

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



Seventy-seventh meeting of the Standing Committee
Geneva (Switzerland), 6–10 November 2023

Administrative and financial matters

RULES OF PROCEDURE OF THE CONFERENCE OF THE PARTIES

1. This document has been submitted by the Standing Committee Chair, as the Chair of the Standing Committee's working group on the Rules of Procedure.*

Background

2. At its 18th meeting (CoP18, Geneva, August 2019), the Conference of the Parties adopted Decision 18.1 on *Rules of Procedure* that directed the Standing Committee with the support of the Secretariat to "review Rule 7.2 a) and Rule 25 of the Rules of Procedure of the Conference of the Parties and propose amendments as appropriate to the 19th Meeting of the Conference of the Parties with the view to ensuring the effective conduct of the meetings." An intersessional Working Group was formed to carry out this work and the Standing Committee's Report and its recommendations are found in Document CoP19 Doc. 4.1.
3. At its 19th meeting (CoP19, Panama, November 2022) the Conference of the Parties amended and adopted changes to Rule 7.2 a), Rule 25.5, and corresponding amendments to the first part of Rule 25.6, but consensus could not be reached on additional proposed amendments to Rule 25.6. Therefore, the Conference of the Parties adopted Decision 18.1 (Rev. CoP19) that directed the Standing Committee with the support of the Secretariat "to review Rule 25.6 of the Rules of Procedure of the Conference of the Parties and propose amendments, as appropriate, to the 20th meeting of the Conference of the Parties with the view to ensuring the effective conduct of meetings." See CoP19 Plenary Discussion; CoP19 Plen. Rec. 1 (Rev. 1), https://cites.org/sites/default/files/documents/E-CoP19-Plen-Rec-01-R1_0.pdf; CoP19 Plen Rec. 4 (Rev. 1) <https://cites.org/sites/default/files/documents/E-CoP19-Plen-Rec-04-R1.pdf>.
4. At its 76th meeting (Panama 2019), the Standing Committee formed an intersessional Working Group with its mandate to review Rule 25.6 of the Rules of Procedure and with its membership as follows (26 Parties ; 15 Observers):

Argentina, Benin, Bolivia (Plurinational State of), Botswana, Brazil , Canada, China, Colombia, Democratic Republic of the Congo, European Union, Georgia, Germany, Ghana, India, Israel, Italy, Japan, Kenya, Liberia, Namibia, Rwanda, South Africa, Tonga, United Republic of Tanzania, United States of America (Chair), Zimbabwe; Center for Biological Diversity, Conservation Force, David Shepherd Wildlife Foundation, Defenders of Wildlife, European Federation of Association for Hunting and Conservation (FACE), International Association for Wildlife (IAW), IWMC-World Conservation Trust, Law of the Wild, Lewis & Clark – Global Law Alliance, Professional Hunters Association South Africa (PHASA), Safari Club International, South African Taxidermy and Tannery Association, Sustainable Use Coalition, Southern Africa, Wildlife Ranching South Africa (WRSA), World Wide Fund for Nature (WWF).

* *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.*

Approach of the Working Group (WG)

5. The WG Chair solicited views of the WG on the current Rule 25.6 that reads

“ If two or more proposals including proposals amended in accordance with Rule 24, paragraph 2 or in accordance with paragraph 5 of this Rule, relate to the same taxon, but are different in substance, the Conference shall first decide on the proposal that will have the least restrictive effect on the trade and then on the proposal with the next least restrictive effect on the trade, and so on until all proposals have been submitted to decision. When however, the adoption of one proposal necessarily implies the rejection of another proposal, the latter proposal shall not be submitted to decision.”

6. The WG Chair invited WG members to discuss this Rule 25.6 with a focus on re-framing the work to ensure that all proposals to amend the CITES Appendices submitted by Parties are discussed and decided upon by Parties at a meeting of the CoP. In the past discussions, while the goal had been to ensure that all proposals were given fair consideration, discussed, and decided pursuant to CITES listing criteria, focus of debate had been on the order of the proposals to consider – starting with the least restrictive versus the most restrictive proposal. These discussions, over the order and reversing the order, failed to reach consensus and were divisive. WG members expressed their views on this issue and considered if any alternative solutions existed that would allow all proposals to be considered and decided upon.

Deliberations

Brief Overview

7. In discussions, WG members provided examples of scenarios of overlapping proposals in an effort to elucidate the understanding of members of what the WG wanted the rule to accomplish. The group examined the actual application of Rule 25.6 at CoP16 that prevented a number of turtle proposals from being considered and much of the working group's deliberations were focused on options for addressing this type of scenario for future CoPs. In general, WG members agreed that the text of the rule should be clear and simple to implement and be understood by Parties. Many WG members could not accept text that gives the Chair of Committee I the discretion to change the order for discussion of the proposals. Parties in the working group agree to maintaining the current order in the Rule, of proceeding from least restrictive to most restrictive, but with support for all proposals to be introduced, discussed, and decided upon – i.e., no automatic rejection of a proposal. The Conference would therefore decide in a stepwise approach on the appropriate level of restrictions.
8. However, the WG members have not yet agreed upon text for the amendments that would clearly explain the stepwise decision-making process at the meeting when multiple proposals are moving in the same direction toward more restrictions with regard to the same taxon. This brief overview is elaborated in the paragraphs below for the benefit and consideration of Standing Committee Members and Parties.

Past Examples

9. In discussions, some WG members did not recall there being problems with application of Rule 25.6 in the past particularly with regard to consideration of the least restrictive proposal first. Other WG members recalled that Rule 25.6 was originally intended to provide a stepwise approach in those cases where there are different proposals addressing the same taxon and with different effects, allowing each successively more restrictive proposal to be considered and adopted or rejected in stages at the CoP. At SC46, “The Secretariat suggest[ed] that an improvement would be to decide first on the least trade-restrictive proposal and then on the next least trade-restrictive proposal. In this way the Conference can decide by stages what level of trade-restriction is adequate. This approach is further consistent with generally accepted principles, such as that trade restrictions should be imposed only when they are necessary and that any measures imposed should be the least trade-restrictive required.” (See Document SC46 Doc. 7.4). However, some WG members also recalled that the rule in practice has not been interpreted and implemented this way at a meeting of the Conference of the Parties.
10. WG members also provided examples of proposal scenarios. We examined examples of the actual application of Rule 25.6 that prevented certain proposals from being considered. It was noted that in these examples Rule 25.6 was applied with substantial difficulty, led to an inefficiency of process, and put extra work on proponent Parties to bring proposals at later meetings, while simultaneously foreclosing the opportunity to debate and decide based on differing views on the species status when the proposals were originally brought.

Example 1: CoP16 Prop. 33 (*Cuora galbinifrons*) was not able to be considered at CoP16 because of an interpretation of Rule 25.6 that adoption of CoP16 Prop. 32 necessarily implied rejection of CoP16 Prop. 33. New taxonomy for the species was adopted at CoP17, splitting the species into *Cuora galbinifrons*, *Cuora bourreti*, and *Cuora picturata*. Subsequent proposals at CoP18 and CoP19 were needed to consider and complete the transfer from Appendix II to Appendix I that could have been considered at CoP16: CoP18 Prop. 33 (*Cuora bourreti*), CoP18 Prop. 34 (*Cuora picturata*), and CoP19 Prop. 26 (*Cuora galbinifrons*).

Example 2: CoP16 Prop. 35 (*Mauremys annamensis*) was also not able to be considered at CoP16 because of an interpretation of Rule 25.6 that adoption of CoP16 Prop. 32 necessarily implied rejection of CoP16 Prop. 35. A subsequent proposal at CoP18 was needed to consider and complete the transfer from Appendix II to Appendix I that could have been considered at CoP16: CoP18 Prop. 35 (*Mauremys annamensis*).

11. Much of the WG's deliberations were focused on options for addressing this type of scenario for future CoPs. Concerns were expressed that the proponent Party in each of these examples did not have the opportunity to introduce its proposal and have it considered. Rather, the WG members generally preferred that the full range of proposals (all) be considered before decisions are reached. There were also some discussions in the WG on the whether the Chair should be allowed to change the order of debate and under what conditions.
12. It was generally agreed that the text of the rule should be clear and simple to implement and be understood by Parties, so that effective decisions can be taken and implemented with little ambiguity. However, it was also acknowledged that some additional detail may be needed to ensure that there is no ambiguity in the meaning of the rules to ensure effective conduct of the meetings.

Consideration of all Proposals

13. In cases where there are different proposals addressing the same taxon and with different effects, as addressed in Rule 25.6, the rules should enable the Parties to hear a diverse array of perspectives and for each proposal to be introduced and considered, prior to reaching a decision for the taxon. This issue is proposed to be addressed by adding new language at the end of the first sentence of Rule 25.6. See paragraph 21 below ("If two or more proposals including proposals amended in accordance with Rule 24, paragraph 2 or in accordance with paragraph 5 of this Rule, relate to the same taxon, but are different in substance, the Chair shall so advise the Conference, clearly indicating the implications of the adoption of one proposal for the other(s), and should allow each of the proposals to be introduced prior to submitting any of them for discussion and decision. ...").

Consideration of all taxa in each Proposal

14. Consistent with conservation goals and to ensure that each proposal is given due consideration, WG members generally agreed that proposals on non-overlapping species should be discussed at the CoP, regardless of the result of overlapping species. In other words, if some parts of a proposal are necessarily rejected through adoption of another proposal with respect to the same taxon (see paragraph 17, paragraph 20 scenario 2 below), the parts of the proposal that relate to other taxa that are not rejected would still be considered on their own merits. This issue is proposed to be addressed through amending the final sentence of Rule 25.6. See paragraph 21 below ("... If, in relation to the same taxon, when however, the adoption of one proposal necessarily implies the rejection of another proposal ..., the latter proposal shall nevertheless not be submitted to decision in relation to any remaining taxon.").
15. While there was general consensus on edits to the final sentence for this purpose, there remained some additional discussion to take place in the WG about whether additional text is needed to clarify that Rule 25.6 does not conflict with Rule 25.5 or other parts of Rule 25, or whether this is already clear in the rules. Examples are provided to illustrate how the two rules operate.

Example A:

Species Xx is a plant included in Appendix II with no annotation. All other species in Genus X are also included in Appendix II with no annotation.

Proposal 1 is to remove Species Xx from the Appendices. (removing current restrictions)

Proposal 2 is to transfer Genus X to Appendix I. (adding restrictions)

Proposal 1 is considered first (as it is the proposal that will have the least restrictive effect on the trade). Assume for this example that Proposal 1 is amended by the Conference under Rule 25.5 to reduce its scope and maintain Species Xx in Appendix II subject to an annotation excluding certain parts and derivatives from the listing, and this Proposal 1, as amended under 25.5, is adopted.

Proposal 2 would necessarily be rejected with regard to only Species Xx. This is because adoption of Amended Proposal 1, as amended under 25.5, was a decision of the Parties to remove current restrictions on trade in Species Xx rather than to add restrictions on the same trade. This implies that Proposal 2 to add restrictions is rejected with regard to Species Xx (per the text in the final sentence of 25.6, see paragraph 17, paragraph 20 scenario 2 below).

Proposal 2 would nevertheless be considered with regard to all other species in Genus X other than Species Xx. The amendment of Proposal 1 under Rule 25.5 does not affect reaching a decision on Proposal 2 under 25.6 with regard to the other species in Genus X. If Proposal 2 is adopted, then Genus X would be included in Appendix I (Except Species Xx which would be included in Appendix II subject to an annotation). If Proposal 2 is rejected, then Genus X remains included in Appendix II (Species Xx would be subject to an annotation).

Example B: Same as above, except Proposal 1 is to remove Genus X from the Appendices.

Species Xx is a plant included in Appendix II with no annotation. All other species in Genus X are also included in Appendix II with no annotation.

Proposal 1 is to remove Genus X from the Appendices. (removing current restrictions)

Proposal 2 is to transfer Genus X to Appendix I. (adding restrictions)

Proposal 1 is considered first (as it is the proposal that will have the least restrictive effect on the trade). Assume for this example that Proposal 1 is amended by the Conference under Rule 25.5 to reduce its scope to remove species other than Species Xx from consideration, and to maintain Species Xx in Appendix II subject to an annotation excluding certain parts and derivatives from the listing, and this Proposal 1, as amended under 25.5, is adopted. Proposal 1 cannot later be reamended to consider species other than Species Xx because this would expand the scope of the proposal.

Proposal 2 would necessarily be rejected with regard to only Species Xx. This is because adoption of Amended Proposal 1, as amended under 25.5, was a decision of the Parties to remove current restrictions on trade in Species Xx rather than to add restrictions on the same trade. This implies Proposal 2 to add restrictions is rejected with regard to Species Xx (per the text in the final sentence of 25.6, see paragraph 17, paragraph 20 scenario 2 below).

Proposal 1 would not be considered with regard to all other species in Genus X, because the amended Proposal 1 superseded the original Proposal 1 according to Rule 25.5. Amended Proposal 1 cannot be reamended to broaden its scope. The final sentence of Rule 25.6 does not change the effect of Rule 25.5.

Proposal 2 would nevertheless be considered with regard to all other species in Genus X other than Species Xx (per the text in the final sentence of 25.6). The amendment of Proposal 1 under Rule 25.5 does not affect reaching a decision on Proposal 2 under 25.6 with regard to the other species in Genus X. If Proposal 2 is adopted, then Genus X would be included in Appendix I (Except Species Xx which would be included in Appendix II subject to an annotation). If Proposal 2 is rejected, then Genus X remains included in Appendix II (Species Xx would be subject to an annotation).

A member of the WG asked that this understanding about the relationship between Rule 25.5 and Rule 25.6 be included in the text of the rules to further clarify for all Parties. Where one proposal is amended to reduce its scope by removing a species from consideration, the amended proposal supersedes the original proposal in accordance with the last sentence of Rule 25.5. Later in the same meeting, the amended proposal cannot be reamended to broaden its scope to again include consideration of the species that was removed from the original proposal. The final sentence of Rule 25.6 does not change the effect of Rule 25.5 for the amended proposal. Amending one proposal under Rule 25.5 also does not affect application of Rule 25.6 for other proposals. The WG member suggested adding the following sentence to the end of Rule 25.6 for clarity:

"Nothing in the procedure stipulated in this Rule is intended to affect the procedure in the Rule 25.5." Another option may be: "Nothing in the procedure stipulated in this paragraph is intended to affect the procedure in the other paragraphs of Rule 25." However, the WG did not yet have time to discuss these suggestions, or whether the amendments to 25.5 and the first part of 25.6 adopted at CoP19 already helped to clarify this issue.

Order of Consideration and the Stepwise Approach

16. It was generally agreed to maintain the order of consideration of proposals starting with the proposal with the least restrictive effect on the trade and continuing stepwise. While a number of WG members preferred to include an option for the Chair to reverse the order of consideration on an exceptional basis, there was no clear majority, and a number of WG members were opposed. A consensus of the WG could accept a compromise of making no change to the rule on the order of consideration, if text is added to ensure the stepwise approach. It was considered by most members of the WG that a stepwise approach from least to most restrictive is the most practical. However, discussions continue in the WG, and it remains to be decided how best to implement the stepwise approach to provide clarity on a single outcome for the taxon, and following CITES listing criteria.
17. Some WG members and Parties suggested that the first least restrictive proposal adopted should always be the decision of the CoP, regardless of whether the CoP continued stepwise to adopt more restrictive proposals. The main focus of these concerns related to proposals that move in opposite directions from the current status of the species, with one proposal reducing current restrictions and the other proposal increasing restrictions for the same taxon. The majority of WG members agreed that where proposals are moving in opposite directions, the adoption of a proposal to reduce restrictions on the same trade for the same taxon necessarily implies rejection of a proposal to increase restrictions on the same trade for the same taxon.
18. A small number of WG members also considered the first least restrictive proposal adopted should apply when proposals were moving in the same direction, all toward more restrictions from the current status. Most WG members did not consider this would be consistent with a stepwise decision-making process. In this scenario, however, the majority of WG member Parties suggested that the CoP would decide in a stepwise manner whether to adopt incrementally more restrictions or not, and therefore the last most restrictive proposal adopted should be the decision of the CoP.
19. WG members suggested a number of alternatives. Some alternatives suggested included adding additional new processes, such as ranked choice voting, or advance notice by the Chair of proposed voting order. However, these alternatives to add additional new processes did not gain support. The alternative that gained the most support was to include a new third sentence in the rule that would better explain the stepwise process and articulate what it means for adoption of one proposal to necessarily imply rejection of another proposal in relation to the same taxon, though there were different views on how it should be phrased.
20. Following these discussions, the WG Chair outlined three scenarios to help Parties come to a common understanding. It should be noted that after a comment from a WG member, these scenarios were clarified to replace "protections" with "restrictions" to be consistent with terminology used in Rule 25.6, and to add a practical example to Scenario 2 and Scenario 3.

Scenario 1) Compared to current status, all proposals are moving in the same direction toward more restrictions. In this scenario, more than one proposal may be initially adopted, and the Parties decision to continue to adopt more restrictions through a stepwise approach means logically that the last proposal the Parties adopt is the decision of the Parties. They may adopt none and there is no change. They may adopt any one and that is the decision. They may adopt any two and the second adopted is the decision. They may adopt any three and the third adopted is the decision. And so on. Each time, the Parties make an active, informed, stepwise decision to add some amount more restrictions or reject adding more restrictions, based on the will of the Conference. After considering all the proposals, the largest adopted change is the decision.

Assume, for example there are two proposals, and 90% of Parties find the least restrictive proposal is best. They will vote for it first. It will be adopted. Then the second proposal will be considered, they will not vote for it, and it will be rejected. So, Proposal 1 will be adopted.

Now assume, for example 90% of Parties find the most restrictive proposal is best, but when deciding first on the least restrictive proposal, they do not know how many Parties support which proposal. They would

not want to vote no to the first proposal and risk adding no protections compared to the current status [Another quick example illustrates this point. Assume 50% of Parties support Proposal 1. And assume 50% support Proposal 2 but could accept Proposal 1. If Parties only voted for the outcome, they most support, both proposals would fail. This would not be a logical outcome for the Convention or the species.]. So, they would vote yes to ensure at least the first proposal is adopted. Then, moving stepwise, they would vote yes on the second proposal. And the outcome would be as the 90% decided, the second proposal would be the decision (or, when as normal the proposals are first considered in Committee I, the recommendation of Committee I to the Conference).

Scenario 2) Compared to current status, proposals are moving in opposite directions toward less restrictions and toward more restrictions. If the Parties adopt a proposal to reduce restrictions, then they necessarily reject a proposal to increase restrictions for the same taxon. [A quick example illustrates this point: population of a species currently included in Appendix II; Proposal 1 is to delist the population, Proposal 2 is to transfer the population to Appendix I. Adoption of Proposal 1 necessarily implies rejection of Proposal 2 with regard to the population.] This is also logical. If at least two-thirds of the Parties find there should be fewer restrictions than there are currently for the trade in the taxon, then it is assumed they would not later vote to increase restrictions from the current status for the same taxon.

Scenario 3) Compared to current status, all proposals are moving in the same direction toward less restrictions. Because Rule 25.6 starts with the least restrictive proposal, if the Parties adopt the first proposal to reduce restrictions, then they have done as much as can be done at the meeting to reduce restrictions. [A quick example illustrates this point: if there is a zero export quota for the taxon and Proposal 1 is to increase the quota to 200, Proposal 2 is to increase the quota to 100, and Proposal 3 is to increase the quota to 50. Adoption of Proposal 1 necessarily implies rejection of Proposal 2 and Proposal 3.] This is also logical, and consistent with the outcomes of scenarios 1 and 2 above. The adoption of the first proposal in this case is farthest away from the current status, and necessarily rejects adoption of the other proposals that would not have moved as far from the current status.

21. Building on recommendations from the WG and in consideration of these three scenarios, the WG Chair suggested the following potential new third sentence and new parenthetical language in the final sentence of the rule. Note after a comment from a WG member, these amendments were clarified to replace “protections” with “restrictions” to be consistent with terminology used in Rule 25.6:

“ If two or more proposals including proposals amended in accordance with Rule 24, paragraph 2 or in accordance with paragraph 5 of this Rule, relate to the same taxon, but are different in substance, the Chair shall so advise the Conference, clearly indicating the implications of the adoption of one proposal for the other(s), and should allow each of the proposals to be introduced prior to submitting any of them for discussion and decision. The Conference shall first decide on the proposal that will have the least restrictive effect on the trade and then on the proposal with the next least restrictive effect on the trade, and so on until all proposals have been submitted to decision. **After this stepwise process, if more than one proposal is adopted to add restrictions for the same taxon, then the last proposal adopted will be the decision of the Conference for the taxon.** ~~If, in relation to the same taxon, when however,~~ the adoption of one proposal necessarily implies the rejection of another proposal **(e.g., if one proposal is to reduce restrictions and one proposal is to add restrictions, or the two proposals are to reduce restrictions, for the same taxon)**, the latter proposal shall ~~nevertheless~~ not be submitted to decision in relation to any remaining taxon.”

22. Initial reactions were generally positive, but with some continued debate over whether at the end of the stepwise process the first proposal adopted or the last proposal adopted will be the decision of the Conference for the taxon. Concern was expressed as to whether adoption of the last proposal would be a *de facto* adoption of the most restrictive proposal. It was clarified that there is no *de facto* acceptance of a most restrictive proposal, or any proposal, that the stepwise order of consideration would be from least to most restrictive, that only the Conference of the Parties would decide at each step whether and to what extent to incrementally add restrictions based on CITES listing criteria, and only if at least two-thirds of Parties were in support. There was additionally a suggestion to clarify the text by replacing “add protections” with “strengthen trade regulations.” As noted above, this was addressed by replacing “protections” with “restrictions” for consistency.
23. Discussions of the WG continue to progress and would benefit from additional time and the inputs of the Standing Committee prior to agreeing upon recommended text for amendments to Rule 25.6 of the Rules of Procedure that would accomplish the desired outcomes agreed upon.

Recommendations

24. The working group invites the Standing Committee to:

- a) take note of the progress made in implementation of Decision 18.1;
- b) provide any advice or comments on the document or process at this point;
- c) agree that the working group continue its deliberations to reach consensus on proposed text to amend Rule 25.6 with the view to ensuring the effective conduct of the meetings; and
- d) submit a report, including its recommendations, to the Standing Committee for consideration at its 78th meeting.