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

Seventy-fourth meeting of the Standing Committee
Lyon (France), 7-11 March 2022

INTRODUCTION FROM THE SEA

1. This document has been submitted by the United States of America in relation to agenda item 51 (Introduction from the Sea: Report of the Secretariat), to share with the Standing Committee and the Secretariat our suggested edits related to 10 questions most frequently asked on 'CITES trade from the sea.*

2. In Document SC74 Doc.51 the Secretariat presented the 10 questions most frequently asked by Parties when consulting about the implementation of the new listings of marine species and attempted to provide some responses on several of the challenges mentioned for the consideration of the Standing Committee.

3. After reviewing the provided Secretariat suggested answers to the 10 questions most frequently asked, the United States has several concerns related to the responses which we believe merit bringing to the attention of the Committee for its consideration.

4. Suggested edits

   - **Regarding Question 1.** We believe the IFS certificate should be applied for and issued before the specimen has been caught, in order that all necessary findings can be made. This ensures that when the findings cannot be made or can only be made subject to conditions, applicants can act accordingly and also reduces the risk of specimens being caught that do not meet CITES requirements. However, in limited circumstances where opportunistic noncommercial sampling of the CITES specimen could not be reasonably foreseen, it may be possible that the IFS certificate can still be issued before the specimen is transported into the State or in-transit or transhipped through any Party. Accordingly, we would like to propose the following edits to paragraph 19 and 20 of SC74 Doc. 51 (shown below with text proposed for deletion in strikeout and proposed text for insertion underlined).

     19**. The IFS certificate should be applied for and issued before the specimen has been caught, in order that all necessary findings can be made. This ensures that when the findings cannot be made or can only be made subject to conditions, applicants can act accordingly. However, in limited circumstances where opportunistic noncommercial sampling of the specimen could not be reasonably foreseen, the IFS certificate** could be issued after the specimen has been caught as long as the specimen is not yet transported into the State **or in-transit or transhipped through any Party**. In those cases, the vessel would need to communicate the catch of specimens of CITES-listed species to the CITES Management Authority (MA) while still outside of national jurisdiction. The MA will then consult with the Scientific Authority (SA) on the NDF and if **all** the conditions in Article IV are fulfilled, the MA may issue the IFS certificate before the catch is landed. Parties would need to anticipate what would happen in an instance where the specimens are obtained in the high seas and a certificate is sought before the vessel enters territorial waters, but the SA deems the catch

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* *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*

unsustainable while the vessel is in transit between the high seas boundary and the port of landing. Presumably, the MA would not be able to issue a certificate and the specimen would be confiscated.

20. In the case of a species included in CITES Appendix I, there will most likely be binding fisheries measures in place prohibiting the capture of such species for commercial purposes. For introduction of biological samples of species in Appendix I for scientific purposes, the researcher/scientist should ~~**normally**~~ apply for the IFS certificate in advance of the take of the samples and the IFS certificate should be issued prior to the sampling operation. The Secretariat notes that there may be instances where benthic sampling was done on the high seas and CITES-listed specimens were obtained unexpectedly.

- **Regarding Question 4**. In the cases where harvest of a CITES-listed species is covered by only one Regional Fishery Management Organization (RFMO), or if a Party has national legislation prohibiting retention of a CITES-listed species, then the response is accurate. Yet, the response may not be correct in the in case where several RFMOs coordinate the management of a CITES-listed species. For example, one RFMO may enact a retention ban for a CITES-listed shark or ray species, while the second RFMO coordinating management of that species may not. In this case, a Party could authorize the trade in specimens of the CITES-listed species if caught in accordance with the relevant measures. Accordingly, we would like to propose the following edits to paragraph 24 of SC74 Doc. 51 (shown below with text proposed for deletion in strikeout and proposed text for insertion underlined).

  24. If a Party has adopted stricter domestic measures or is a member of an RFMO that prohibit**s** the take of a species, those measures would prevail and no trade in that species should be authorized by that same Party as it would not be legally acquired and the MA could not make a Legal Acquisition Finding. However, other Parties to CITES that are not bound by such stricter measures may authorize trade in the species concerned. **Furthermore, if the management of a CITES-listed species is covered by several RFMOs, where one prohibits retention of the species and another does not, a Party may only authorize international trade in specimens of the species harvested in the RFMO Convention Area where permitted.** The Secretariat understands that an RFMO requirement, just like CITES, will have national implementing legislation and requirements on its Parties/Members. For instance, if an RFMO ~~**bans**~~ **is banning** retention of **a CITES-listed** shark species, then, if one of the members of that RFMO wished to retain and trade, they would not be able to do so as they also could not make a LAF. Management Authorities are invited to verify if "participating territories" and "co-operating non-members" are also bound by specific RFMO conservation and management measures.

- **Regarding Question 5.** We agree that if the catch of a CITES-listed species is illegal, then it cannot be legally acquired, and no CITES documents should be issued. However, we suggest a substantial revision of paragraph 26. If a species is included in the CITES appendices, this does not mean that the fishery is regulated. Rather, the **international trade** in the species is regulated. Moreover, the term "IUU fishing" refers to vessels engaged in fishing activities that are illegal, unreported, and unregulated. Therefore, we would like to propose clarifying edits to paragraph 26 in SC74 Doc 51 (shown below with text insertion underlined).

  26. **For the four conditions outlined in paragraph 25 to be met, the specimens of CITES-listed species cannot be illegal or unreported. Valid CITES documentation cannot authorize trade in specimens of CITES-listed species caught by vessels engaged in IUU fishing.**

- **Regarding Question 6.** We **oppose** the recommendation in paragraphs 28-29 to explore the feasibility of having a register with the list of open registry States and territories, including vessels fishing for CITES-listed species. This would be a massive and expensive project, and the development and maintenance of such a list would require specialized expertise related to fishing vessel registration and ownership. Moreover, there is no internationally recognized definition of flag-of-convenience, whether a flag State is "convenient" is a matter of interpretation, and an open registry may have a more commonly understood meaning than flag of convenience. It is not clear how this additional reporting would help ensure that flag States take responsibility for fishing vessels entitled to fly their flag and ensure that they do not engage in fishing or trade in species that is not compliant with CITES requirements. Additionally, a vessel's inclusion in

such a registry would not necessarily be a reliable indicator of whether it is or is not engaged in trade or fishing in compliance with CITES requirements, as that is a fact-specific matter. Finally, the United Nations Food and Agriculture Organization (FAO) Global Record is already an open and public registry of fishing vessels with IMO numbers.

- **Regarding Question 7.** We believe the text in paragraphs 32-33 needs to be amended to make clear that all shipments in-transit or transshipped through a Party require CITES documents. The current text may incorrectly imply that a shipment in-transit or transhipped through a Party to a State that has entered a Reservation does not require CITES documents. Therefore, we would like to propose clarifying edits to paragraph 32 and 33 in SC74 Doc 51 (shown below with text proposed for deletion shown in strikeout).

  32. The Secretariat advised customs officers that contacted the Secretariat with specific questions on how to deal with cases where CITES-listed specimens are declared to customs or detected during an inspection. In those cases, the customs officers should verify the presence of valid CITES documents. ~~**Depending on the State of introduction or the State of import of those specimens, they need to verify if that country had entered reservations.**~~

  33. If the shipment does not have CITES documentation ~~**and the State has not entered a reservation**~~, the specimens should be seized in accordance with procedures established in national legislation, and the Secretariat and the country of destination should be informed. As explained in question 1 above, the documents should be issued prior to the transit of the specimens and the argument that the documents are being requested upon arrival to the port is not admissible.

- **Regarding Question 8**. We believe the answer to this question should be amended at the beginning of paragraph 34 by adding a short clarification: **"<u>No, see question 7. If the shipment that is in transit or being transhipped through a Party does not have valid CITES documentation, then the specimens should be seized.</u>** The Convention stipulates . . ."

- **Regarding Question 10**. A small edit. In paragraph 37, we believe the word "applies" should be replaced with "may apply"

  Yes. The simplified procedures contained in Resolution Conf. 12.3 (Rev. CoP18) on Permits and certificates, section XIII, **<u>may apply</u>** ~~**applies**~~ to any species and specimen where trade is considered to have none or negligible impact on the conservation status of the species. See the CITES webpage on the CITES permit system at https://cites.org/eng/prog/Permit_system.