authenticity and validity of such a certificate.]

Meeting of CITES Standing Committee Working Group on Introduction from the Sea
(Geneva, 14-16 September 2009)

LIST OF PARTICIPANTS

Chair of Working Group

Ambassador Cristian Maquieira
Chair of Standing Committee
Ambassador of Chile to Paraguay
Asuncion, Paraguay

Mexico

Mr Alejandro Quiroz Soriano
International Affairs
Instituto Nacional de Pesca
Mexico City, Mexico

Members of Working Group

New Zealand

Parties

Mr Mark Gibb
Permanent Mission of New Zealand
Ministry of Foreign Affairs and Trade
Geneva, Switzerland

Australia (on behalf of Oceania)

Ms Lorraine Hitch
Marine Policy Development
Department of the Environment, Water, Heritage
and the Arts
Canberra, Australia

Norway

Ms Therese Johansen
Norwegian Ministry of Foreign Affairs
Oslo, Norway

Canada

Mr Andrew McMaster
Fisheries and Oceans Canada
Ottawa, Canada

United States

Mr Oliver Lewis
Office of the Legal Adviser
U.S. Department of State
Washington, D.C., United States of America

Germany

Ms Karoline Hess
Federal Ministry for the Environment, Nature
Conservation and Nuclear Safety
Bonn, Germany

United Nations and its Specialized Agencies

CITES Secretariat

Ms Irina Sprotte
Federal Agency for Nature Conservation
Bonn, Germany

Ms Marceil Yeater
Legal Affairs and Trade Policy Support
Geneva, Switzerland

Iceland

Mr Ragnar Kristjansson
Permanent Mission of Iceland
Ministry of Foreign Affairs
Geneva, Switzerland

Food and Agriculture Organization of the United Nations

Mr Blaise Kuemlangan
FAO Legal Office
Rome, Italy

Japan

Mr Hideki Moronuki
Ecosystem Conservation Office
Fisheries Agency of Japan
Ministry of Agriculture, Forestry and Fisheries
Tokyo, Japan

Inter-governmental organizations

European Commission

Mr Joji Morishita
Fisheries Agency of Japan
Ministry of Agriculture, Forestry and Fisheries
Tokyo, Japan

Mr Gaël De Rotalier
CITES Team
Unit for Environmental Agreements and Trade,
Directorate General for Environment
Brussels, Belgium

Non-governmental organizations

International Environmental Law Project/Species Survival Network

Mr Chris Wold
Lewis & Clark School of Law
Portland, Oregon, United States of America

IWMC World Conservation Trust

Mr Jaques Berney
Lausanne, Switzerland

World Wide Fund for Nature (also on behalf of TRAFFIC and IUCN)

Mr Colman O'Criodain
WWF International
Gland, Switzerland

Observers

International Commission for the Conservation of Atlantic Tunas (ICCAT)

Mr Driss Meski
Executive Secretary
Madrid, Spain

Northeast Atlantic Fisheries Commission (NEAFC)

Mr Kjartan Hoydal
Executive Secretary
London, United Kingdom of Great Britain and Northern Ireland

Standing Committee Working Group on Introduction from the Sea

COMPILATION OF COMMENTS ON INITIAL ROLLING TEXT OF 16 SEPTEMBER 2008

A. Germany and the European Commission (following consultation with all EU Member States)

General comment:

Generally, the EU favours a system, which is effective in terms of conservation and pragmatic procedurally.

Specific comments:

- "Introduction from the Sea" (IFS) should be regarded as the process whereby a specimen is harvested in the high-seas and off-loaded in a port. "Transportation into a State" does not mean landing a fish on the deck of a vessel but rather transporting it into a port State (PS).
- the "State of introduction" should be regarded as the flag State (FS), which carries out the "introduction"
- As such, as a general rule the flag State should be responsible for issuing the IFS certificate. However this should not be the case for flags of convenience
- Flag States, in particular those that are members of RFMOs, may be the best placed to make non-detriment findings for CITES-listed species harvested in the high seas
- Once the catch is landed in a port, the port State should have responsibility for verifying that the catch quantity and species composition corresponds to the IFS certificate and that the certificate has been issued by a flag State entitled to do so (i.e. not a flag of convenience). For the latter point, an objective and transparent system could be developed under CITES in order to determine what constitutes a flag of convenience.

For your information, the approach outlined above would be in line with that set out in the new EU legislation regulating IUU fishing*, which requires that catch certificates be validated by the flag State of the fishing vessel (see extract below).

Article 12

Catch certificates

1. *The importation into the Community of fishery products obtained from IUU fishing shall be prohibited.*
2. *To ensure the effectiveness of the prohibition established in paragraph 1, fishery products shall only be imported into the Community when accompanied by a catch certificate in conformity with this Regulation.*
3. *The catch certificate referred to in paragraph 2 shall be validated by the flag State of the fishing vessel or fishing vessels which made the catches from which the fishery products have been obtained. It shall be used to certify that such catches have been made in accordance with applicable laws, regulations and international conservation and management measures.*
4. *The catch certificate shall contain all the information specified in the specimen shown in Annex II, and shall be validated by a public authority of the flag State with the necessary powers to attest the accuracy of the information. In agreement with flag States, within the framework of the cooperation set out in Article 20(4), the catch certificate may be established, validated or submitted by electronic means or be replaced by electronic traceability systems ensuring the same level of control by authorities.*

B. México

En el caso de México esencialmente ratificamos los comentarios y posiciones de nuestro país, que ya están contenidos en texto distribuido, por tanto coincidimos con los países que considean que el Estado de puerto(PS), siempre debe emitir los certificados CITES.

* Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing:
(<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:286:0001:0032:EN:PDF>)

Por tanto también coincidimos con la definición en la cual el Estado de Introducción se refiere al Estado de Puerto, ya que la introducción se realiza una vez traspasadas las aduanas y con la descarga en el puerto designado por el PS, ya que el Estado de Pabellón (FS), es el estado introductor o exportador.

Desde nuestro punto de vista el párrafo 5 del artículo III, y los párrafos 6 y 7 del artículo IV establecen en sentido estricto, el marco para reglamentar la “Introducción procedente del mar” de especies pesqueras incluidas en los apéndices I y II, en ninguna parte determinan trasladar o transferir la responsabilidad de emitir certificados del PS al FS, sino más bien establecen en general el mecanismo y el proceso por el cual el PS emite el certificado con la información científica y técnica disponible y que en ausencia o carencia de información en el país sobre el estatus de las especies de interés, permite un mecanismo alterno para obtener información disponible, al realizar consultas y solicitar información a distintos organismos internacionales o regionales como la FAO, los organismos regionales pesqueros y organismos regionales de ordenamiento pesquero (RFB), e incluso el FS, a fin de estar en posibilidad de cumplir con la emisión del certificado correspondiente.

Coincidimos también con la opinión de que será útil para el grupo de trabajo y le permitirá avanzar con un acuerdo básico sobre la definición de los términos “Introducción procedente del mar”, “Estado de introducción”, y consideramos también conveniente buscar acuerdo sobre el término de “Fuera de jurisdicción nacional”, ya la FAO en 2004 realizó propuestas al respecto.

Si bien el proceso de Introducción procedente del mar (IFS) es complejo y debe considerar diversas circunstancias creemos que puede ser útil un análisis que nos permita partir de lo general a lo particular para que una vez identificadas las generalidades de los procesos, podamos reducir las particularidades a excepciones.

Por ejemplo en general podemos identificar tres modalidades básicas para IFS:

- a) capturas fuera de jurisdicción nacional
- b) capturas de especies que se distribuyen en la ZEE y fuera de jurisdicción nacional
- c) capturas en la ZEE de un país que son introducidas y desargadas en otro PS

y todas son posibles de clasificarse como IFS al momento de desembarcar en un PS, por lo que una vez determinadas las generalidades de el proceso sería posible determinar las verdaderas excepciones o particularidades, y establecer los procesos de cooperación específicos.

Otro caso es el de transbordo, el cual podría ser tratado desde el punto de vista de los sistemas de trasabilidad de las capturas que existen y operan en la actualidad tanto a nivel nacional, como en las RFB's, en la CITES y en la FAO. Es decir tenemos que hacer una revisión y un mapeo general de los sistemas de documentación, de registro y de localización virtual de las capturas y las flotas que operan, los que realmente existen, y una evaluación de su armonización para contar con un sistema de intercambio de información efectivo, para identificar el nivel de trasabilidad que se puede obtener.

Otro de los elementos generales que tal vez nos permitiría avanzar es el tener un mapa general sobre los mecanismos de intercambio de información a partir de los sistemas de información biológico pesqueros y las bases de datos existentes tanto a nivel nacional, como en las RFB's en la CITES y en la FAO, sobre las especies de interés para la CITES, lo cual nos permitiría ir concretando las posibilidades reales de contar con mecanismos útiles de cooperación e intercambio de información a fin de apoyar la emisión de certificados. E incluso serviría para tener una idea aproximada sobre los vacíos de información existentes acerca de las especies acuáticas de interés para CITES que son explotadas comercialmente y son capturadas en alta mar y entonces dirigir esfuerzos para superarlos.

No hay que perder de vista que el propósito básico de la CITES es hacer del comercio un instrumento de protección y conservación de las especies en riesgo.

Otra consideración general es la necesidad de hacer compatible la definición de términos y de los procesos que estamos discutiendo, con la Convención sobre los Derechos del Mar de las Naciones Unidas CONVEMAR 1982 y el derecho internacional conexo aplicable a la pesca, así como a lo establecido en la Convención de Diversidad Biológica (CBD) y la Convención RAMSAR, desde nuestro punto de vista es fundamental profundizar las sinergias con otros organismos intergubernamentales, incluyendo la mayor armonización y compatibilidad de las normas.

Particularmente nos parece importante profundizar la instrumentación del Memorandum de Entendimiento CITES-FAO, ya que no vemos reflejados en su totalidad los aportes de este último organismo intergubernamental en el texto distribuido.

Un ejemplo de la necesaria armonización y profundización de la cooperación es lo relativo a la pesca ilegal, actualmente se lleva a cabo la negociación de un Instrumento Jurídicamente Vinculante sobre las Medidas del Estado de Puerto sobre la Pesca Ilegal, No Registrada y No Reportada (IUU), con el cual se pretende establecer mecanismos y procesos para el control y combate a la pesca IUU, con base en las responsabilidades del PS y del FS, además de considerar el papel que deben jugar o están desarrollando diversas RFB's en el combate a estas prácticas que lesionan la sustentabilidad de la pesca.

Dicho proceso de negociación prevee culminar a fines de enero de 2009 y los resultados ser aprobados por el Comité de Pesca de la FAO en marzo de 2009, por lo cual recomendamos dar seguimiento al proceso de negociaciones a fin de armonizar diversos aspectos científicos, técnicos y jurídicos, como los mecanismos de vigilancia y control de las prácticas pesqueras y el ordenamiento pesquero en aguas más allá de la jurisdicción nacional, por el papel que pueden cumplir las RFB's.

C. Oceania

Representatives from the Oceania region welcome the opportunity to comment on the Introduction from the Sea rolling text. We agree with comments provided by other representatives that the issues are complex and require careful consideration.

We are of the view that initial deliberations should focus on the central issue of the definition of 'State of Introduction', with procedural issues to be resolved at a later stage. Consistent with the views of the United States, we are of the view that continued attempts at this stage to analyse all possible scenarios are unlikely to assist in resolving this issue, and to allow the development of a process to govern introduction from the sea.

Oceania supports an interpretation that recognises 'introduction from the sea' as occurring in the port State of first landing, with the 'State of introduction' therefore being the port State. Further, with regard to specimens entering international trade from a marine environment not under the jurisdiction of any State, 'introduction to' and 'transportation into' are synonymous.

This view is supported both by a logical reading of the Convention text, bearing in mind its objectives, and by practical considerations surrounding implementation. In particular, such an interpretation:

- Recognises that a vessel is not legally equivalent to a part of a State and that landing the catch on the deck of a vessel therefore cannot constitute 'introduction from the sea'
- Where specimens are transhipped, allows for attribution of a single point of responsibility (at the point of introduction)
- Makes it clear that only a certificate of introduction (not an export permit) is required at the point of landing, avoiding potential confusion between 'introduction to a State' and 'export'
- Ensures that only one State has responsibility for deciding if the take of specimens is 'detrimental' and if the specimens are then able to enter trade, and appropriately attributes this responsibility to the State in which the specimens enter trade.

We believe that this approach is consistent with, and does not diminish, the rights and responsibilities of the flag State under international law. We envisage a potential role for the flag State in providing input to decisions on non-detriment findings (NDF), and consider this is an element requiring further consideration. We acknowledge the concerns of some Parties that port States may not have sufficient information to make a NDF. However we do not consider this to be a strong reason for suggesting that the port State cannot issue the NDF, and are of the view that it will be in the interest of flag States to assist in providing the necessary information.

Other issues

There are a range of complex issues that will require further exploration once fundamental aspects of the 'state of introduction' have been agreed. These will include:

- the process for issuing the certificate of introduction
- the role of the flag State in contributing to a NDF finding
- the relationship with and role of regional fishery bodies.

We are of the view that resolving the definition of the State of Introduction is a necessary first step to avoid protracted and potentially unhelpful discussions. We anticipate that future listings will likely lead to the need for some flexibility to accommodate the practical circumstances of fishing activities and the management regimes for different species.

We look forward to continued deliberations and opportunities to comment on the rolling text as it develops.

D. United States of America

The United States agrees that it may be most productive for the WG to begin by reaching a common understanding on relevant terminology contained in the Convention. We suggest that the WG should begin by focusing its efforts on clarifying the "State of introduction."

As other commenters have noted, it will be important to develop a framework that provides flexibility and takes into account current fisheries practices. Given the responsibilities placed on a flag State regarding vessels flying its flag, and that the current practices of most, if not all, RFMOs that utilize a documentation scheme rely on the flag State to issue the necessary documents, we believe it is important to consider a scenario under CITES in which a flag State may be considered to fulfill the responsibilities of the "State of introduction." One way this could be achieved is under a system that would allow the State of first landing to rely on the flag State of the vessel that caught the Appendix-II species to issue the certificate. Such an arrangement would be facilitated through an agreement between the Management Authorities of the State of first landing and the flag State. Absent any such agreement with a flag State, the State of first landing would issue the certificate under Article IV, paragraph 6.

The above proposal reflects the assumption that introduction occurs only upon transportation of specimens into a port State. Landing fish on a vessel is not an introduction because a vessel can not be considered a sovereign governmental body. It is important to recognize, however, that the point at which the line is crossed, from an area not under the jurisdiction of any State to an area under the jurisdiction of a State, in which that State has the right to enforce applicable laws with respect to the CITES specimens being transported, will be different for different countries. The point at which something is considered to be "imported" also differs from one country to another depending on the country's national laws. The Parties have not seen a need to define the point at which an import has occurred under CITES and we believe that, likewise, it is not necessary to define the point at which an introduction has occurred.

We would argue that if the Parties can reach agreement that introduction occurs only upon transportation of specimens into a port State that it is not necessary to define the precise point at which that line is crossed, i.e. it is not imperative to define "transportation into a State" to reach resolution of this issue.

E. Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations

1. In light of the various views that have been put forward on the interpretation and implementation of the "introduction from the sea" provisions of CITES, the Division, as the Secretariat of the United Nations Convention on the Law of the Sea (UNCLOS) and the United Nations Fish Stocks Agreement, considers that, at this stage, it can best assist the parties to CITES by providing information on the relevant provisions of UNCLOS and the Fish Stocks Agreement relating to the rights and duties of flag States and port States in respect of the conservation and management of the living resources of the high seas and the role of subregional or regional fisheries management organizations or arrangements (RFMO/As) thereon.
2. In addition to the provisions outlined below, a number of other international instruments are also relevant to the issues under consideration by the Working Group, including General Assembly resolutions on sustainable fisheries (e.g., resolutions 62/177 and 61/105, in particular paragraphs 83-91 of the latter), as well as a number of instruments developed, or under development, in the context of the Food and Agriculture Organization of the United Nations (e.g., International Guidelines for the Management of Deep-sea Fisheries in the High Seas, draft agreement on port state measures to prevent, deter and eliminate illegal, unreported and unregulated fishing).
3. The Division hopes this information can assist the CITES Parties in reaching a common understanding of the interpretation and implementation of the "introduction from the sea" provisions of CITES, consistent with the law of the sea. In this regard, the Division notes that 140 parties to UNCLOS are also parties to CITES.

Rights and duties of flag States in respect of vessels flying their flag beyond areas of national jurisdiction

4. In accordance with UNCLOS, all States may exercise freedom of fishing on the high seas subject to conditions related to the conservation and management of the living resources of the high seas. Flag States are required to adopt conservation measures for their vessels in respect of living resources of the high seas, and to cooperate with other States in the conservation and management of such resources (article 87 and Part VII Section 2 of UNCLOS).
5. As specified by the United Nations Fish Stocks Agreement, the duties of the flag State is to ensure that its vessels comply with subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks and that they do not engage in any activity which undermines the effectiveness of such measures. A flag State is required to authorize a vessel to conduct fishing activities on the high seas only where it is able to exercise effectively its responsibilities in respect of such vessel. Of particular relevance to some of the issues considered by the Group, the United Nations Fish Stocks Agreement sets out a range of measures to be taken by the flag State, including control of vessels by means of fishing licences, authorizations or permits, as well as requirements for recording and reporting catch of target and non-target species and for verifying such catch through such means as observer programmes, inspection schemes, unloading reports, and supervision of transshipment. The Agreement also sets out the duties of the flag State to ensure compliance with and enforce applicable conservation and management measures for straddling fish stocks and highly migratory fish stocks (articles 18 and 19). In addition, the FAO Compliance Agreement requires a State to ensure that fishing vessels flying its flag do not engage in activities that undermine the effectiveness of international conservation and management measures for high seas fishery resources (Article III).
6. With regard to the genuine link, it can be noted that apart from the requirement in article 91 of UNCLOS for a genuine link between the flag State and the ship, the Division would also like to draw the Group's attention to the judgment of the International Tribunal for the Law of the Sea in the 1999 *M/V Saiga (No.2)* case, that the purpose of article 91 on the need for a "genuine link" between a ship and its flag State is to secure more effective implementation of the duties of the flag State and not to establish criteria by reference to which the validity of the registration of ships in the flag State may be challenged by other States.
7. Except as provided for in international treaties or UNCLOS, a ship is subject to the exclusive jurisdiction of the State whose flag it flies on the high seas (article 92 of UNCLOS). The high seas boarding and inspection procedure in the United Nations Fish Stocks Agreement is an exception to that general principle and thus applies solely to the States parties to the Agreement (articles 21 and 22).

Rights and duties of port States in respect of high seas conservation and management measures

8. In light of the failure of some flag States to exercise effective control over vessels flying their flag on the high seas, port State measures have been incorporated into the legal and policy framework as a complementary jurisdiction to that of the flag State, to promote the effectiveness of subregional, regional and global conservation and management measures. Consequently a State is entitled to undertake investigations of any foreign fishing vessel which is voluntarily at its port or off-shore terminal, to ensure compliance with international conservation and management measures.
9. Under article 23 of the United Nations Fish Stocks Agreement, a port State may inspect documents, fishing gear and catch on board fishing vessels. States can also adopt regulations empowering the relevant national authorities to prohibit landings and transshipments where it has been established that the catch has been taken in a manner which undermines the effectiveness of subregional, regional or global conservation and management measures on the high seas.

Role of subregional or regional fisheries management organizations or arrangements under UNCLOS and the United Nations Fish Stocks Agreement

10. On the high seas, the flag State has the duty to cooperate with other States directly or through RFMO/As in the conservation and management of high seas living resources (Part VII Section 2 of UNCLOS). The United Nations Fish Stocks Agreement provides a detailed description of the functions of RFMO/As, in particular those related to their scientific and management roles (articles 8 to 11). The scientific functions of RFMO/As include, inter alia, obtaining and evaluating scientific advice, reviewing the status of the stocks, and assessing the impact of fishing on non-target, associated or dependent species. As to the

management functions of RFMO/As, these include, inter alia, the adoption of conservation and management measures; determination of participatory rights of existing members and new entrants; and establishment of cooperative mechanisms for monitoring, control and surveillance and enforcement.

11. As regards non-members of and non-participants in RFMO/As, the United Nations Fish Stocks Agreement provides that such States are not discharged from the obligation to cooperate in the conservation and management of the relevant straddling fish stocks and highly migratory fish stocks (article 17).
12. The Division will be pleased to provide additional input at a later stage, as appropriate, or to answer any specific question addressed to it by the Working Group.

F. Food and Agriculture Organization of the United Nations

1. It will be recalled that at the 2005 IFS Workshop, the delegation from the Food and Agriculture Organization of the United Nations (FAO), was attracted to the position that a literal reading of the terms “transportation into a State” in the definition of “introduction from the sea” (IFS) points to the port State as the “State of introduction”. It should be noted, however, that FAO also favours a pragmatic approach to operationalising Article III and IV of CITES in relation to IFS. In this regard, the process of seeking agreement on the appropriate way to implement the relevant provisions of the said articles should draw on the flexibility inherent in those articles.
2. It is also preferred that instead of focusing on the term “transportation into a State” (and in that respect attempt to develop a working definition of the term), a more productive approach would be to focus on “State of introduction”. Such State will have the responsibility to make findings and issue certificates under Articles III and IV. In this regard a resolution which designates either the flag State or the port State as the “State of Introduction” (the designated principal State) for the purposes of making findings and issuing certificates under Article III and IV should be developed. Such resolution should also state that the designated principal State may reach agreement with other States or a regional fisheries management organization or arrangement (RFMO/A) in order to transfer to them the responsibility of issuing certain certificates or making certain findings.
3. In the context of the above preliminary comments, it is observed that the current suggested definitions of “transportation into a State” in the proposed revisions to Resolution Conf. 14.6 for consideration by CoP are not in line with the flexible approach advocated above and are potentially restrictive in application. The restriction is present, in particular, in relation to the use of the term “cleared by Customs” (in both options) and arises from the premonition that it does not give due consideration to how fishing vessels and the fishing industry operates particularly in relation to transshipment or landings in port. For example, it should be noted that the *FAO Model Scheme on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing* (FAO Model Scheme), the elements of which are being used to develop a binding instrument on port State measures (PSM) under the auspices of FAO, assumes that transshipment in port does not necessarily have to clear customs but this does not mean that it should not be subjected to other authorisation and inspection regimes (e.g. fisheries) of the port State. It should also be noted in this connection that a designated port area under the control of a national ports authority may not necessarily be restricted to, for example, the wharf area; it could be a harbour. Certain activities in other parts of the port may not be subject to customs control or clearance.
4. FAO would be supportive of an approach to the development of a CoP resolution that not only seeks to effectively implement CITES but also addresses illegal, unreported and unregulated (IUU) fishing and draws on the important role that flag States, port States and RFMO/As can play in this regard consistent with international law and the obligations of parties under other relevant international fisheries instruments. Such approach must recognise current deficiencies including, in particular, the long standing problem that not all flag states are able to ensure that they exercise effective control over vessels flying their flags in areas beyond national jurisdiction and that port States and RFMO/As can contribute effectively to reducing this deficiency. There is also the issue of how to deal with fishing entities in this context.
5. The development of the solution for operationalising CITES Articles III and IV should also take into account the following:
 - a) ports can be the principal point of entry where fish and fish products, being landed (on shore) for the first time, can be subjected to inspections and verification interventions;
 - b) under international law, States have sovereignty over their ports and port States can deny access to their ports accept in the case of *force majeure*.

- c) fish and fish products can be transhipped in port without being subjected to customs clearance and that transshipment at sea provides a possible loophole in the effort to combat IUU fishing as it creates the opportunity for, inter alia, “fish laundering”.
- d) Most RFMOs have elaborate management regimes in their area of competence and may play a useful role in IFS and NDF schemes;
- e) certain RFMOs have IUU fishing vessel lists and others are developing such lists. The IUU Fishing vessel lists could be useful for the purposes of the CITES IFS and NDF schemes;
- f) Certain RFMOs have catch monitoring schemes such as CCAMLR’s catch documentation scheme which highlight’s the RFMO’s leading role in fisheries management of shared stocks and in ensuring traceability of catches in the RFMO area and the opportunities that these present, in particular the integration or the use of such schemes for CITES purposes;
- g) relevant developments including the process of developing an international binding instrument on PSMs under the auspices of FAO. Such instrument may provide for minimum requirements and standards for port state measures and that the process for negotiating such binding instrument is expected to be completed in the first half of 2009. The current draft agreement under consideration includes the following elements:
 - recognition of sovereignty of port states over their ports which can be used to deny access except in *force majeure*;
 - the requirement for fishing vessels to provide advance notice of entry into port to assist the port State to decide whether or not to grant access to a vessel and that such notice describes the minimum information to be provided including the characteristics of the vessel, the relevant authorisation for fishing or transshipment and the quantity of fish on board (see Revised Annex A at: ftp://ftp.fao.org/FI/DOCUMENT/tc-psm/2009/revised_draft_ann_e.pdf)
 - prescription of minimum requirements and standards for inspections in port including the collection of information on the area where the fish was caught and authorizations to fish or whether the catch is taken in an area under the competence of an RFMO/A (see Revised Annexes B and C at: ftp://ftp.fao.org/FI/DOCUMENT/tc-psm/2009/revised_draft_ann_e.pdf)

G. IWMC World Conservation Trust

This document, including comments from various sources, illustrates the complexity of the issue of introduction from the sea of commercially exploited species, although it does not cover all the possible difficulties, e.g. in case of transshipment of specimens from more than one CITES species from one or more FS and/or originating from high seas and EEZ of more than one State. In such circumstances, the last comment from China is understandable. A crucial question should be “could CITES be an appropriate instrument to fight against overfishing and/or IUU fishing, and if so how?” This question may not be answered by CITES only but would require cooperation with FAO and RFBs. It should not be forgotten in addition that CITES Parties, FAO and RFB members are the same States, which should be able to coordinate their views, actions and positions within international bodies at the national level first. A single certification system would appear as the only solution to such a complex issue that the CITES procedures may not solve properly. This is in discussion within FAO but the work is apparently not progressing as it should.

Although an as uniform as possible implementation of CITES is desirable, it should not be forgotten that IFS is the only ‘trade’, as this term is defined by CITES, that involves ONE Party only, the State of introduction. As resolutions and other decisions of the Conference of the Parties are not binding (unless they so wish through their national legislation) but are just recommendations, Parties may decide to interpret the terms under discussion within the working group at their own convenience.

Regarding: Clarification of the process for issuing a certificate of introduction from the sea

The text of the Convention (Article III, paragraph 5 and Article IV, paragraph 6) is quite clear on this specific point. The certificate of introduction shall be issued by a Management Authority of the State of introduction, on the condition that a Scientific Authority of the State of introduction has advised that the introduction will not be detrimental to the survival of the species involved. As there is only one State of introduction for one shipment, both the Management and the Scientific Authorities must be from the same State, i.e. the State of introduction.

* The RFMOs are the [Commission for the Conservation of Antarctic Marine Living Resources](#) (CCAMLR), [General Fisheries Commission for the Mediterranean](#) (GFCM), [Inter-American Tropical Tuna Commission](#) (IATTC), [Indian Ocean Tuna Commission](#) (IOTC), [International Commission for the Conservation of Atlantic Tunas](#) (ICCAT), [Northeast Atlantic Fisheries Commission](#) (NEAFC), [Northwest Atlantic Fisheries Organization](#) (NAFO), [South East Atlantic Fisheries Organization](#) (SEAFO) and the [Western Central Pacific Fisheries Commission](#) (WCPFC).

It appears however that this State may be either the port State or the flag State. This does not prevent consultation between these States and with RFBs or any other competent bodies or people.

Regarding: [Transportation into a State]/[Introduction from the Sea] – definition; Legal issues (following comments of Germany and the European Commission)

*It seems that for **Appendix I** the intention of the text [Article III(5)] is that the PS should issue a certificate in line with the general concept of having importing countries issue a permit for specimens that do not originate in the High Seas.*

*However for **Appendix II** the text is not so clear [Article IV(6)]. For introduction from the sea, the language seems to mirror the general language for Appendix-II situations, where the "harvesting" States (the State of Export) must make the non-detriment finding (NDF) and issue a certificate; the most analogous concept for introduction from the sea would seem to be the Flag State (FS).*

For non-lawyers, these different interpretations appear difficult to understand as the wording is exactly the same in both Articles.

Regarding: Non-detriment – process

In the case of a shipment covered by an IFS issued by a FS and landed in another State, the shipment, in accordance with CITES, shall be covered by an export permit issued by the FS. This would be even more confusing for Customs.

H. Species Management Specialists Inc.

The issues are indeed complex and will require careful consideration. In this regard, although the workshop achieved some progress on a range of issues, SMS believes that it may be more productive to focus on the definitions of terminology contained in the text of the Convention before considering procedural aspects of IFS. If CoP15 is able to agree on interpreting the term "State of introduction", it is likely that some of the procedural aspects of IFS will "come-out-in-the-wash" when Parties understand better the respective responsibilities of the flag State (FS) and port State (PS) with respect to IFS.

SMS agrees that an introduction from the sea should be regarded as the point at which a specimen is off-loaded and cleared at a port. Landing a fish on the deck of a vessel should NOT be regarded as being an "introduction from the sea. Such an interpretation would lead to unnecessary documentary complications. Furthermore, SMS concurs with the views expressed that the process of issuing an IFS certificate in relation to the respective responsibilities of the FS and PS should be pragmatic and attempt, wherever possible, to accommodate current fisheries management practices.

SMS shares the view of the United States that paying too much attention to the phrase 'transportation into a State' confuses the issue and may not prove to be productive.

We like the views expressed by the European Community that a cogent argument could be mounted to support the FS being regarded as the State of introduction (and therefore being responsible for issuing IFS certificates). With the exception of vessels using a flag of convenience (FOC), the FS is responsible for licensing a fishing vessel and ensuring that it complies with and operates according to relevant national laws etc. Recognition of the FS as the State of introduction and consequently the primacy of the FS being interpreted as the 'State of introduction' [and hence responsible for issuing an IFS certificate] is further strengthened by the requirements of Articles III and IV for the prior grant of an IFS certificate. Except in cases where the FS and PS are the same, SMS agrees with the views expressed that, in many instances, it is unrealistic to expect the PS to be familiar with the fishing activities of a foreign vessel. This aspect is closely related to the NDF process and SMS does not believe that it would necessarily amount to issuing a 'blank cheque' approach to regulating high seas fisheries.

Under the circumstances, it would seem appropriate that the FS assumes the responsibility of issuing the IFS certificate and the PS has the responsibility of verifying that the catch quantity and species-composition corresponds to the IFS certificate issued by the FS. In many cases the FS and the PS will be the same country. In cases where a fishing vessel is registered in another State that is not where the vessel is normally harboured when not at sea, clearly the FS is not well placed [or qualified] to issue IFS certificates with respect to the fishing activities of the vessel in question. Under these circumstances, the most appropriate State to issue an

IFS certificate would be the State that regulates the vessel's activities and of which the vessel comprises an element of that countries fishing fleet

I. Species Survival Network/International Environmental Law Project (SSN/IELP)

General Comments

We agree with the comment made by SMS that the Introduction from the Sea (IFS) Working Group should first define basic terms, such as transportation into a State and State of Introduction, before considering the "process" issues found on pages 9-14 of the Chairman's Rolling Text. These process issues are, for the most part, applicable regardless of which Party issues an IFS certificate. For example, the process and criteria for identifying (1) whether a marine species has been taken in the marine environment and (2) making a non-detriment finding would be, more or less the same, regardless of which Party issues the IFS certificate. With respect to non-detriment findings, it would seem premature for this Working Group to address this issue until the results of the NDF workshop, which Mexico is hosting in November 2008.

In addition, we note that many of the options reported in the Chairman's rolling text create complex arrangements for issuing IFS certificates. We believe that any recommendations from the IFS Working Group should strive for solutions that avoid unnecessary complexity, while also ensuring that any solution is consistent with the conservation goals and the provisions of the Convention. Any solution that is unnecessarily complex is likely to result in implementation problems that would not help achieve the goals of the Convention.

Specific Comments

Comment 1: page 4, paragraph 3: Is it possible for the port State to issue the IFS certificate while the flag State issues the NDF?

For specimens of Appendix I species, we completely agree with the analysis provided by IWMC: there is no authority in the text of Article III for granting authority to make an NDF to one State and the authority to issue the IFS certificate to another State.

For Appendix II specimens, however, it may be possible for the Scientific Authority of one State to issue the NDF while the Management Authority of another State issues the IFS certificate. Article IV(7) refers to issuance of an IFS certificate upon the advice of a Scientific Authority. It does not say upon the advice of a Scientific Authority of the State of Introduction. It is noteworthy that all other references in Articles III and IV to a Management Authority or a Scientific Authority are qualified by the phrase "of the State of Introduction." While it is likely that this omission is a drafting error, we cannot say with certainty that this distinction was unintentional. However, a process that allows the flag state to make a non-detriment finding while allowing the port State to issue the IFS certificate is likely to create unnecessary complexity and confusion for enforcement and/or customs officials. This situation should be avoided.

Comment 2: page 5, Issue b): When a certificate should be issued

Some members of the IFS Working Group have said that a focus on the phrase "transportation into a State" has confused the issues that we must address. However, Articles III(5) and IV(6) state that "The introduction from the sea of any specimen ... shall require the prior grant of a certificate". Because Article I(e) defines "introduction from the sea" as "transportation into a State", the IFS certificate must be issued prior to "transportation into a State."

Thus, regardless of which Party issues the IFS certificate, the IFS Working Group must define the phrase "transportation into a State" for purposes of determining when the certificate must be issued.

As described in more detail below in comment 3, we believe that "transportation into a State", as a matter of law, occurs when a specimen has cleared customs. Assuming for now that "transportation into a State" means the species must clear customs, then the IFS certificate must be issued prior to the specimen clearing customs.

May IFS certificates be issued before the specimen is caught? The definition of "introduction from the Sea" is unclear. The definition of "introduction from the sea" refers to species "which were taken." The use the past tense suggests that "introduction from the sea" only occurs after the specimen has been caught. However, the phrase "where were taken" more likely refers to the location of where the specimen was taken—that is, they "were taken in the marine environment not under the jurisdiction of any State." If this is true, then the IFS

certificate may be issued at any time before the specimen clears customs, including prior to the specimen being caught.

We don't believe that issuing IFS certificates prior to taken the specimen amounts to a blank check. Instead, doing so could help reinforce the catch limits established by Regional Fisheries Bodies (RFBs). In this regard, we note that Article IV(7) contemplates the use of one-year quotas. Since most RFBs grant quotas on a country-by-country basis, those quotas could be used as the basis for making non-detriment findings.

Proposed Revisions to Resolution Conf. 14.6

Comment 3: Definition of Transportation into a State

As a matter of law, "transportation into a State" occurs when a specimen clears customs. First, this phrase cannot mean landing a specimen on the deck of a fishing vessel. International law has never treated private fishing vessels as a "floating portion of a territory." International law has always considered this idea "a fiction." As Article 91 of the United Nations Convention on the Law of the Sea states, vessels have the nationality of the flag State. It is true that flag States also have jurisdiction over a vessel on the high seas. However, neither nationality nor jurisdiction over a vessel confers statehood or the status of territory on the vessel.

With respect to the port State, the definition of "transportation into a State" could mean that the specimen has either (1) entered the territorial sea or inland waters of a State or (2) cleared customs. The first possibility must be eliminated, however. Article VII(1) of the Convention exempts "transshipment of specimens through or in the territory of a Party while the specimen remains in customs control." If transshipments through a country that remain in customs control do not require permits, then it cannot be true that getting the shipment to customs control does require a permit. As FAO and others have concluded, "transportation into a State" occurs when a specimen clears customs; it does not mean when the fish is landed on a vessel.

From a practical perspective, defining "transportation into a State" to mean when a specimen is landed on a vessel would create unnecessary complexity. If landing a specimen on a vessel constitutes transportation into a State, then the next transaction, then entry into the territory of another State would constitute export. Similarly, any subsequent transfer to a vessel flagged by another state would be an export. If the specimen enters a third State, then this would be a re-export. This cannot be what the drafters of CITES intended. As others have suggested, this would also be unduly cumbersome.

It would also be impractical to consider entry into a coastal State's territorial waters as "transportation into a State." If this definition is adopted, then each time a vessel crosses into the territorial waters of another State, in some areas, such as vessels transiting from West Africa to Europe, the vessel might need re-export permits from 10 or more Parties.

Comment 4: State of Introduction

Because the Convention does not define "State of Introduction," some members of the Working Group have suggested that the Convention provides flexibility to allow issuance of IFS certificates by either the flag State or the port State. As a matter of treaty interpretation, this view is likely not correct. It is difficult to conceive that the drafters intended the phrase "State of Introduction" to mean something different from "State of Introduction from the Sea." Article 31 of the Vienna Convention on the Law of Treaties requires treaties to be interpreted "in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." Articles III(5) and IV(6) are about "introduction for the sea." As such, a good faith/ordinary meaning interpretation of "State of Introduction" would relate to the definition of "introduction from the sea." Because "introduction from the sea" includes the phrase "transportation into a State," then the State of Introduction must be the port State, as described in comment 3 above.

However, another rule of interpretation requires treaty interpreters to give effect to distinctions in treaty terms, unless doing so leads to something absurd or unreasonable. Because the drafters used the phrase "State of Introduction," then perhaps they intended something different from "State of Introduction from the Sea."

Does this distinction lead to something absurd or unreasonable? From an implementation perspective, treating either the flag State or the port State as the State of Introduction creates problems. As noted above, when the flag State is the "State of Introduction," then an at-sea transshipment to a vessel flagged by another State or clearing a specimen through customs in a State other than the flag State constitutes an export, which requires an export permit. Thus, even if it is agreed that "State of Introduction" can mean flag State, we do not solve these cumbersome implementation problems.

Moreover, it is well known that many vessels fish on the high seas pursuant to flags of convenience. These flag States are also Parties to CITES. Thus, an interpretation that presumes that flag States have authority to issue IFS certificates may result in known “flags of convenience” issuing IFS certificates. That is a result to be avoided. On the other hand, while there is some concern about “ports of convenience,” the number of ports of convenience seems to be small. In 2004, the OECD reports reported that Las Palmas de Gran Canaria is a major ports of convenience and that Port Louis, in Mauritius, and Cape Town (at least in the past), have been ports of convenience. OECD, DIRECTORATE FOR FOOD, AGRICULTURE AND FISHERIES, FISHERIES COMMITTEE, “Halting IUU Fishing: Enforcing International Fisheries Agreements”, AGR/FI/IUU/RD(2004)1, para. 31 (April 6, 2004).

For these reasons, we believe that designation of the port State as the Party which issues the IFS certificate is the only legally defensible interpretation of the Convention as well as the most practical approach.

Nonetheless, we recognize that some Parties have adamantly opposed this view. For that reason, and in the spirit of cooperation, we suggest the following approach, which seeks a solution that is not complex and is in the best interests of the species. First, the phrase “transportation into a State” would be used and defined for determining when the IFS certificate must be issued. The phrase “State of Introduction” would be used and defined for determining which Party issues the IFS certificate.

Second, we recommend designating port States as having authority to issue IFS certificates, unless some other arrangement exists between the port State and the flag State. By establishing this presumption, the Parties recognize the underlying legal conclusion that port States are the State of Introduction. This approach is also generally consistent with Article IX(1) of the Convention, which allows a Management Authority to designate “one or more Management Authorities competent to issue permits and certificates.” In this case, the designated Management Authority is from the flag State for purposes of issuing IFS certificates.

This approach also avoids many of the problems associated with flags of convenience. In addition, the Parties would know which Party has responsibility for issuing IFS certificates. In this regard, we note that certain ambiguous provisions of the Convention have resulted in implementation problems. For example, Article VII(3) of the Convention exempts Appendix II personal and household effects from permit requirements when, among other things, the State where removal occurred requires the prior grant of an export permit. Because most Parties did not notify the Secretariat as to whether they required such an export permit, importing States did not know whether the personal and household effect was legally exported. To eliminate this ambiguity, Resolution 13.7 (Rev. CoP14) established the presumption that export permits or re-export certificates would not be required for certain personal or household effects unless a Party notified the Secretariat that such permits or certificates were required. Similarly, it seems essential that the provisions for introduction from the sea clearly establish a presumption as to which Party issues the IFS certificate.

Third, criteria should be developed for determining which flag States may issue IFS certificates. To enhance synergies with other conventions addressing fisheries, and to avoid problems associated with flags of convenience, we propose the following language concerning issuance of IFS certificates:

“The Management Authority of the port State shall issue the certificate of Introduction from the sea, unless the Management Authority of the flag State of the vessel that caught the specimens provides written notification to the Parties that it has ratified, accepted, or acceded to, or is a cooperating non-Party to:

1. The Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (“The FAO Compliance Agreement”);
2. The Agreement for the Implementation of the Provisions of the United Nations Convention of the Law of the Sea of 10 December 1982, relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (“The Fish Stocks Agreement”); and
3. Any regional fisheries body with conservation and management responsibilities for the listed species in question.”

Comment 5: Concerning the comments on legal Issues presented by the EU on page 8

The EU appears to make an analogy between the import/export permitting scheme for Appendix II specimens and the export permit only scheme for Appendix I specimens. The analogy, however, is inappropriate. As noted by IWMC, the language concerning introduction from the sea in Articles III(5) and IV(6) is identical in that these provisions contemplate a single issuer of the IFS certificate—the State of Introduction. The provisions for IFS do not contemplate a “receiving/importing” State and a “harvesting/exporting” State.

Article XIV(4) does not help the EU's argument. Article XIV(4) exempts a CITES Party from all CITES permitting requirements when a vessel it flags catches a marine specimen in accordance with the rules of another treaty (and which pre-dates the entry into force of CITES). In other words, it applies to all "trade"—import, export, re-export, and introduction from the sea. It also applies equally to specimens taken in territorial waters, the exclusive economic zone, and the high seas. Because of the broad, general applicability of Article XIV(4), no inferences can be made concerning the role of the flag State as the State of Introduction.

Comment 6: Issues included in pages 9-14

As noted in our general comments, we urge the Working Group to omit discussion of the issues beginning on page 9 until resolution of the definitions of "transportation into a State" and "State of Introduction."

Comment 7: "introduction" – process (page 9)

Our comment here is just a reminder that many participants at the IFS Workshop noted that an asymmetry between the provisions concerning export and introduction from the sea. Whereas the Management Authority of the state of export, prior to an export of an Appendix I or II specimen, must be satisfied that the specimen was not obtained in contravention of the laws of that State, no equivalent requirement exists for introduction from the sea. Since there were few RFBs and management measures applicable to high seas fisheries at the time the Convention was adopted, perhaps the drafters of CITES did not consider it important to determine whether the specimen was taken consistently with applicable conservation and management measures of RFBs. In any event, many participants in the IFS Workshop thought that an equivalent provision for IFS would be useful now.

J. Trade Records Analysis of Flora and Fauna in Commerce (TRAFFIC)/World Wide Fund for Nature (WWF)

Firstly we have produced the findings of a short workshop we convened to look at the practical application of IFS. I have attached this publication and it raises a number of practical issues we should consider [provided separately to the Working Group].

On the single point of where Introduction occurs:

When reading our workshop outcomes one should note that we came to the conclusion at that workshop that introduction occurred when species hit the deck of a vessel. We came to this conclusion as the Convention specifies

"The introduction from the sea of any specimen of a species included in Appendix II shall require the prior grant of a certificate from a Management Authority of the State of introduction."

We had concluded that only the Flag State would be able to meet the requirements to issue the certificate. We had legally interpreted "State of Introduction" to be the State that received the introduction.

In line with [Germany and the European Commission's] advice we would fully support ensuring that the convention interpretation was that the "State of Introduction" was the one making the introduction and not receiving it. This would then not necessarily require the interpretation that the introduction occurred when species hit the deck of a vessel. The fundamental point though not to be lost is that only the Flag State would be capable of making the NDF. Please see our publication for further discussion of "prior grant of a certificate".

We would agree with the other points in [Germany and the European Commission's] email but do have concerns how the CITES Parties would specifically identify Flags Of Convenience. At the end of the day if we assume that normal CITES processes occur that test the integrity of NDF findings and legal findings, problems would be identified and the Scientific and Management Authority at the heart of the problem identified. We would recommend this working group consider the specific nature of information that is included on certificates to enable the detection quickly of any inconsistencies with appropriate NDF and Legal findings. While the legal findings are not required for the IFS certificate, they are for export and re-export and the experience of many high seas fisheries has been that the rigor with which Flag and Port States control and monitor fished species is highly variable.