

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

RESERVATIONS

1. This document has been submitted by the United States of America in relation to agenda item 88 (Communications concerning amendments to the Appendices received by the Depositary Government after the 18th meeting of the Conference of the Parties (CoP18; Geneva, 2019)), to share additional considerations related to reservations entered by Parties.*
2. In Document CoP19 Doc. 88, the Secretariat examines the communications concerning amendments to the Appendices received by the Depositary Government after CoP18 and the practical legal implications of them, including with regard to questions raised about the scope and effect of reservations entered in accordance with Article XV. Further, the Secretariat's recommendations make clear that an amendment to an annotation at a subsequent meeting does not open the species listing to a reservation. The Secretariat's document importantly acknowledges that the scope and effect of a reservation to an Article XV amendment should be equivalent to the scope and effect of the amendment, particularly in relation to amendments to annotations.
3. We urge all Parties to implement the amendments to the Appendices adopted by the Conference of the Parties, however we believe it is important that all Parties have a clear understanding of the scope and effect when a Party decides to enter a reservation in accordance with Article XV. The United States believes the scope and effect of a reservation entered in accordance with Article XV(3) should match the scope and effect of the Article XV amendment. We want to avoid the effects of a reservation becoming broader. For example, we want to clarify that if a Party enters a reservation to an amendment to an annotation to a listing in the Appendices, it does not result in the Party no longer being bound by the listing in its entirety. Because of this, we believe there is a need to update Resolution Conf. 4.25 (Rev. CoP18) on *Reservations* to provide a consistent interpretation of these issues. We support the amendments to Resolution Conf. 4.25 (Rev. CoP18) recommended by the Secretariat in Document CoP19 Doc. 88, which we believe are a good start.
4. While we support the Secretariat's proposed amendments in CoP19 Doc. 88, we do not think they go far enough to address this matter clearly and consistently for this and future meetings of the Conference of the Parties, in order to resolve the problem in its entirety and avoid the emergence of further issues. As detailed in our information document presented to SC74, SC74 Inf. 12, we identified several other issues related to reservations, which we believe merit bringing to the attention of CoP19 for its consideration. Below we again summarize these issues, and then suggest a small number of additional amendments to address the issue of reservations consistently. These amendments, together with the Secretariat's, will ensure the scope and effect of a reservation is equivalent to the scope and effect of the amendment.
5. Concerning the scope of reservations that may be entered in accordance with Article XV

Article XV sets out a formal amendment process for changes to Appendices I and II, which includes the ability of a Party to take a specific reservation "with respect to the amendment," laid out in Article XV, paragraph 3. Until such reservation is withdrawn, a Party taking a reservation shall be treated as a State not

* 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.

a Party to the present Convention “with respect to trade in the species concerned.” The scope of a reservation is limited both “with respect to the amendment” and “with respect to trade in the species concerned.” In brief, the scope and effect of a specific reservation should be determined by the scope and effect of the requirements for trade resulting from the amendment. Where there is a substantive effect from an amendment to the Appendices, a reservation that is entered in accordance with Article XV, paragraph 3, has substantive effect only to the same extent that the amendment made in accordance with Article XV alters the scope of protection for fauna or flora under the Convention. For the Party taking the reservation, the same requirements would apply to that Party before and after the amendment with respect to the species concerned, as if the amendment had not occurred. We have identified three primary illustrative examples where clarification may be needed: 1) adoption of substantive annotations, and substantive amendments to an annotation; 2) nomenclatural changes; and 3) split listings.

6. Adoption of substantive annotations to an existing listing, and substantive amendments to an annotation

Article XV applies to substantive amendments to Appendices I and II, but provides no specific guidance on changes to annotations. We believe that, where a change to an annotation is substantive in nature (for example, the change alters what is included in the listing or the requirements for trade under the listing) it must also be subject to the amendment process laid out in Article XV, and thereby also subject to the reservation process articulated in Article XV, paragraph 3. The effect of such a reservation would only be “with respect to the amendment” and “with respect to trade in the species concerned,” meaning with respect to the scope of the change in requirements for trade in the species concerned resulting from the Article XV amendment.

In the case of the communications to the Depositary Government after CoP18 in relation to *Loxodonta africana*, the “reservations” were entered against a Resolution, which is not legally binding. However, because the substantive change to the annotation occurred as a result of an amendment to a Resolution rather than by formal amendment, the changes also have no legally binding effect.

We do not see a fundamental problem with including reference to a Resolution in an annotation to a CITES listing, and for the sake of keeping annotations reasonable in length, it may in some circumstances be preferable. However, when a Resolution is later updated, where the updates to the Resolution itself substantively change the scope of the listing (through the annotation), the update to the Resolution referenced in the annotation must be done by formal amendment under Article XV in order to be legally binding, which would provide Parties the opportunity to take a formal reservation under Article XV, paragraph 3. Where the changes to the Resolution do not substantively alter the scope of the listing, the Secretariat may update the reference to the Resolution in the annotation under its authority to make ministerial changes.

7. Nomenclatural change

Article XV applies to substantive amendments to Appendices I and II, but provides no specific guidance on nomenclatural changes. We believe that, where a nomenclatural change does not alter the intent or application of the existing listing, then such changes should not be subject to reservations. Even if they were subject to reservations, the effect of a reservation is only with respect to the scope of the change in requirements resulting from the Article XV amendment. As there would be no change in scope, there would be no substantive effect for the Party taking the reservation. The same requirements would apply to that Party before and after the amendment with respect to the species concerned, as if the amendment had not occurred. The only effect would be confusion in the names of species, and this should be avoided for clear and consistent application of the Convention.

8. Split listings

Article XV applies to substantive amendments to Appendices I and II, but provides no specific guidance on split listings. Specific reservations are limited both “with respect to the amendment” and “with respect to the species concerned.” Article I defines “species” as “any species, subspecies, or geographically separate population thereof.” Accordingly, in the case of split-listings, where one or more population/subspecies/species of an already listed taxon is transferred to a different Appendix, a reservation that is entered in accordance with Article XV, paragraph 3, applies only to the amendment made to the population/subspecies/species that is transferred, and has no substantive effect on any other population/subspecies/species of the already listed taxon. The effect of a reservation is only with respect to the scope of the change in requirements resulting from the Article XV amendment. For the Party taking the reservation, the same requirements would apply to that Party before and after the amendment with respect to the species concerned, as if the amendment had not occurred.

9. Recommendations

Based on the above considerations, the United States supports the Secretariat's recommendations in CoP19 Doc. 88, with the following additional amendments to address the issue of reservations consistently and ensure the scope and effect of a reservation is equivalent to the scope and effect of the amendment:

In CoP19 Doc. 88, Annex 1, in addition to the Secretariat's proposed amendments to Resolution Conf. 11.21 (Rev. CoP18) on *Use of annotations in Appendices I and II*, insert "generally" before "should" in each of the proposed new paragraphs 1. h) and i).

In CoP19 Doc. 88, Annex 2, in addition to the Secretariat's proposed amendments 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*, insert "generally" before "should not" in the proposed new preambular paragraph, and insert "except as decided by the Conference of the Parties" at the end of paragraph 4. a).

In CoP19 Doc. 88, Annex 3, in addition to the Secretariat's proposed amendments to Resolution Conf. 4.25 (Rev. CoP18) on *Reservations*, further amend paragraphs 1 and 2, as follows:

1. RECOMMENDS that any Party having entered a reservation with regard to any species included in Appendix I treat that species as if it were included in Appendix II for all purposes, including documentation and control **and any annotation that applies in accordance with paragraph 2;**

2. AGREES that **the scope and effect of a reservation entered in accordance with Article XV paragraph 3 is the same as the scope and effect of the amendment. For example,** where an annotation to **a species included an animal species listed** in Appendix I or II is amended, a Party may enter a reservation in accordance with Article XV paragraph 3. The effect of such reservation is limited to excluding the amendment from applying to the reserving Party until the reservation is withdrawn. The reserving Party remains bound by the version of the annotation in effect prior to the **amendment.**

3. DIRECTS the Secretariat to maintain on the CITES website, in the table on Reservations entered by Parties, reference to the requirements for international trade that apply to each Party having entered a reservation in accordance with Article XV paragraph 3:

2. ~~4.~~ . . .