

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



Sixty-first meeting of the Standing Committee
Geneva (Switzerland), 15-19 August 2011

Interpretation and implementation of the Convention

CITES Appendices

TIME-BOUND LISTINGS OF SPECIES IN THE APPENDICES

1. This document has been prepared by the Secretariat.
2. Recent discussions at meetings of the Conference of the Parties over the inclusion of species in the Appendices have highlighted the difficulty which is sometimes experienced in either downlisting a species or removing it from the Appendices. The Secretariat notes that some Parties express recurrent concerns that species that are listed in the Appendices tend to remain there – a phenomenon sometimes referred to as 'life-long listings'. The Secretariat therefore raised the issue of possible time-bound listings with the Chair of the Standing Committee prior to its inclusion on the agenda of this meeting in accordance with Article XII of the Convention, which lists the functions of the Secretariat, and in particular paragraph 2 (e) which provides that the Secretariat shall "invite the attention of the Parties to any matter pertaining to the aims of the present Convention" and, paragraph 2 (h), which provides that it shall "make recommendations for the implementation of the aims and provisions of the present Convention ...".
3. The Secretariat notes that concerns expressed since the 15th meeting of the Conference of the Parties (CoP15, Doha, 2010) have usually been in the context of proposals to include in the Appendices commercially-exploited aquatic species that fall under other international management regimes. The concern has primarily related to inclusions in Appendix I. In response to these concerns, the possibility of time-bound listings being utilized in certain circumstances has again emerged as one possible way for CITES to contribute more effectively towards the management and regulation of trade in CITES-listed species. Of particular relevance to discussions on these concerns are species that are managed by intergovernmental bodies under other international agreements.
4. Three of the species considered at CoP15 fell under the purview of the International Commission for the Conservation of Atlantic Tunas (ICCAT): the Atlantic bluefin tuna (*Thunnus thynnus*), the Oceanic white tip shark (*Carcharhinus longimanus*) and the porbeagle (*Lamna nasus*).
5. The third *FAO expert advisory panel for the assessment of proposals to amend Appendices I and II of CITES concerning commercially-exploited aquatic species*, convened by the Food and Agriculture Organization of the United Nations (FAO) to review proposals for CoP15 concluded that the decline of these three species had been sufficiently large to justify inclusion in the CITES Appendices (see Annex 3 of document CoP15 Doc. 68).
6. There was not, however, the required two-thirds majority of CITES Parties in favour of including these three species under the Convention. Much of the debate focused on the role of ICCAT in the conservation and sustainable use of the species, in particular with respect to Atlantic bluefin tuna, which was proposed for inclusion in Appendix I.
7. During the course of the debate on the proposed listing of Atlantic bluefin tuna, Spain, on behalf of the European Union and its Member States, proposed that the inclusion of Atlantic bluefin tuna in Appendix I be delayed until May 2011 and that it only take place if certain conditions were fulfilled. In the context of the discussion of the associated document CoP15 Doc. 52, Norway suggested "a sunset provision that would allow the removal of the species from the Appendices after 10 years if it appeared warranted". Norway has

provided the Secretariat with the full text of their intervention which explains the thinking behind their suggestion:

There appears to be one factor in particular which keeps many countries from voting in favour of listing proposals; that is the fear that they will be unable to get the species down- or delisted once it has recovered enough not to meet the criteria for listing in the first place. CITES's record does indeed give ample reasons for that fear. The last operative paragraph of the proposal by Monaco on delisting procedures, may be seen in this light. In our opinion, however, it does not provide a sufficient guarantee. Norway therefore wishes a "sunset clause" to ensure that the species really will be taken off the Appendices if it meets the objective criteria for this, and we propose an additional paragraph to the draft resolution as follows: In the event that the procedure described in the preceding paragraph does not result in a delisting within 10 years, the Atlantic bluefin tuna will be automatically removed from the Appendices at the following meeting of the Conference of the Parties, unless that meeting decides, by a two-thirds majority, to maintain the listing. The 10-year limit is suggested as a maximum limit.

8. The Secretariat recalls that the subject of 'sunset clauses' for species included in the Appendices was previously discussed at the 12th meeting of the Conference of the Parties (CoP12, Santiago, 2002) in the context of a draft resolution submitted by Norway on *Sustainable use of and trade of CITES-listed species* (document CoP12 Doc. 17). The draft resolution noted "the difficulties related to deletion of species from the Appendices or downlisting of species even when this has been warranted under the CITES criteria or when the criteria for inclusion are no longer met". In its recommendations, Norway proposed that "the Parties consider ways of validating the CITES Appendices, e.g. by an automatic review of listed species every fifth year or by the introduction of a 'sunset clause' for a suitable period." However, Parties did not reach an agreement and the proposed resolution was not adopted.

9. At the 14th meeting of the Conference of the Parties (CoP14, The Hague, 2007), the Chair of Working Group on the Periodic Review of Plant Species included in the CITES Appendices of the Plants Committee submitted document CoP14 Inf. 11, which contained the following remark:

It can be hoped that the guidelines are improved during CoP14. One of the main problems seems to be the lack of incentives for reviewing the appendices. The idea under b) was therefore already brought up at earlier CoPs. For example, it was suggested that new listings should be valid only for a predefined term and then would need to be proposed again ("sunset clause").

10. This topic has also been raised by non-governmental organizations. For example, in document PC19 Inf. 7 submitted at the 19th meeting of the Plants Committee (Geneva, 2011), TRAFFIC India suggested that:

such species [Kuth (Saussurea costus)], which have a history of traditional use and recent cultivation could also benefit from periodic listing where the listing would originally be for a given period of time (i.e. a 'sunset clause') and be renewed only on production of credible, scientific information that such listing meets its objectives.

11. Concern has been expressed regarding whether such time bound listings would be, *inter alia*, consistent with the Convention and with the principle that amendments to the Appendices are to be based upon agreed biological and trade criteria. Concern has also been expressed about the extent to which time-bound listings may be utilized. However, the Conference of the Parties has previously introduced a time-bound element into its decisions about proposals to include species in the Appendices by deferring the entry into force of amendments to the Appendices beyond the 90 days prescribed in Article XV, paragraph 1 (c), of the Convention. For example:

- a) at CoP4 (Gaborone, 1983), the Conference adopted proposals to include in Appendix I the species *Balaenoptera acutorostrata* (except the West Greenland stock) and *Caperea marginata* with an entry into effect delayed from 29 July 1983 to 1 January 1986;
- b) at CoP10 (Harare, 1997), the Conference adopted a proposal to include in Appendix II the species of the order Acipenseriformes with an entry into effect delayed from 18 September 1997 to 1 April 1998; and
- c) at CoP12 (Santiago, 2002), the Conference adopted two proposals with delayed entries into effect: the inclusion of *Hippocampus* species in Appendix II, which was delayed from 13 February 2003 to

15 May 2004; and the inclusion of *Swietenia macrophylla* (neotropical populations) in Appendix II, which was delayed until 15 November 2003.

12. The Secretariat has informally raised the issue of whether time-bound listings should be considered in certain limited circumstances with States, intergovernmental and non-governments organizations, including through the following means:
 - a) Remarks by the Secretary-General made during the 29th session of the FAO Committee on Fisheries (COFI) (Rome, 1 February 2011).
http://www.cites.org/eng/news/SG/2011/20110201_sg_remarks_cofi.shtml
 - b) Statement by the Secretary-General at the 17th Special Meeting of the ICCAT (Paris, 19 November 2010).
http://www.cites.org/eng/news/SG/2010/20101119_sg_statement_ICCAT.shtml
 - c) Intervention by the Secretary-General during the first expert workshop on sharks convened by FAO and CITES, (Genazzano, 19 July 2010).
13. The responses to informal discussions have been varied, but there has been an interest in exploring further the issue of time-bound listings, without prejudice to the outcome, recognizing that the notion of 'life-long listings' is not included in the Convention. It is open to the Parties to amend the Appendices regarding any species that no longer satisfies the agreed biological and trade criteria. Time-bound CITES listings could better complement the work of international fishery management regimes in managing high-value marine species.
14. As it remains open for a proposal for a time-bound listing to be introduced by any Party, including from the floor of a meeting of the Conference of the Parties, it may be beneficial to enable an open and transparent intersessional debate on the pros and cons of utilizing time-bound listings in certain circumstances. This may, or may not, lead to a draft resolution on the topic. An open discussion of the issue may, in itself, be beneficial in helping to provide a better understanding of the implications of making use of time-bound listings, and any other possible measures to enhance the complementarity of CITES with other management regimes.
15. Circumstances in which a time-bound listing could, by way of example, be considered are where there is a proposal for listing:
 - a species in Appendix I;
 - a commercially exploited aquatic species; and
 - a species under which another intergovernmental body has a management function.
16. The end-point of a time-bound listing could take many different forms, such as, a listing that lapses:
 - at a designated meeting of the Conference of the Parties, unless it were reaffirmed by the Parties through a two-thirds majority;
 - at a designated time if certain pre-conditions, determined by the Conference of the Parties, were met; or
 - at a designated time if certain pre-conditions, determined by the Conference of the Parties, were met – with verification of compliance being assigned by the Conference of the Parties to the Standing Committee.
17. In the case of a species that is subject to management by another intergovernmental body, the precise timing of the listing could be made to coincide with the assessment cycle of the species by that body, such as the assessment cycle of a species under a regional fishery management organization.
18. As the Conference of the Parties retains the right to extend a listing, the Secretariat does not regard the use of time-bound listings to be contrary to the Convention, or contrary to listing decisions being based upon sound and relevant scientific information. Any decision to amend the Appendices that include a time-

bound listing may need to be drafted as a specific exception to the general provisions found in Resolution Conf. 9.24 (Rev. CoP15), which is open to the Parties to decide.

19. CITES Parties have adopted other innovative approaches over the years to enable the best and most effective use of the Convention, the most obvious examples being with respect to delaying the entry into effect of amendments to the Appendices, the use of annotations and the setting of quotas, none of which is specifically envisaged in the text of the Convention.

Recommendation:

20. The Secretariat invites the Standing Committee to consider:

- a) whether it wishes to initiate a policy dialogue on measures that may be available to the Parties to enhance the complementarity of CITES with other management regimes, including through making use of time-bound listings; and
- b) establishing a working group for this purpose, to report at its 62nd meeting.