

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



Nineteenth meeting of the Conference of the Parties
Panama City (Panama), 14 – 25 November 2022

Interpretation and implementation matters

Regulation of trade

Non-detriment findings

MAKING NON-DETRIMENT FINDINGS FOR SPECIMENS OF APPENDIX II SPECIES
TAKEN IN THE MARINE ENVIRONMENT NOT UNDER THE JURISDICTION OF ANY STATE

1. This document has been submitted by the United Kingdom of Great Britain and Northern Ireland.*

Background

This paper refers entirely to introduction from the sea of specimens of species listed in Appendix II.

[Resolution Conf. 14.6 \(Rev. CoP16\)](#) sets out the procedure and practices related to introducing specimens of CITES-listed species taken from the marine environment not under the jurisdiction of any State including the high seas. It has provisions on who should act as the State of export or State of introduction depending on the State in which a fishing vessel is registered and the country into which a specimen is to be transported.

Resolution Conf. 14.6 (paragraph 2.a) provides that where a vessel is registered in one State and is transporting specimens into the same State, the provisions of Article IV, paras.6 & 7 should be applied, with that State being the State of introduction. A movement of specimens from the high seas to the same State requires an introduction from the sea certificate, which may only be granted when certain conditions are met. Under Article IV.6(a), one condition is that a Scientific Authority (SA) advises that the introduction will not be detrimental to the survival of the species involved. Notably, Article IV.7 states:

*Certificates referred to in paragraph 6 of this Article may be granted on the advice of a Scientific Authority, in consultation with other national scientific authorities or, **when appropriate, international scientific authorities**, in respect of periods not exceeding one year for **total numbers of specimens to be introduced** in such periods [emphasis added]*

However, if a vessel taking specimens from the marine environment not under the jurisdiction of any State is registered in a State different from that to which the specimens are to be transported, then Res. Conf. 14.6 (Rev. CoP16) (paragraph 2.b) provides that Article IV.2, 3 & 4 should be applied, with the country in which the vessel is registered being the State of export (and the destination country being the State of import)..

Paragraph 4 of Res. Conf. 14.6 (Rev. CoP16), then makes provision for the making of non-detriment findings (NDFs), as follows:

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

FURTHER RECOMMENDS that, in the case of an export of Appendix-II specimens, the Scientific Authority of the State of export, in making its non-detriment finding, consult with other national scientific authorities or, **when appropriate, international scientific authorities** [emphasis added]

However, the convention provides no guidance on how the consultation with international scientific authorities referred to in Article IV.7 might take place nor how total numbers of specimens to be introduced should be determined (nor does Res Conf. 14.6 (Rev. CoP16) do so). Whilst some guidance has been developed by Parties with respect to the making of non-detriment findings for shark species¹, the practicalities around making NDFs for species taken in the high seas by vessels from multiple Parties remains a concern.

The issue

Many commercially exploited aquatic organisms are taken in fisheries on the high seas; several of these, such as sharks and other species, are included on the CITES Appendices. These species may occur in discrete populations or stocks in different ocean basins. Several of them are taken in fisheries (targeted or as bycatch) by vessels flagged in numerous countries. There are a range of measures in place by Regional Fisheries Management Organisations (RFMOs) that apply to CITES Appendix II-listed species; however, there are also many gaps in species-specific and geographical coverage of these measures. Some species, such as shortfin and longfin mako sharks (*Isurus oxyrinchus* and *Isurus paucus*) are effectively unmanaged in three of the four major tuna RFMOs. However, RFMOs may gather catch and landings data for vessels flagged to countries which are party to the RFMO.

It is very difficult for any individual SA to make an NDF for trade in a CITES-listed fish taken on the high seas without having access to information on the status of the relevant stock, other relevant information and to the levels of offtake (including illegal, unregulated, and unreported (IUU) fishing and bycatch) being undertaken by vessels flagged to their own and other States.

Although SAs are encouraged to consult with other SAs, or when appropriate 'international SAs' (which could include RFMOs and other Regional Fisheries Bodies, RFBs), there are no simple mechanisms for the bilateral and multilateral development of NDFs or for co-ordinating over the 'total number of specimens to be introduced', which needs collaboration and agreement in advance. Even if the information were available for specific ocean basins (and divided between countries), how a State would further divide these between its flagged vessels, and how catches and trade would be monitored in real time, needs further articulation and are unlikely to be simple to implement.

This is a fundamental issue which has not been addressed by the Convention's Conference of the Parties. Even though proposals to amend the CITES Appendices for commercially exploited aquatic species, taken in the high seas have often proposed a 12-18-month delay to any listing approved at a CoP, to give Parties time to prepare for full implementation, this essential issue around high seas NDFs has not been addressed (though individual Parties may have tried to address it). It is not clear if the delay in listing has been used by Parties and other stakeholders to any major advantage in preparing for the subsequent implementation of the listing. Now that some of these listings have been in effect for several years, often, Parties have to address in isolation the making of NDFs for fish species taken on the high seas by multiple Parties, and further discussion and guidance is warranted to assist in the effectiveness of these Appendix II listings.

Some of these issues have been discussed by the Joint Tuna RFMO By-catch Working Group meeting (16-18 December 2019, Porto, Portugal)² with recommendations being made to improve communication and cooperation between CITES and tuna RFMOs to provide guidance and advice for the CITES listed species caught within the jurisdiction of each tuna RFMO. There is also the German Government initiative to bring together CITES and RFMO officials to coordinate efforts to deliver common objectives for the protection and sustainable management of CITES-listed sharks and rays, including recovery of depleted stocks and legal and sustainable fisheries and trade, and devise ways to improve cooperation between the sectors to pre-empt the need for further CITES listings. Additional information can be found in AC31 Inf doc 18, found at [E-AC31-Inf-18.pdf \(cites.org\)](#).

¹ Mundy-Taylor, V., Crook, V., Foster, S., Fowler, S., Sant, G. and Rice, J. (2014). *CITES Non-detriment Findings Guidance for Shark Species (2nd, Revised Version)*. A Framework to assist Authorities in making Non-detriment Findings (NDFs) for species listed in CITES Appendix II. Report prepared for the Germany Federal Agency for Nature Conservation (Bundesamt für Naturschutz, BfN). <https://cites.org/sites/default/files/eng/prog/shark/docs/Shark%20NDF%20guidance%20incl%20Annexes.pdf>

² Chair's [report](#) of the 1st Joint tuna RFMO By-catch working group meeting (16-18 December 2019, Porto, Portugal)

The challenges faced by Parties when preparing NDFs for marine or aquatic species (and in particular sharks and rays), for data-poor, multi-species, shared and migratory stocks, introduction from the sea and non-target (bycatch), were also raised as a priority for further guidance at the most recent joint sessions of the 31st meeting of the Animals Committee and the 25th meeting of the Plants Committee (as agreed in document [AC31/PC25 Com. 3](#)). At a workshop hosted by the German government in November 2021, participants identified strengths and weaknesses in the current relationship between fisheries and conservation in respect of shark management and conservation, while also noting areas of progress and lessons learned. These findings serve as the basis for a second workshop in July 2022 where key stakeholders from fisheries and conservation will discuss specific ways to improve cooperation both prior to and after a CITES listing has occurred.

Recommendations

The UK considers that it is timely, if listings of commercially exploited aquatic species are to be implemented effectively, especially on the high seas, that steps are taken to enable Parties, individually and collectively, with the aid of international scientific authorities, to make robust, science-based non-detriment findings.

We suggest the following actions are desirable and propose a series of CoP Decisions to achieve these.

- a) Identification of what constitutes an ‘international scientific authority’ and clarification of the role it plays in the context of introduction from the sea. It is likely that candidates for this role would be organisations with an established regulatory or management role for commercially exploited aquatic species, such as RFMOs, or any other body that is acknowledged internationally as having appropriate expertise to provide advice on these species. As a first step, these ‘international SAs’ need to be clearly identified.
- b) Even once identified, where data are not publicly available, any such body would have to be willing to cooperate with the relevant CITES Scientific Authorities and be acting within their mandate (or be given such a mandate their members or Parties). It is also likely that other bodies have different ways of working and different objectives than their CITES equivalents. Therefore, any means of collaboration would have to be explored and, perhaps, formalised for example through agreed working protocols or memoranda of understanding.
- c) We suggest that the best way to begin to develop this thinking is through a collaborative workshop involving key stakeholders relevant Parties, RFMOs, RFBs, MEAs, fishing industry, non-government organisations and scientists to try and develop technical and practical guidance steps to improve the ability of Parties to make high seas NDFs for commercially fished aquatic species and to report back to a future Animals and Standing Committee before CoP20. This workshop would be complementary to the ongoing initiative by the German Government, focussing more on the technical outputs needed to progress this work.

The Conference of the Parties is invited to adopt the draft decisions on Non-Detriment Findings on the high seas in Annex 1 to the present document.

DRAFT DECISIONS ON *NON-DETRIMENT FINDINGS ON THE HIGH SEAS
FOR SPECIES INCLUDED IN APPENDIX II*

Directed to the Secretariat

19.AA The Secretariat shall, subject to external funding:

- a) convene a technical workshop to consider how non-detriment findings might best be achieved for the introduction from the sea of specimens of CITES Appendix II-listed, commercially exploited aquatic organisms taken by multiple Parties in waters beyond national jurisdiction;
- b) invite the Animals Committee, the Secretariats of the Convention on the Conservation of Migratory Species of Wild Animals and relevant daughter agreements and MoUs, Food & Agriculture Organisation of the United Nations, Regional Fisheries Management Organisations, other Regional Fisheries Bodies, other relevant scientific advisory bodies, representatives from States especially those which flag vessels which undertake high seas fisheries, importing countries, fishery stakeholder and industry representatives, and relevant intergovernmental and non-governmental organizations to participate in this workshop;
- c) invite Parties, other governments and stakeholders through a Notification to submit information on their experiences in making non-detriment findings for specimens of CITES Appendix II-listed species taken on the high seas, to share any non-detriment findings produced, to highlight any difficulties encountered in the process and any suggestions they might have for improvements; and
- d) contract appropriate technical and scientific experts to prepare workshop documents on: a) the level (current and anticipated) of trade in CITES-listed species taken from the high seas; b) the difficulties encountered by Parties when making non-detriment findings for specimens taken on the high seas; c) the current role, if any, of Regional Fisheries Management Organisations and other Regional Fisheries Bodies in making data and information available to CITES Scientific Authorities making non-detriment findings; and d) invite workshop participants and Parties to contribute relevant information and expertise to the appointed technical experts; and
- e) submit findings and recommendations of this workshop to the Animals Committee at their 32nd meeting for their consideration and for them to make recommendations to the Standing Committee for its consideration, and any recommendations to be considered by the 20th meeting of the Conference of the Parties.

Directed to the Animals Committee

19.BB The Animals Committee shall consider the report of the workshop in Decision 19.AA and make recommendations to the next meeting of the Standing Committee as appropriate.

Directed to the Standing Committee

19.CC The Standing Committee shall consider the report of the workshop and the recommendations and comments of the Animals Committee and shall submit recommendations to the 20th meeting of the Conference of the Parties.

Directed to Parties and relevant stakeholders

- 19.DD** a) Parties, intergovernmental organizations, non-governmental organizations, private businesses, and other donors are encouraged to provide funding to the Secretariat for implementing Decision 19.AA.
- b) Parties, intergovernmental organizations, RFMOs and other RFBs, non-governmental organizations, fishery stakeholders and others are encouraged to respond to the Notification from the Secretariat in Decision 19.AA, paragraph c).

TENTATIVE BUDGET AND SOURCE OF FUNDING
FOR THE IMPLEMENTATION OF DRAFT RESOLUTIONS OR DECISIONS

According to Resolution Conf. 4.6 (Rev. CoP18) on *Submission of draft resolutions, draft decisions and other documents for meetings of the Conference of the Parties*, the Conference of the Parties decided that any draft resolutions or decisions submitted for consideration at a meeting of the Conference of the Parties that have budgetary and workload implications for the Secretariat or permanent committees must contain or be accompanied by a budget for the work involved and an indication of the source of funding.

The authors of the present document anticipate that the draft decisions 19.BB and 19.CC in Annex 1 will have no direct financial costs, but are dependent on the activities in Decision 19.AA being externally funded. 19.BB and 19.CC will have workload implications for the Animals Committee and the Standing Committee, respectively, but it is expected that these can be covered within existing resources.

Regarding draft decisions 19.AA in Annex 1 directed to the Secretariat: The activities include convening a technical workshop (subject to external funding) which should be budgeted at around USD 75-100,000 and contracting appropriate technical and scientific experts to prepare workshop documents which would require approximately USD 45-50,000.