

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

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Fourteenth meeting of the Conference of the Parties  
The Hague (Netherlands), 3-15 June 2007

CORRESPONDENCE BETWEEN THE FAO AND THE CITES SECRETARIAT CONCERNING  
PROPOSALS TO AMEND THE APPENDICES

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IL 2/895

14 May 2007

Dear Mr Wijnstekers,

I am writing to you in relation to the recently released recommendations from the CITES Secretariat on listing proposals concerning commercially-exploited aquatic species submitted to CoP 14 (CoP14 Doc. 68 Annex 2).

As you know, the proposals addressing these species were evaluated by the FAO Ad Hoc Expert Advisory Panel, meeting in Rome from 26 to 30 March 2007. The Panel gathered leading experts in the fields of fisheries science and management, species biology and trade. It was convened by FAO as the central activity for implementing paragraph 4 of the Memorandum of Understanding (MOU) between FAO and CITES, where it is agreed that "The FAO will work together with CITES to ensure adequate consultations in the scientific and technical evaluation of proposals for including, transferring or deleting commercially-exploited aquatic species in the CITES Appendices based on the criteria agreed by the Parties to CITES".

The task of the Panel was therefore to assess each proposal from a scientific perspective in accordance with the CITES biological listing criteria and to comment on technical aspects of the proposal in relation to biology, ecology, trade and management issues, as well as the likely effectiveness for conservation. With the intention of producing the best possible recommendations on the proposals, we did not spare resources or staff time dedicated to the organization of the Panel and were fortunate to have Panel members of the highest caliber covering all aspects of each proposal relevant to CITES. In the view of FAO and of the Panel members, this was a rigorous and constructive meeting, and the report of the Panel provided important, very carefully considered information and recommendations to inform CITES in making their decisions on the proposals.

As much as we appreciate the fact that the CITES Secretariat acknowledged the results and included the Assessment Summaries of the FAO Panel in its recommendations (CoP14 Doc. 68 Annex 2), we were surprised that for four out of seven proposals the Secretariat ignored the Panel recommendations that the available evidence did not support the proposals and, instead, recommended their adoption. We are fully aware that the Secretariat is empowered by the Convention to communicate its own findings and

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recommendations to the CITES Parties and that it is in no way obliged to follow the advice from FAO. This letter is not intended to challenge that authority in any way. However, where proposals are dealing with commercially-exploited aquatic species and the recommendations of the CITES Secretariat differ from those of the Panel, we would expect substantive evidence and explanation from the CITES Secretariat for its decision to disagree with the FAO Expert Panel evaluations.

In our view the CITES Secretariat's recommendations on these proposals were not adequately substantiated and, as such, failed to meet the requirements of CITES Resolution Conf. 9.24 (Rev. CoP13) on the criteria for amendment of Appendices I and II. In the Preambular text, that Resolution notes that decisions to amend the Convention's Appendices are to be "founded on sound and relevant scientific information, take into account socio-economic factors, and meet agreed biological and trade criteria for such amendments". Despite this requirement, in none of the four cases in which the CITES Secretariat disagreed with the Panel recommendations did it provide any scientific challenge to the conclusion of the Panel that the species did not meet the biological criteria for Appendix II, as required above.

The Resolution further specifies that the Annex 2 a criteria must be read in conjunction with the definitions, explanations and guidelines listed in Annex 5, including the footnote relevant to commercially-exploited aquatic species. Annex 5, including the footnote for Application of decline to commercially-exploited aquatic species, clearly covers both the Annex 2 a paragraph A and paragraph B criteria. As you know, these criteria and accompanying definitions, explanations and guidelines were the result of several years of broad and intensive scientific deliberation and negotiation by both organizations. In keeping with the Convention, they were the basis of the Panel's evaluations.

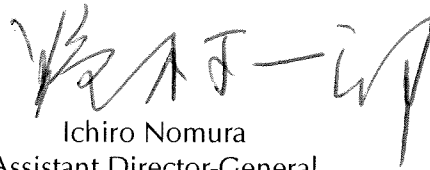
In contrast, Annex 5 seems to have been ignored by the Secretariat in issuing their recommendations and replaced instead with loose and subjective statements such as "...it does not seem unreasonable to conclude that for these populations, in line with paragraph B in Annex 2 a of Resolution Conf. 9.24 (Rev. CoP13), regulation of trade is required to ensure that harvest of specimens is not reducing the wild populations..." (Recommendation by the Secretariat for *Lamna nasus*) or "On the basis of the information available prior to the discussion at CoP14, the Secretariat recommends..." (Recommendation by the Secretariat for *Pterapogon kauderni*). I find it difficult to accept these arguments as a basis for countering the detailed and rigorous evaluation of the FAO Panel. In my view they fall drastically short of the standards applied in all effectively managed fisheries around the world.

Our concern also goes much further than just these proposals. We find it unfortunate that, after so much effort by both organizations and the intense dialogue between the two in order to develop sound and scientifically-based criteria to evaluate listing proposals concerning commercially-exploited aquatic species, in these cases the Secretariat has decided to bypass the relevant sections of Annex 5 and to base its recommendations on an undefined interpretation of paragraph B of Annex 2 a of Resolution Conf. 9.24 (Rev. CoP13). This sets a precedent that potentially negates all the progress and consensus developed on the criteria, including Annex 5, over the last five or more years and that

contributed to the agreement and signature of an MOU last year. In the view of the FAO Fisheries and Aquaculture Department, the approach adopted by the CITES Secretariat in formulating these recommendations on commercially-exploited aquatic species could lead to a return to the conflictual and confused situation that prevailed in 1998, when the matter of the CITES criteria was first brought to the attention of the FAO Sub-Committee on Fish Trade by Member countries in 1998.

In closing, I sincerely hope that you urgently take corrective action with regard to the CITES Secretariat's recommendations on these proposals.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Nomura Ichiro' in Japanese characters, written in a cursive style.

Ichiro Nomura  
Assistant Director-General  
Fisheries and Aquaculture Department



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Your ref.:

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Geneva, 16 May 2007

Dear Mr Nomura,

Many thanks for your letter of 14 May 2007.

I do share your concern that the recommendations of our two organizations regarding proposals to amend the appendices for commercially-exploited aquatic species to be discussed at CITES CoP14 are not perfectly aligned. There are many assessments of the amendment proposals undertaken by a variety of organizations and the CITES Secretariat does try and take an impartial view, however I recognize that there is a particular need for the CITES Secretariat and FAO to work as closely together as possible on this matter. I can assure you that we took full account of the Panel's conclusions before making our own recommendations.

I have examined the circumstances you refer to again. I do believe that one fundamental problem concerns the interpretation of the listing criteria in Annex 2 a of Resolution Conf. 9.24 (Rev. CoP13). As you know, this states that a species should be included in the CITES Appendices if:

- A. It is known, or can be inferred or projected, that the regulation of trade in the species is necessary to avoid it becoming eligible for inclusion in Appendix I in the near future; or*
- B. It is known, or can be inferred or projected, that regulation of trade in the species is required to ensure that the harvest of specimens from the wild is not reducing the wild population to a level at which its survival might be threatened by continued harvesting or other influences.*

However, as is made clear on page 4 of the Panel report, in the view of FAO both of these criteria are to be replaced by the decline criterion in the footnote to Annex 5.

Of course FAO is entitled to its own interpretation of the views of the CITES Parties, but in my opinion, had the CITES Parties wished to use only the decline criterion in the footnote of Annex 5 as the *raison d'être* for inclusion of species in Appendix-II, they would have indicated this and not created paragraphs A and B cited above. I understand that this point was made by my staff member David Morgan, who attended the Panel as an observer, but that this matter was not in fact taken up until the last day of the Panel meeting.

I understand FAO's special focus on commercially-exploited aquatic species, but the CITES Secretariat is charged by the Parties with providing advice on all amendment proposals and consequently must maintain a consistent approach across all taxa subject to amendment proposals. In a number of cases, proponent Parties (quite legitimately) made no claims regarding the decline criterion in the footnote of Annex 5, but based their proposals on other aspects of paragraphs A and B in Annex 2 a of Resolution Conf. 9.24 (Rev. CoP13), and the CITES Secretariat must take account of this.

The extracts from our recommendations which you term "loose and subjective" are either quotations from Resolution Conf. 9.24 (Rev. CoP13), or are made quite deliberately. All our recommendations are made on the basis of information available prior to the discussion at CoP14. We believe that the Conference of the Parties is a place for dialogue and discussions and the CITES Secretariat will certainly be listening very carefully to the interventions from Parties and other participants and will not hesitate to change its recommendations if significant new information comes to light which affects our judgment. In the case of the proposed listing of *Corallium* spp. in Appendix-II, I can share with you the fact that this proposal was the subject of much animated debate within the Secretariat and we will be particularly attentive to any new information about this case.

You will have heard from your staff as well as I did, that the Panel discussions were not easy and, the same applied to the formulations of recommendations within the Secretariat. As so often in matters of science there is no 'correct' answer – it comes down to a question of judgment.

I understand that other aspects of the Panel meeting this time were perhaps not as successful as might have been hoped. The focus on CITES implementation issues was an interesting development, but not surprisingly few Panel members had any experience with these issues. It was announced at the end of the Panel meeting that the FAO Secretariat intends to conduct an internal reflection on the operation of the Panel. If you consider it appropriate, we would gladly participate in such an exercise.

I agree with you entirely that we must strengthen and build on the more cooperative relationship between our two organizations that has developed recently and I look forward to cooperating with you in future.

Yours sincerely,



BB Willem Wijnstekers  
Secretary General