

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

Eleventh meeting of the Conference of the Parties
Gigiri (Kenya), 10-20 April 2000

Consideration of proposals for amendment of Appendices I and II

OTHER PROPOSALS

1. The proposals submitted by Parties in accordance with the provisions of Article XV, paragraph 1(a), of the Convention are listed in the Annex to document Doc. 11.59.
2. The Secretariat consulted the Parties on the proposed amendments in accordance with the provisions of Article XV, paragraphs 1(a), 2(b) and (c), through Notification to the Parties No. 1999/89 of 22 November 1999. In order to inform the Parties as soon as possible on proposals, these have been made available to them through courier services rather than through the conventional postal service. Provisional assessments of the proposals were provided to the Parties through Notification to the Parties 1999/97 of 29 December 1999; these are also included in Annex 1 to this document.
3. The responses from the Parties that are relevant to the amendment proposals are quoted in Annex 1 to this document.
4. In accordance with the provisions of Article XV, paragraphs 1(a) and 2(b), of the Convention, the Secretariat has consulted intergovernmental bodies having a function in relation to marine species. Their comments are included in Annex 2 to this document.
5. In accordance with the provisions of Resolution Conf. 10.13, paragraph b), regarding international organizations, the Secretariat has further sought the views of ITTO, FAO and IUCN regarding the amendment proposal for a timber species. Their comments are also included in Annex 2.
6. Annex 3 contains the report of the Panel of Experts on the African Elephant.
7. On the basis of the above consultation procedures and comments received, as well as the information contained in the assessment of the amendment proposals prepared by IUCN (see Web site: www.iucn.org), the Secretariat has, where appropriate, revised its provisional assessment of the amendment proposals. Its resulting recommendations are provided in Annex 1.
8. Also in view of the fact that all documents related to proposals to amend the appendices have immediately been made available through its Web site, the Secretariat believes that consultations have taken place in a very timely manner and with unprecedented transparency.

Comments from the Parties and comments and recommendations from the Secretariat

General Comments

Kenya: *While Kenya appreciates that CITES mandates the Secretariat to comment on proposals to amend the Appendices, it seems that an extra stage has been added to the process by which this is normally done. In circulating a set of 'Provisional Assessments' well in advance of its formal recommendations, the Secretariat risks influencing Parties which have not yet had time to digest all the proposals or which lack the technical knowledge required to make an informed decision in the absence of expert advice from scientific bodies.*

Circulating assessments at this stage may lead to Parties relying upon the information, partial as it may be, provided in these assessments. Kenya does not believe that this change to the procedure is beneficial either to the Parties or to the Convention as a whole ¹.

Morocco: The Government of Morocco informed the Secretariat that it had no objection to any of the proposals to amend the appendices, because the species concerned were not part of the Moroccan fauna or flora subject to international trade.

Norway: *"It is essential that decisions on inclusion of species, removal of species or amendment of Appendix category for species already on the CITES Appendices strictly follow the criteria set out in the Articles of the Convention and are in accordance with the relevant requirements in Resolutions Conf. 8.21 and Conf. 9.24. This is in crucial to avoid political decisions with motives not necessarily following the intentions of the Convention.*

This is also important where the threats against the survival of the relevant species are not to be found in the trade or trade relations. In these cases other countermeasures, often domestic, have to be found. We therefore support the rejection of proposals for inclusion of new species or upgrading of species already on Appendix II when the species neither are endangered because of trade, nor likely to become so.

For species of national concern, where the threats are to be found in habitat degradation or poor management, it is the responsibility of the country in question to initiate relevant action either nationally or with the assistance of other nations or organisations as appropriate concerning these species. It is also Norway's position that any exploitation and use of any species must be sustainable, and that it is the responsibility of the relevant country to establish the necessary laws, control mechanisms and management procedures to ensure this sustainability. When it has been justified that sustainable use of the given species is possible, and sufficient mechanisms have been established to control the trade, there is in our view no basis in CITES to have such species on Appendix I."

Switzerland: made six general comments, quoted below. Where relevant, reference to these general comments will be given by their numbers

" 1. According to Resolution Conf. 9.24, the Conference of the Parties to the Convention has recognized that range States of a species, subject to an amendment proposal, should be consulted following the procedures recommended by the Conference of the Parties. We have taken note that, in a number of cases, range States have not been consulted. In other cases range States may have been consulted but have not commented. In still other cases range States have stated their opposition to the

¹ The Secretariat believes that its more proactive approach is required under Article XV, paragraphs 1(a) and 2(c), of the Convention. The latter paragraph requires that the Secretariat shall communicate texts of proposed amendments 'as soon as possible thereafter its own recommendations'. The Secretariat had of course no intention to influence Parties, but as indicated in Notification to the Parties No. 1999/97, aimed at assisting the Parties in forming their own opinion. The combination of provisional assessments, followed by a discussion with the Parties, the provision of additional information in support of proposals and a set of revised recommendations as the result of this consultation procedure has, in the Secretariat's view, been a positive development in the thorough consideration of amendment proposals.

proposal. Quite generally we would expect that proposals are submitted in cooperation with the range State(s) concerned. Since this obviously seems not to be the opinion of other member states, we would expect that the proposing Parties, that have not done so, consult the relevant range States prior to the meeting and that the views of these range States are made fully known to the COP.

2. Some proposals concern species that are included in the Significant Trade review process of the Animals Committee under the provisions of Resolution Conf. 8.9. At the meeting of the Animals Committee in Madagascar, careful analysis of the status and trade of a number of species, undertaken by WCMC together with IUCN and TRAFFIC, has been thoroughly discussed and a number of decisions as to further action has been taken. We think it not only premature to discuss any proposal dealing with one of these species until the consultative process has been completed and the relevant parties have been advised on conservation and trade control measures for these species, but fear that by taking decisions prematurely, the Significant Trade review process according to Conf. 8.9 risks to be undermined. This holds true also in cases where a proposal aims to overturn the result of the Significant Trade review process, accepted by the Animal Committee.
3. There are a number of proposals where it becomes clear from the information provided that the species concerned is not in international trade or that international trade is negligible, and that the problems the species and/or populations face – if any – result mainly from domestic use and/or habitat loss. In some instances these populations are not even protected nationally. We doubt that in cases, where the problems are definitely at the national level, involving the world community can make much sense.
4. There are proposals that concern the transfer to Appendix I of species listed on Appendix II where, according to the information provided, either the provisions of Article IV CITES seem not to be fully enforced and/or trade has slipped into illegality. We doubt that a transfer to Appendix I in these cases would be a means to remedy the situation, in particular to combat illegal trade. It might be worthwhile to increase the effort to strictly enforce the provisions of Article IV CITES (including e. g. a zero export quota) before considering a transfer.
5. We are concerned that a number of proponents have not fulfilled their obligations under CITES, i.e. have not sent in their annual reports. It is thus impossible to assess the trade volume of the species concerned and/or to decide, whether the trade criteria according to Conf. 9.24 are fulfilled or not.
6. In some instances the proposal does not contain adequate information on population status and population trends and/or international trade volume (even when the species concerned is on Appendix II !) or trade potential, which makes it difficult or impossible to decide whether the proposal meets the biological and/or trade criteria laid down in Conf. 9.24.”

United States of America: “We appreciate the Secretariat’s submission of Notification 1999/97 in a timely manner, and far earlier than previous meetings of the Conference of the Parties, giving Parties ample opportunity to comment on it. We note however one disadvantage, that this timing provided the Secretariat little or no time for peer review or analysis by scientists with expertise in these diverse taxa. We believe that the Secretariat should wait until all comments are available from the Parties and from scientific review and analysis by IUCN and other bodies and individuals prior to making its final recommendations to the Parties about which proposals to support or oppose.”²

² The Secretariat should like to thank the United States of America for this comment. As indicated by its Secretary General on a number of occasions, the Secretariat is developing into a more professional and pro-active body that is able to give guidance to the Parties as well as assist them with the implementation of the Convention. As indicated in Notification No. 1999/97, that document contained provisional assessments that were intended to help Parties in making their own assessment and to stimulate discussion. The Secretariat believes that both these aims have been accomplished. Notification to the Parties No. 1999/97 also indicated that the Secretariat’s final recommendations, required under Article XV, would be made in the light of comments from Parties and interested bodies. The purpose of distributing provisional assessments and inviting comments from the Parties was exactly to obtain input from as wide a range of experts, Parties and regions as possible. In addition, the Secretariat has included the independent review by the IUCN, using its global network of specialists and experts which make up the membership of the specialist groups of the IUCN Species Survival Commission, in its final evaluation of proposals. The Secretariat therefore remains convinced that the followed process led to an unprecedented level of transparent consultation and contributed to a set of recommendations to the Parties of the quality they deserve.

*In several cases, particularly in response to proposals to include or transfer a species to Appendix I, the Secretariat has stated that "the proposal does not provide reliable information on the current size of populations or subpopulations." There is no such requirement for population size data in Resolution Conf. 9.24. We believe that is an overly literal interpretation of the notes and guidelines in Resolution Conf. 9.24. The flexibility built into Resolution Conf. 9.24, particularly Annexes 2 and 3, allows the Parties to make decisions on proposals to amend the Appendices, based on the best available scientific information. Sometimes that information is known, but often it is inferred or projected; the criteria reflect this reality.*³

*Furthermore, we note that throughout Notification 1999/97, the Secretariat states either that it "supports" a proposal, or "cannot support" a proposal. Many of those proposals were submitted or co-sponsored by range countries, in good faith and in the interest of the conservation of their native species subject to or threatened by international trade. We believe that it might be more helpful if the Secretariat noted any deficiencies in proposals, in terms of the listing criteria in Resolution Conf. 9.24, and made recommendations to Parties on how to improve proposals, and reported on the results of its consultations with other bodies and with scientific experts.*⁴

*We note that in several cases, the Secretariat has highlighted when a range State, in particular a proponent, is not current with its annual report obligations. We strongly support the requirement to submit annual reports, and the utility of accurate CITES trade data. However, we note that many of the Parties that have submitted proposals are either new Parties or are newly-emerging nations. We appreciate the Secretariat's assessment of the difficulties that many range countries have in effectively implementing the treaty, and their need for capacity building assistance. However, we also believe that the biological, trade, and enforcement considerations in Resolution Conf. 9.24 must receive the utmost consideration."*⁵

Prop. 11.13: Transfer of *Manis crassicaudata*, *M. pentadactyla* and *M. javanica* from Appendix II to Appendix I (India, Nepal, Sri Lanka, United States of America)

Provisional assessment by the Secretariat

The three pangolin species referred to in this proposal have been included in Phase IV of the Significant Trade review of the Animals Committee under the provisions of Resolution Conf. 8.9 and Decision 10.79. WCMC together with IUCN and TRAFFIC provided an extensive review of the status and trade of all three species in 1999, which led the Animals Committee to conclude that *M. crassicaudata* belongs in category d)iii) (i.e. the level of trade is evidently not a problem); *M. javanica* in di) (i.e. international trade has an adverse effect on population status) and *M. pentadactyla* in di) or d)ii) (i.e. information is insufficient to make a judgement). The Animals Committee has not yet formulated recommendations concerning these species as the process of consultation with range States has not been completed. The Secretariat therefore considers it to be

³ The Secretariat acknowledges that Resolution Conf. 9.24 does not contain the specific requirement that information on the current sizes of populations and sub-populations be reliable. However, the Secretariat also believes that a liberal interpretation of the absence of such a requirement is not appropriate. Proponents are required to submit the best (most current) information available as outlined in Annex 6 of Resolution Conf. 9.24. It may not be possible to conclude that a species meets the criteria for inclusion in one of the Appendices unless information is provided concerning population size and trend etc. The Secretariat, when it refers to the absence of reliable or adequate information in this context, therefore indicates that it may not be possible to apply the criteria outlined in Resolution Conf. 9.24 with an acceptable degree of certainty.

⁴ The Secretariat has in no case expressed doubts about the good faith and intentions of the proponents, range States or not. The comments from the Secretariat clearly indicated the deficiencies of certain proposals, as do its current comments. The additional information received from proponents as a result of the Secretariat's provisional assessment was substantial and has allowed the Secretariat to adapt its position, where appropriate. This was the clearly stated intention of its provisional assessments.

⁵ The Secretariat is very concerned in general about the non-submission or late submission of annual reports by Parties, which is an infraction against the text of the Convention. It can be argued that informed decisions about proposals and other issues before the Conference of the Parties cannot be made without reference to the characteristics of international trade in the species concerned, for which annual report data on trade are essential. The Secretariat did not, however, in any instance base its recommendation to support or not support a proposal on the absence of annual reports. References to the absence of such reports were intended to remind proponents of their reporting obligations. The Secretariat has now received annual reports from Parties referred to in this context, showing that this initiative has had the desired effect.

premature to transfer any species (other than possibly *M. javanica*) until the consultative process has been completed and the relevant Parties have been advised on conservation and trade control measures for these species. Exporting countries should in the mean time strictly apply Article IV (i.e. only authorize exports on the basis of adequate non-detriment findings), accurately report on the trade in *Manis* specimens and identify products in trade to the species level.

Comments from the Parties

Nepal: "As co-sponsor of the proposals, we would like to stress that the information on biological and trade data furnished on both the species in the proposals are quite sufficient to support the taxa for listing in Appendix I. We believe that uplisting the species in Appendix I will help controlling the poaching as well as illegal trade on those species and ultimately ensure the long-term conservation of the species"

Switzerland: See general comments no's 1, 2, 3, 4 and 6 on pages 3 and 4 of this Annex.

United States of America: "The Secretariat does not support the proposal, primarily because these species are part of the Significant Trade review (pursuant to Resolution Conf. 8.9). Although we understand this perspective, we believe that the proposals should be evaluated solely on the basis of the criteria for Appendix-I listing detailed in Resolution Conf. 9.24. In this regard, we strongly feel that *Manis pentadactyla* and *M. javanica* qualify for inclusion in Appendix I under Resolution Conf. 9.24, Annex 1 (C), and that *M. crassicaudata* probably qualifies under Annex 1 (C) and definitely qualifies under Annex 1 (D) (i.e., it is reasonable to infer that the species will meet Conf. 9.24, Annex 1 (C) within five years if it is not transferred to Appendix I). Below, we briefly summarize the strongest evidence in our original proposal, and will add additional supporting information we have obtained since November 1999.

The Animals Committee concluded that *M. javanica* belongs in category d)i) (i.e., international trade has an adverse effect on population status). The Animals Committee was split as to whether *M. pentadactyla* belongs in category d)i) (i.e., international trade has an adverse effect on population status) or category d)ii) (i.e., information is insufficient to make a judgement). We believe there is little doubt that harvest for domestic use and international trade has had and is continuing to have an adverse effect on wild populations of both these species. Furthermore, in cases of disagreement such as *M. pentadactyla*, we believe that caution dictates a conservative approach (in this case, by assuming that international trade has an adverse impact on population status).

Recent reports have clearly documented a massive trade of pangolins and their parts and derivatives across the borders of Burma/Myanmar, Lao PDR, and Vietnam into China (Compton and Le Hai Quang (1998), Li et al. (1996), Li and Li (1997), Martin (1997), and Li and Wang (1999)). This trade, much of which is unreported and, therefore, illegal, dwarves the reported trade. The trade likely involves both *M. javanica* and *M. pentadactyla*, because most of these countries have populations of both *M. javanica* and *M. pentadactyla* (most significantly Lao PDR, Myanmar/Burma, and Vietnam), the species may be mixed in international trade, and it is often impossible to determine which species is referred to in both local use and export (WCMC 1999).

Harvest and use of large quantities of pangolin scales within China has been fairly well documented. Recent information is contained in Guo et al. (1997), who conducted a survey of medicine markets and TCM manufacturers in China. They found large quantities of raw pangolin scales in many of the country's medicine markets (Guo et al. 1997). Purchase of scales by provincial TCM companies was also significant; one company alone reported purchasing a total of 74,619 kg. during 1990-93 (Guo et al. 1997). Consumption of scales by just three TCM manufacturers averaged 214.7 kg. per year for the period 1990-95 (Guo et al. 1997). The Endangered Species Scientific Commission (1998) stated that in the 1960s, a total of approximately 100,000 pangolins was killed each year in Fujian, Hunan, Guangxi, and Guizhou Provinces. Since that time, the species is considered to have declined sharply, especially in the past decade, with a decrease of approximately 80 percent (ESSC 1998). In areas where it was formerly abundant (Guangdong, Guanxi and Fujian) its has become "limited in number" (ESSC 1998). Li Wenjun, an ESSC staff member and graduate student at the University of Massachusetts, attempted to study pangolins in the wild in the early 1990s (1993 and 1994). He was unsuccessful because, although he visited three protected areas in Guangdong and two

protected areas in Guangxi, he was unable to find enough pangolins to study. They had all been harvested for human consumption (Li Wenjun, pers. comm. with OSA staff, January 2000).

Outside China, available evidence indicates that all three species have been declining in the wild as a result of human harvest. Tikader (1983) stated that both the populations of *M. crassicaudata* and *M. pentadactyla* have been greatly reduced by hunting in India. Reports from the late 1980s and early 1990s suggest that the population of *M. pentadactyla* in Taiwan was decreasing due to poaching and habitat destruction (Chao Jung-Tai 1989; Taiwan Forestry Research Institute in litt. 1992). A 1993 survey conducted in the Royal Nagarjung Forest in Kathmandu, Nepal, determined that the protected *M. pentadactyla* population residing within the forest was fairly healthy, yet the general trend elsewhere in Nepal was dramatically declining, due to increased access to hunting areas and loss of habitat. At the same time, it was noted that there was an increase in conflict between armed wildlife and forestry guards and local hunters, seeking to utilize the resource (Gurung 1996). Duckworth et al. (1999) noted that, in three separate areas within the range of *M. javanica* in Lao PDR (Xe Pian, Dong Phou Veng and Khammouan Limestone NBCA), villagers have recently reported that pangolin populations have declined, in some areas to as little as one percent of the level 30 years ago. Duckworth et al. (1999) further noted that hunting in Lao PDR in general has significantly reduced pangolin populations. Duckworth (in litt. 1999) stated that villager estimates of remaining pangolins in Lao PDR are of the order of 1-5% of levels 20 years ago. Humphrey and Bain (1990) considered that *M. javanica* in Thailand was threatened and becoming increasingly rare.

The Animals Committee concluded that *M. crassicaudata* belongs in d)iii) (i.e., the level of international trade is evidently not a problem). This conclusion was reached in large measure because the species does not show up in international trade statistics reported by CITES Parties. We believe that it is naive to assume that this is an accurate reflection of levels of trade of this species. Given the high levels of unreported, illegal trade of pangolins, the high demand and therefore high prices being paid for pangolins, and problems in identifying skins and scales in trade, we suspect that international trade in this species may actually be very high. There are reports of population declines in India (Tikader 1983). Further, we feel that an Appendix-I listing for the other two species would inevitably shift harvest pressure to this species.

We urge the Secretariat to reconsider its views on this proposal. [Note: References cited are available on request]."

Comments from the Secretariat

In view of comments received from Nepal, Switzerland and the United States of America and the assessment by IUCN, and as also mentioned in its provisional assessment, the Secretariat agrees that *Manis javanica* qualifies for inclusion in Appendix I. The Secretariat nevertheless believes that the review of Significant Trade by the Animals Committee should be allowed to run its course, i.e. that remedial measures be identified and, as appropriate, proposed to the range States of this and the other two pangolin species. The Secretariat believes that this is a vital process within CITES that should be supported by all Parties. Resolution Conf. 8.9 has been designed to take timely remedial action in order to avoid that unsustainable trade would result in the need to transfer a species to Appendix I. Transferring a species to Appendix I, before the review process is completed, would contradict the intent of the Conference of the Parties when it adopted this Resolution. The Secretariat therefore recommends that this proposal be withdrawn and that Parties do not issue CITES documentation for trade in specimens of *Manis javanica* until the review process has been completed.

Secretariat's recommendation: **Reject**, but Parties should not issue CITES documentation for trade in specimens of *Manis javanica* until the review process has been completed.

Prop. 11.14: Transfer of *Tursiops truncatus ponticus* from Appendix II to Appendix I (Georgia, United States of America)

Provisional assessment by the Secretariat

The primary conservation problem affecting this subspecies of bottlenose dolphin is undoubtedly habitat loss and a decline in habitat quality. No information has, however, been presented to support

the conclusion that such a decline in habitat quality has resulted in or will result in a decline in the size of the wild population [see Resolution Conf. 9.24, Annex 1, paragraph Cii)] at current levels of international trade. The proposal indicates that the commercial harvest of this subspecies has been greatly reduced since the 1980s and that significant progress has been made in regional co-operation for its management and the protection of its habitat. There is accordingly no clear justification for a transfer to Appendix I. Exports from the range States have ranged from 4 to 16 live specimens a year for the period 1992 to 1997 (on the basis of exports recorded in annual reports). The proposal therefore seems to be aimed primarily at eliminating the trade in small numbers of live specimens. The Secretariat believes that trade in such specimens can be adequately controlled if Article IV is correctly implemented and that no additional measures are needed. Exports should only be authorized on the basis of a non-detriment finding and it would seem to be most appropriate in this instance to establish annual quotas through the regional mechanisms discussed in the proposal.

It is of concern that one of the proponents which is also a range State of the species concerned has not yet reported on international trade since acceding to CITES in 1996. When there is a trade-related concern it stands to reason that, as a first step, all existing mechanisms within CITES be used to address such concerns, including the reporting of all international trade on an annual basis.

Comments from the Parties

Japan: *"Japan shares the view of the Secretariat that this proposal does not contain adequate information, and that international trade of several specimens a year cannot be considered to constitute a major cause to drive this species to extinction. Japan is opposed to this proposal because it believes there is no rational ground to transfer this sub-species to Appendix I."*

Norway: *rejects this proposal. "Bottlenose dolphin is not declining primarily because of unsustainable trade, but the real problem seem to be other factors, inter alia deteriorating habitat. We thus recommend the concerned nations to solve the problem, inter alia through regional co-operation"*

Switzerland: *See general comments no's 3, 4, 5 and 6 on page 4 of this Annex. "It is not clear, whether this really is a subspecies. Obviously it cannot be distinguished from a bottlenose dolphin from another locality. DNA fingerprints have not been made, therefore it is concluded that "all bottlenose dolphins originating from the Black Sea are Tursiops truncatus ponticus". There is however a connection between the Black Sea and the Mediterranean Sea. There is no information on an exchange between these two dolphin populations, which however is likely to occur."*

United states of America: *"While it is true that the present take of live bottlenose dolphins from the Black Sea is small, the trade is not prohibited by some of the nations bordering the Sea and may continue or increase. Individual nations could well authorize live takes that would be of sustainable size individually but which could be unsustainable in the aggregate. The reproductive potential of the species is low, and the removal of even a few animals can be disadvantageous to a small population. For example, the estimated safe level of removals from the coastal population of the species in southern California, which is estimated to total 140 dolphins distributed over a 500-km range, is only 1.3 dolphins annually, including those captured incidentally in fisheries (Barlow et al., 1997). For the coastal population on the U.S. east coast, estimated at a minimum size of 2,482, the estimated safe level of removals by live capture and incidentally in fisheries is 25 dolphins annually (Waring et al., 1999); this population could well be significantly larger than that in the Black Sea. Given that the Black Sea population(s) is thought to be reduced from its (unknown) original level and heavily pressured by habitat degradation, the potentially unsustainable international traffic in live animals should be eliminated while current conditions persist."*

Barlow, J. et al. (10 authors). (1997). U.S. Pacific marine mammal stock assessments: 1996. NOAA Technical Memorandum NMFS-SWFSC-248, 223pp.

Waring, G. T. et al. (12 authors). (1999). U.S. Atlantic and Gulf of Mexico marine mammal stock assessments -- 1999. NOAA Technical Memorandum NMFS-NE-153, 196pp.

Furthermore, we do not believe that a range State's proposal to amend the Appendices for a species should be rejected because it is not current with its annual report obligations.⁶ We strongly support the requirement to submit annual reports. However, we note that Georgia is a new Party, and indeed is a newly emerging nation. We should encourage Georgia's conservation efforts, rather than discourage them. We also do not agree with the proposition that if a species is rare or endangered largely due to habitat loss or degradation, the species does not qualify for inclusion in Appendix I. We note that in Conf. 9.24, the Parties resolved that "any species that is or may be affected by trade should be included in Appendix I if it meets at least one of the biological criteria listed in Annex 1". We believe that this species is affected by trade, and meets at a minimum the following biological criteria in Annex 1: A)i) and A)v); and C)i) and C)ii).

See Annex 2 for responses received in compliance with Article XV, paragraph 2(b).

Comments from the Secretariat

In light of the comments received from Japan, Norway, Switzerland and the United States, as well as the assessment by IUCN, the Secretariat maintains its earlier position and recommends that this proposal be rejected.

Secretariat's recommendation: **Reject**

Prop. 11.15: Transfer of Eastern North Pacific stock of *Eschrichtius robustus* from Appendix I to Appendix II (Japan)

Provisional assessment by the Secretariat

This species was included in Appendix I in 1985 as a result of the establishment of zero catch quotas by the IWC. In addition, Resolution Conf. 2.9 recommends that Parties agree not to issue any CITES permits or certificates for primarily commercial purposes for any specimen of a species or stock protected from commercial whaling by the International Convention for the Regulation of Whaling (ICRW).

However, adequate scientific information has been presented to indicate that the stock of gray whales referred to in the proposal does not meet the biological criteria for inclusion of the species in Appendix I. This listing, however, reflects the conservation status afforded to the population under the ICRW and this kind of co-ordination with such conservation measures is to be ensured under Article XIV, paragraph 2.(b) ⁷, of the Convention. Alternatively, and both in line with this requirement and CITES listing criteria, the population can also be transferred to Appendix II with a zero quota and the Secretariat therefore supports this proposal. In relation to this and the other proposals concerning whale stocks managed by the IWC, the Secretariat is concerned that the difficult political discussion that has divided that body for so many years now, is "exported" to the CITES conference of the Parties with the risk of causing similar negative effects on the relationship between Parties. To subject CITES to such a risk may not be justified, particularly because an Appendix II listing would have no practical effect where and as long as commercial catches remain prohibited under international law.

Comments from the Parties

The general comments from Parties, relating to all four whale proposals have been included here. Specific comments on a particular whale proposal have been included under the proposal concerned.

Australia: "In relation to the proposals concerning whale stocks managed by the IWC, Australia concurs with the Secretariat's comment expressing concern

⁶ As indicated in footnote 5, the Secretariat's assessment was not based on the absence of annual reports.

⁷ The appropriate reference is Article XV, paragraph 2(b).

“that the difficult political discussion that has divided that body for so many years now, is ‘exported’ to the CITES conference of the Parties with the risk of causing similar negative effects on the relationship between Parties. To subject CITES to such a risk may not be justified.”

However, Australia does not agree with the conclusions reached by the Secretariat that:

“in line with... CITES listing criteria, the populations can also be transformed to Appendix II with a zero quota and the Secretariat therefore supports this proposal.”

In the absence of internationally agreed management measures for these populations, the proposals clearly do not meet the precautionary measures agreed in paragraph 2 of Annex 4 of Resolution Conf. 9.24. Thus it is difficult to understand how the secretariat is able to conclude that the proposals are in line with CITES listing criteria.

Australia is also unable to accept, in the absence of further detail, the statement by the Secretariat that:

“Appendix II listing would have no practical effect where and as long as commercial catches remain prohibited under international law.”

The preliminary comments make no mention of how the provisions of paragraphs 4 and 5 of Article XIV of the Convention will operate in these circumstances. The wording of Article XIV.4 indicates that a State Party to ICRW is relieved of its obligations under CITES for any whale species listed on Appendix II. Thus it would seem that the products of the current whaling operations, undertaken by Japan and Norway in accordance with the provisions of the ICRW, would not be subject to any control under CITES. To state that an Appendix II listing would have no practical effect thus appears inaccurate. In our view the Secretariat should provide authoritative legal advice on this issue in its final comments on these proposals.

Cuba: (All four whale proposals) “Cuba considers the scientific information provided in the proposals as clear evidence that the species do not comply with the criteria (Resolution Conf. 9.24) for inclusion in Appendix I. Maintaining the species in Appendix I is not scientifically justified and therefore inconsistent. CITES should base its decisions on scientific criteria, not on sentiments.”

France: In conformity with its position in the International Whaling Commission, France opposes the proposals by Japan and Norway for the following reasons:

I Background

The International Convention on the Regulation of Whaling has as objective to regulate the hunting of whales.

CITES has as objective the regulation of international trade in species threatened with extinction

Since 1979, Resolution Conf. 2.9. recommends Parties not to issue import or export permits for introduction from the sea for commercial purposes of specimens of species or stocks protected by IWC. In 1983, in response to a Resolution by the IWC, the 4th meeting of the Conference of the Parties to CITES decided that all Cetaceans for which the capture is regulated by IWC should be transferred to Appendix I in 1986, date on which IWC moratorium on commercial hunting of whales entered into force.

These decisions have established a strong link with IWC, and this has always been maintained since the moratorium entered into force.

Resolution Conf. 2.9 has been reconfirmed with IWC by the last meeting of the Conference of the Parties.

More recently, (at its 51st annual meeting of IWC, 1999) IWC requested its Secretariat to inform the Parties that the revised management scheme had not yet been put in place, and that the moratorium was still in force.

II Position of France

Because no new decisions have been taken by IWC regarding reopening of commercial hunting, the proposals to downlist certain stock of the gray whale and the minke whale are premature.

France would like to record that the commercial hunting of whales until the 1970's was the cause of the majority of species becoming almost extinct. Earlier methods to establish quota have failed, because they could not avoid the decline of the exploited species. The moratorium established in 1986 completely stopped commercial whaling. It allowed the IWC to develop a precautionary management scheme for the population concerned. Still, a method to implement inspection mechanisms and controls has to be elaborated; any proposal to reopen the trade under CITES appears therefore premature in view of the work carried out in the context of IWC.

For the reasons mentioned above, France opposes the downlisting and proposes that the European Union adopts a common position in this respect at the Conference of the Parties to CITES, this April.

In addition to that, France expresses its strong reservations regarding the lifting of a moratorium prohibiting commercial whaling, considering that the population dynamics of the species require a much longer pause in their exploitation than is currently accorded, and taking into account the pollution of the oceans and environment changes.

Japan: *"Japan fully concurs with the concern of the Secretariat over possible intrusion of political confrontations over the whaling issue from International Whaling Commission (IWC) into CITES. There is no need for CITES to be controlled by political decisions of IWC, which unfortunately does not fulfil its role as a sound fisheries management organization. Japan believes that CITES should focus its attention only on scientific information and make its decisions objectively based on its own Appendix listing criteria. In this respect, the view of the Secretariat suggesting establishment of zero quota on the basis of Conf. 2.9. etc. appears to contradict its own concern because it is Resolution Conf. 2.9 that links decisions of CITES with the scientifically unjustifiable commercial whaling moratorium by IWC and introduces political conflicts at IWC into CITES. Furthermore, when stock status and management system as explained in the Japanese proposal are considered, no reason can be found to attach such adjunct conditions. For this reason, Japan considers it is not appropriate to establish a zero quota."*

Management Authorities for fisheries: *"With respect to the downlisting proposal for three species of whales by Japan, the CITES Secretariat supports transfer of those species to Appendix II with the attachment of zero quota. Japan is of the view that any Appendix listing of wildlife species should be determined objectively in the light of listing criteria on the basis of scientific data available. In view of scientific data on whales as they stand now, it is hard to understand that the Secretariat supports attachment of zero quota to the Japanese proposal.*

Japan is a Contracting Party to the International Convention for the Regulation of Whaling and conducts whaling within the scope authorized under the provisions of the Convention. Therefore, Japan agrees that any allocation in CITES should be set within this range recognized under the provisions of the Convention."

Kenya: *"As a long-term member of the International Whaling Commission, Kenya has the following concerns about the Secretariat's assessments of the proposals to transfer certain species and populations of whales to Appendix II.*

Article XV, 2(b) requires that, with regard to proposed amendments to Appendix I and II relating to marine species, the Secretariat is obliged to consult with relevant inter-governmental bodies and to communicate their opinions, along with any scientific data they may provide, to the Parties as soon as possible. Kenya is concerned that the Secretariat has made clear its own views of the proposals without first having consulted the International Whaling Commission (IWC), the body with primary responsibility for the management of whales. In fact, the Secretariat's remarks about the IWC are such that some Parties may be pre-disposed to reject the views of the IWC when its response to the proposals is published in February.

Article XV provides that the Secretariat should ensure that CITES co-ordinate with any conservation measures enforced by the IWC. It is Kenya's view that, in these preliminary assessments, the Secretariat should have pointed out to the Parties that the IWC has primacy over CITES in respect of whales and that CITES should reflect the management decisions of the IWC."

Norway: "Both these species are currently on CITES Appendix I, but both fail to meet the biological criteria set out in Res. Conf. 9.24. We refer to the proposal from Norway (cf. Prop. 11.18) to downlist the North-east Atlantic and North Atlantic central stocks of Minke Whale for further elaboration on this issue. Norway cannot support the CITES Secretariat's proposal to downlist when this is done with a quota set to zero.

In the provisional assessment made by the Secretariat on proposal Prop. 11.15, the Secretariat makes reference to Article XIV, paragraph 2b, of the Convention. We suspect that the correct reference should be Article XV, paragraph 2b. In this context, the Secretariat does not provide an assessment of whether the IWC moratorium is a "conservation" measure or not." In our opinion this is debatable and it should be clarified what "conservation measures" implies and in particular what IWC decisions can be regarded as such measures." ⁸

The Netherlands: "The Dutch CITES Management Authority has reviewed the CITES Secretariat's provisional assessments of the proposals for COP XI to amend CITES Appendices I and II (CITES Doc. No. 1999/97 of 29 December 1999). It would like to inform you that we do not support the Secretariat's provisional assessment of the proposals Prop. 11.15 to Prop. 11.18 for the transfer of certain populations of whales from Appendix I to Appendix II.

In our opinion the conservation status of whale population is a matter that should be decided by the International Whaling Commission as the only international organisation with authority to manage whaling and whale conservation worldwide. It is our belief that as long as the IWC maintains a prohibition on the commercial taking of whales there should be no changes made to the current listing of these populations under CITES.

I note that similar proposals for downlisting whale species/populations submitted to COP IX and X were rejected by the CITES parties. In our opinion it would be a wrong signal to the IWC if CITES were to adopt the proposed downlistings at the next conference, as this could be interpreted as a decision by the CITES parties that international trade in whale products is permitted in principle. This would run counter to the various decisions taken over the years both by CITES and the IWC reflecting the principle that international trade in whale products should not be allowed unless commercial exploitation of the relevant whale stock is permitted.

Finally, it would appear that any restriction of the proposed downlistings, such as the 'zero quota' clause suggested by the Secretariat, would be meaningless in respect of Norway and Japan, as these countries could claim an exemption under CITES Article XIV, paragraph 4."

Switzerland: See general comment no 1 on page 3 of this Annex "(it might however be quite difficult to determine which Parties are "range States" per definitionem with a stock that lives – at least partly – in the international seas). It is not clear whether the proponent has entered a reservation. Should this be the case, then it has not declared that it will – according to point 3 of the Prec. Princ. - withdraw its reservation, should the proposal be accepted."

United States of America: "The United States opposes the downlisting of these populations (Prop.'s 11-15 – 11.18) of whales, which are subject to the International Whaling Commission (IWC) moratorium on commercial whaling. We continue to believe that it is inappropriate to consider these species for downlisting until the IWC completes the revision of its management regime in order to bring all whaling under effective IWC control, as discussed below. We also believe that these species

⁸ The Secretariat is of the opinion that the adoption of catch quotas and recommendations related to the exploitation of whales by the ICRW/IWC (or any other species management agreement) are conservation measures. It is not for the Secretariat to comment on the justification of such measures.

do not qualify for transfer to Appendix II, pursuant to Annex 4 of Resolution Conf. 9.24. The discussion that follows relates to all four of these proposals.

The United States believes that the CITES Conference of the Parties should honour the request for assistance in enforcing the moratorium which the IWC communicated to the CITES Parties in a resolution passed at the Special Meeting of the IWC in Tokyo, December, 1978. This request was answered by the CITES Parties in Resolution Conf. 2.9 ("Trade in Certain Species and Stocks of Whales Protected by the International Whaling Commission from Commercial Whaling") which calls on the Parties to "agree not to issue any import or export permit or certificate" for introduction from the sea under CITES for primarily commercial purposes "for any specimen of a species or stock protected from commercial whaling by the International Convention for the Regulation of Whaling." Resolution Conf. 2.9 was overwhelmingly reaffirmed by the Parties at COP10, by the defeat of a draft resolution proposed by Japan to repeal this resolution. At the 50th meeting of the IWC subsequent to COP10, the IWC passed a resolution that expressed its appreciation for the reaffirmation of this link between the IWC and CITES. IWC Resolution IWC/51/43 also welcomes the CITES COP10 decision "to uphold CITES Resolution Conf. 2.9." Support for these requests of the IWC necessitates opposition to any proposal to transfer whale stocks to Appendix II.

Additionally, according to Resolution Conf. 9.24, Annex 4, Precautionary Measures, paragraph 2.B.a. "Even if such species do not satisfy the relevant criteria in Annex 1, they should be retained in Appendix I unless ...the species is likely to be in demand for trade, but its management is such that the Conference of the Parties is satisfied ... with i) implementation by the range States of the requirements of the Convention, in particular Article IV; and ii) appropriate enforcement controls and compliance with the requirements of the Convention." Unfortunately, these "appropriate enforcement controls," as part of a Revised Management Scheme, have not yet been adopted by the IWC. Therefore, these whale stocks do not qualify for transfer to Appendix II, pursuant to Resolution Conf. 9.24.

The key assumption in the downlisting proposals for these populations of minke whales and gray whales is that the differences within species are discrete, occur in all individuals and can be readily differentiated by forensic DNA methods. This is not the case, as the experts who have developed these methods will attest and the scientific literature reinforces. While there are clear markers, which differentiate species, finding forensic markers for all individuals within a population or stock is much more problematic. It is usually possible only when the population distinctiveness approaches that of species. Moreover, the use of Japanese and Norwegian DNA registers that are not available for scrutiny by other whale DNA experts, is counter to all principles of forensic identification. Only when there is a consensus on DNA markers, tested against adequate sample sizes of the whale stocks in question, could they be utilized for verification purposes. Such research may show significant evolutionary units within some stocks, and significant gene flow between stocks makes forensic identification of a meat sample to a particular stock impossible.

The previous IWC management regime was not effective in managing the whaling industry. While it was in place, the whaling industry drastically depleted whale stocks until many became threatened with extinction. Since the establishment of the moratorium on global whaling, coupled with the CITES Appendix I listings, the Commission has continued to work on activities that the United States believes must be completed before commercial whaling can even be considered. This management regime must include devising an observation and monitoring program to ensure that quotas are not exceeded. Thus, the U.S. opposes even considering the downlisting of any whale species until the IWC has taken steps to create and institutionalize a revised management regime that brings all whaling under effective IWC monitoring and control.

The Secretariat explains why these species were originally listed in Appendix I, describes the complementary actions taken over the years by CITES and the IWC in order to manage both the take and international trade of whale species under the jurisdiction of the IWC, and states that the conservation status of the species in the CITES Appendices is a reflection of their status in the ICRW. The Secretariat goes on to present an alternative to the Japanese and Norwegian proposal, that is, to list the populations in Appendix II with a zero quota. The United States does not agree that the submitted proposals (or the hypothetical alternatives of downlisting with a zero quota) are consistent with CITES listing criteria.

Article XV, paragraph 2(b) states that the Secretariat must consult with relevant intergovernmental bodies when assessing marine species proposals to obtain scientific data and ensure co-ordination with those bodies' conservation measures. We are concerned that the Secretariat provides no results of consultation with IWC on the proposals submitted by Japan and Norway, an obligation imposed by the text of the Convention. We believe such consultation should be undertaken prior to any recommendations from the Secretariat to the Parties about these downlisting proposals.

The United States believes that these stocks continue to meet the criteria for inclusion in Appendix I. We note that, in addition to the biological and trade criteria specified in Annexes 1, 2a and 2b of Resolution Conf. 9.24, the criteria also contain provisions in Annex 4 that apply to Precautionary measures. In paragraph 2.B.a., this Annex states that "Even if such species do not satisfy the relevant criteria in Annex 1, they should be retained in Appendix I unless...the species is likely to be in demand for trade, but its management is such that the Conference of the Parties is satisfied...with i) implementation by the range States of the requirements of the Convention, in particular Article IV; and ii) appropriate enforcement controls and compliance with the requirements of the Convention." However, the International Whaling Commission has not yet adopted "appropriate enforcement controls," as part of its Revised Management Scheme. Therefore, according to Annex 4, these species should be retained in Appendix I. We urge the Secretariat to consider Annex 4 of Resolution Conf. 9.24 in its evaluation of proposals to amend the Appendices.

We call attention to Resolution Conf. 9.24 Annex 3, which states, "Listing of a species in more than one Appendix should be avoided in general in view of the enforcement problems it creates." All minke whales and gray whales should be retained in Appendix I, without split-listings. Two species of minke whales are recognized. The South Hemisphere population of Antarctic minke whales is known as *Balaenoptera bonaerensis*, but the northern minke whale which occurs in both the North Pacific and North Atlantic is also sympatric in the Antarctic with *B. bonaerensis*. Both the North Pacific and the North Atlantic have different populations of minke whales within each ocean basin. Therefore, by downlisting populations within each ocean, the Parties would have the enforcement and implementation problem of being left with split listing in the North Pacific and North Atlantic. In addition, the proposed transfer to Appendix II of eastern gray whales would also result in an unacceptable split listing in the North Pacific for gray whales. This is especially troubling in that the western population of gray whales is one of the world's ten most endangered large whale populations. We urge the Secretariat to also consider Annex 3 of Resolution Conf. 9.24 in its evaluation of proposals to amend the Appendices.

The United States also disagrees with the statement that "an Appendix II listing would have no practical effect where and as long as commercial catches remain prohibited under international law." The resolution passed in 1978 by the IWC was a request for assistance in enforcing the IWC moratorium. Clearly the IWC would not have passed this resolution and forwarded it to CITES if the Commission believed that its prohibitions were sufficient. Since Norway has lodged an objection to the moratorium on commercial whaling, and is therefore, not bound by it, the United States does not agree that a downlisting to Appendix II would have no practical effect.

The CITES treaty allows that only a Party may propose amendments to the Appendices. Furthermore, the Rules of Procedure under which the Conference of the Parties operates allow that only a proponent country can amend a proposal that has previously been submitted, and the option of Appendix II with zero quota has not been formally put forward by any proponent country. It thus remains entirely hypothetical and is not ripe for any consideration at this time by the Parties or the Secretariat.⁹

However, we also do note the need to resolve questions about the application of Article XIV paragraphs 4 and 5 to these proposals. Any proposal which might be made by the proponents for an Appendix II listing with a zero quota could not be considered without a thorough analysis of the ramifications under Article XIV paragraphs 4 and 5. Specifically, it seems that according to

⁹ The Secretariat draws the attention to Rule 12, paragraphs (2) and (3) of the Rules of Procedure of the Conference of the Parties. Any Party may propose an amendment to reduce the effect of a listing proposal. The Secretariat can of course recommend that such a proposal be made.

Paragraphs 4 and 5 of Article XIV, Japan and Norway would be exempted from any CITES controls on their current whaling operations (in the absence of any management program within the IWC). This situation would not be acceptable, and would facilitate illegal trade in whale products on a global scale.

The United States also believes that comments provided by the Secretariat in Notification 1999/97 concerning the "difficult political discussion" that may attend this issue, are not relevant to the decision about what position should be taken by the Parties, who must instead be guided by the text of the Convention and the relevant resolutions which pertain to this issue. We urge the Secretariat to evaluate these comments, those of other Parties, and those of the IWC, prior to making its final recommendations pursuant to Article XV."

Specific comments on this proposal "The gray whale's range previously encompassed the Atlantic and Pacific Oceans. The Atlantic population was hunted to extinction by the early 1900s, restricting the gray whale to shallow waters of the Pacific Ocean. Two stocks are recognized in the North Pacific, the western stock, the northernmost limit of which is the Okhotsk Sea, and the southern end of Kamchatka Peninsula and the eastern or California stock, which ranges from the Russian Federation past Canada and the United States to Mexico. We oppose this proposed downlisting for the aforementioned reasons. As a range country, Japan consulted us on their draft of this proposal, and we provided Japan our comments and opposition to this proposal. We sent you a copy of that correspondence in November, 1999 (copy attached as well). Japan noted our opposition in its proposal but did not elaborate on our submission. We understand that Mexico, as a range State as well, also provided its comments in opposition to the draft proposal, although they were not noted or incorporated by Japan into the final proposal. In addition to the above comments, we note that the proposal states that the species should be transferred to Appendix II because the United States removed the species from our domestic Endangered Species Act. This, in itself, is not an adequate justification for CITES downlisting, especially since the gray whale remains fully protected by our Marine Mammal Protection Act."

See Annex 2 for responses received in compliance with Article XV, paragraph 2(b).

Comments from the Secretariat

The Secretariat should like to draw the attention of Parties to the comments from IUCN on this proposal. The fact that the stock concerned may not meet the biological criteria for an Appendix-I listing is clearly outweighed by the fact that the proposal does not meet a series of other criteria for downlisting to Appendix II. This, in addition to obligations deriving from Article XV, paragraph 2(b), of the Convention, leads the Secretariat to the conclusion that the gray whale population concerned should not be transferred to Appendix II.

The Secretariat should further like to point out that the suggestion in its provisional assessment of the proposals Prop. 11.5 to Prop. 11.18 with regard to a transfer to Appendix II with zero quotas would of course only match the current protection under Appendix I and the IWC zero catch quotas for commercial whaling, when all Parties to the Convention would undertake to respect the zero quota in Appendix II. Also given the provisions of Article XIV, paragraph 4, of the Convention that suggestion would appear to be cumbersome and unrealistic.

Secretariat's recommendation: **Reject**

Prop. 11.16: Transfer of the Southern Hemisphere stock of *Balaenoptera acutorostrata* from Appendix I to Appendix II (Japan)

Provisional assessment by the Secretariat

The decision to include *B. acutorostrata* in Appendix I was taken at the fourth meeting of the Conference of the Parties (Gaborone, 1983) at the request of the Seychelles. The listing entered into force on 1 January 1986, the date on which also the IWC's zero commercial catch quotas entered into force. In addition, Resolution Conf. 2.9 recommends that Parties agree not to issue any CITES permits or certificates for primarily commercial purposes for any specimen of a species or stock protected from commercial whaling by the ICRW.

Adequate information has been presented to indicate that the stock of minke whales referred to in the proposal does not meet the biological criteria for Appendix I. The Secretariat refers to its remarks on proposal Prop. 11.16. It would add, however, that adoption of a transfer of the stock to Appendix II with a zero quota would under paragraph 3 of Annex 4 of Resolution Conf. 9.24 require, prior agreement from Japan to withdraw its reservation on the listing of this species within 90 days of the adoption of such an amendment or else the Conference of the Parties should not consider this proposal. The Secretariat supports the proposal with a zero quota.

Comments from the Parties

For comments from Australia, Cuba, Japan, Kenya, the Netherlands and Norway see under Prop. 11.15 above.

Switzerland: see under Prop. 11.15 above. *"The proponent has not declared that it will – according to point 3 of the Precautionary Principles. - withdraw its reservation, should the proposal be accepted."*

United States of America: *"According to this proposal, range States for this population are Argentina, Australia, Brazil, Chile, Comoro, Congo, Ecuador, Fiji, France, Gabon, Indonesia, Kenya, Madagascar, Mauritius, Mozambique, Namibia, New Zealand, Papua New Guinea, Peru, Seychelles, South Africa, Tanzania, the United States, the United Kingdom, Uruguay, and Vanuatu. We oppose this proposal for all of the aforementioned reasons. In addition, we disagree scientifically with the statement in the proposal that "DNA analysis techniques advanced enough to distinguish individual whales are already available and will be used to track and control the movements of the whale specimens." No such techniques are available and full transparency and publication of all DNA sequences by the government of Japan is vital to fully evaluate this contention. As a range country, Japan consulted us on their draft of this proposal, and we provided Japan our comments and opposition to this proposal, a copy of which is attached. Japan noted our opposition in its proposal but did not elaborate on our submission."*

See Annex 2 for responses received in compliance with Article XV, paragraph 2(b).

Comments from the Secretariat

Although IUCN concurs that this population does not meet the numerical guidelines relating to the biological criteria for inclusion in Appendix I, it concludes – for a number of important reasons – that it is difficult to assess the impacts of the proposed transfer to Appendix II of the stock of *Balaenoptera acutorostrata* concerned. This, in addition to the other concerns expressed by IUCN in relation to the criteria of Resolution Conf. 9.24 and the obligations deriving from Article XV, paragraph 2(b) of the Convention, form sufficient grounds for the maintenance of the stock in Appendix I.

Also see the last paragraph of the Secretariat's comments under proposal Prop. 11.15.

Secretariat's recommendation: **Reject**

Prop. 11.17: Transfer of the Okhotsk Sea - West Pacific stock of *Balaenoptera acutorostrata* from Appendix I to Appendix II (Japan)

Provisional assessment by the Secretariat

See proposals Prop. 11.15 and Prop. 11.16.

Comments from the Parties

For comments from Australia, Cuba, Japan, Kenya, the Netherlands and Norway see under Prop. 11.15 above.

Switzerland: See under proposals Prop. 11.15 and Prop. 11.16.

United States of America: "According to this proposal, range States for this population are Canada, the People's Republic of China, Indonesia, Korea, Marshall Islands, the Philippines, the Russian Federation, and the United States. We oppose this proposal for all of the aforementioned reasons. As a range country, Japan consulted us on their draft of this proposal, and we provided Japan our comments and opposition to this proposal, a copy of which is attached. Japan noted our opposition in its proposal but did not elaborate on our submission."

See Annex 2 for responses received in compliance with Article XV, paragraph 2(b).

Comments from the Secretariat

The view of IUCN that uncertainty about the population structure of minke whales in the north Pacific makes it difficult to determine whether the stock concerned meets the biological criteria for inclusion in Appendix I, together with IUCN's concerns about the practical and trade aspects of the proposal are – in addition to the obligations deriving from Article XV, paragraph 2(b) of the Convention – reason for the Secretariat to propose the maintenance of the stock concerned in Appendix I.

Also see the last paragraph of the Secretariat's comments under proposal Prop. 11.15.

Secretariat's recommendation: **Reject**

Prop. 11.18: Transfer of the North-east Atlantic stock and North Atlantic Central stock of *Balaenoptera acutorostrata* from Appendix I to Appendix II (Norway)

Provisional assessment by the Secretariat

See proposals Prop. 11.15 and prop. 11.16.

It is of concern that Norway has not (by December 1999) reported on international trade from 1996 onwards. The Secretariat believes that full compliance with reporting mechanisms should be demonstrated by Parties wishing to resume trade in species currently listed in Appendix I.

Comments from the Parties

For comments from Australia, Cuba, Japan, Kenya and the Netherlands see under Prop. 11.15 above.

Norway: "We are pleased to find that the Secretariat notes that these two stocks do not meet the biological criteria for inclusion in Appendix I. According to the criteria of the Convention this is the crucial point.

However, as far as we can understand Resolution Conf. 2.9 makes the Secretariat recommend that a transfer to Appendix II be combined with a zero quota. Resolution Conf. 2.9 recommends that the Parties to CITES agree not to issue any permits or certificates for primarily commercial purposes for whales that are protected by the International Whaling Commission. The resolution does not deal with criteria for listing of species and stocks in the Appendices. Such criteria are found in the Convention and Resolution Conf. 9.24. When making its final assessment the Secretariat should stick strictly to these criteria and leave it to the Parties to decide how they will relate to the recommendation to agree to a certain behaviour in Resolution Conf. 2.9.

In its comments to another whale proposal (Prop. 11.15), the Secretariat expresses concern that the political discussion in the International Whaling Commission is "exported" to CITES and may have negative effects. Norway shares these concerns. The best way to protect CITES from such dangers and to enhance the well functioning and credibility of the organisation is to adhere closely to the Convention and apply its provisions.

Norwegian annual report to CITES: We regret to confirm that the annual Norwegian report on CITES trade still is missing from the period 1996 and onwards. However, we have every intention of producing these reports and will forward them prior to the Conference of Parties in April."

Switzerland: See proposals Prop. 11.15 and Prop. 11.16; also general comment 5 on page 4.

United States of America: "According to the Norwegian proposal, range States for these populations are Belgium, Denmark (including the Faroe Islands and Greenland), France, Germany, Iceland, Ireland, the Netherlands, Norway, Portugal, the Russian Federation, Spain, Sweden and the United Kingdom. We oppose this proposal for all of the aforementioned reasons. In addition, we are concerned scientifically with the statement in the proposal that "Norway has established a trade control system based on DNA analysis techniques with samples taken from each individual whale." No such system is available and feasible, and full transparency and publication of all DNA sequences by the government of Norway is vital to fully evaluate this contention."

See Annex 2 for responses received in compliance with Article XV, paragraph 2(b).

Comments from the Secretariat

Although for the stocks concerned IUCN comments that these do not meet the criteria for inclusion in Appendix I, concerns remain about a number of other aspects of Resolution Conf. 9.24 and the implementation of Article XV, paragraph 2(b) of the Convention (see also comments on proposals Prop. 11.16 and 11.17 of the Convention. These form enough reasons for not supporting the downlisting of these stocks to Appendix II.

Also see the last paragraph of the Secretariat's comments under proposal Prop. 11.15.

Secretariat's recommendation: **Reject**

Prop. 11.19: Deletion of *Parahyaena brunnea* from Appendix II (Namibia, Switzerland)

Provisional assessment by the Secretariat

The brown hyaena is effectively absent from international trade and therefore does not meet the criteria for inclusion in Appendix II.

Secretariat's recommendation: **Accept**

Prop. 11.20: Transfer of the South African population of *Loxodonta africana* from Appendix I to Appendix II to allow:

- a) trade in raw ivory under an experimental quota of a maximum of 30 tonnes of whole tusks of government owned stock originating from the Kruger National Park, subject to the provisions as set out in Resolution Conf. 10.10; Decision 10.1 and document Doc. SC.41.6.4 (Rev. 2);
 - b) trade in live animals for re-introduction purposes into protected areas formally proclaimed in terms of legislation of the importing country;
 - c) trade in hides and leather goods;
 - d) trade in hunting trophies for non-commercial purposes; and
 - e) all other specimens shall be deemed to be specimens of species in Appendix I and the trade in them shall be regulated accordingly
- (South Africa)

Provisional assessment by the Secretariat

No assessment or comments will be made until the report of the Panel of Experts under the provisions of Resolution Conf. 10.9 is available.

Comments from the Parties

Cuba: See proposal Prop. 11.21 below.

Norway: "South Africa has demonstrated efficient management of their elephant populations and the proposal demonstrate that sustainable use can be performed concerning this species. On this background we support the proposal if sufficient trade control mechanisms can be established, cf. Annotations."

Comments from the Secretariat

In light of the information contained in the report of the Panel of Experts (Annex 3 to this document), the Secretariat recommends that the non-ivory related aspects of this proposal be accepted. Concerning ivory, it recommends that the proposed export quota for raw ivory be accepted but that exports not be permitted for a period of at least 18 months after CoP11. This period of time will allow for obtaining more data from the implementation of the MIKE and ETIS monitoring systems. Also in this period, the Secretariat will propose to the Standing Committee a trade control system based on the provisions of Decision 10.1 (including the precautionary undertakings of Parties that exported ivory in 1999). The granting of the approval to export raw ivory should rest with the Standing Committee, on the basis of compliance with the proposed trade control system.

Recommendation from the Secretariat: **Accept** a) the non-ivory related aspects of the proposal and, b) the ivory quota on the condition that no trade takes place within 18 months after the Conference of the Parties, and that the Standing Committee has agreed to a trade control system based on the conditions of Decision 10.1.

Prop. 11.21: Maintenance of the population of *Loxodonta africana* of Botswana in Appendix II

Amendment of annotation °604 regarding the population of *Loxodonta africana* of Botswana to read:

°604: For the exclusive purpose of allowing in the case of the population of Botswana:

- a) trade in registered stocks of raw ivory (whole tusks and pieces) of Botswana origin owned by the Government of Botswana for commercial purposes only to CITES-approved trading partners who will not re-export and subject to an annual quota of 12 tonnes (12,000 kg) ivory;**
- b) trade in live animals to appropriate and acceptable destinations;**
- c) international trade in hunting trophies; and**
- d) trade in hides and leather goods**
(Botswana)

Provisional assessment by the Secretariat

Botswana requests that its population of the African elephant be maintained in Appendix II and in effect that annotation °604 be amended to provide for an annual quota for raw ivory of 12,000 kg and trade in live specimens, hunting trophies and hides and leather goods. With this proposal, Botswana complies with the provisions of paragraph D, Annex 4 of Resolution Conf. 9.24 on the renewal of quotas.

The Secretariat would like to note that there is no need to ask for the maintenance of the population in Appendix II. The procedures outlined in paragraph D of Annex 4 of Resolution Conf. 9.24 only relate to the renewal, amendment or deletion of quotas that have been established for species transferred to Appendix II at the request of the Party concerned. The Parties can approve or reject such a request. Paragraph D also provides for a procedure to establish a zero quota in the case of the absence of such a request from the Party concerned.

Below, the Secretariat provides comments firstly on compliance with the requirements for trade in ivory and other elephant products (as established by the 10th meeting of the Conference of the Parties) and secondly on the scope of the proposed trade.

- a) Concerning the requirements for trade in raw ivory (and other elephant products):
 - i) Verification of compliance with previous undertakings and trade control procedures: The Secretariat has verified that Botswana has complied with all requirements for and undertakings made concerning trade in elephant products as outlined in Decision 10.1 and Botswana's proposal to CoP10 (agenda item 31.1), including the management of stocks, the actual process of sale and export, and the management of revenues.
 - ii) Status of Decision 10.1 Part A: Most elements of Part A of Decision 10.1 are, in the case of Botswana, no longer relevant and need not be retained. The paragraphs a)-d) and h), for example, refer to one off events such as the withdrawal of reservations, specific agreements reached by the Standing Committee and specific verifications made by the Secretariat. Paragraphs e)-g) and i), referring to support for international co-operation in law

enforcement, mechanisms to halt trade, management of trade revenues, and participation in monitoring systems, are nevertheless considered to be useful and should be retained. A new proposal for a decision incorporating the latter provisions will therefore be drafted by the Secretariat in the event that the proposal is adopted.

- iii) Status of Decision 10.1 Part B: Part B of Decision 10.1 refers to an evaluation by the Standing Committee of legal and illegal trade and legal offtake on the basis of the long-term monitoring systems for the monitoring of illegal killing of elephants (MIKE) and trade (ETIS) established pursuant to Resolution Conf. 10.10 (Annexes 1 and 2 respectively). The Secretariat will report to CoP11 on the status of these monitoring systems (agenda item 31.2). The decision to authorize exports of raw ivory in 1999 did not hinge on the operational status of the MIKE and ETIS systems.

b) Concerning the scope of proposed trade:

- i) Annual quota for raw ivory of 12,000 kg: The proposal indicates that Botswana has accumulated 24,806.59 kg of ivory from natural mortality, problem animal control and seizures. Of this quantity in storage, 7,112.15 kg represent seizures or specimens of unknown origin, leaving an amount of about 17,694 kg of ivory. Taking into account that Botswana did not export its entire quota in 1999, this would mean that, since the provision of stock information for the proposal submitted for consideration at the 10th meeting of the Conference of the Parties, Botswana's ivory stocks have increased by an average of about 4000 to 5000 kg per year. The proposal does not provide more detailed information about the source of the proposed annual quota of 12,000 kg, but the Secretariat considers this amount to be conservative relative to the size of the elephant population of Botswana, assuming that the suggested quantity relates to the years 2001 and 2002 only. The Secretariat has calculated that at a natural mortality rate of 1-5%, the national population of approximately 100,000 elephants would produce between 10,000 and 50,000 kg of ivory a year at a low crude average combined tusk weight of 10 kg per individual. Not all ivory from natural mortalities is recovered, and mortality rates may vary considerably from year to year, but this calculation serves as an indication that the proposed quota is conservative.

It would be relatively simple for the Secretariat to verify that intended exports of the quota amount can be traced to an appropriate source within Botswana if the Management Authority maintains its registration and inventory system developed for the experimental trade of 1999, which records the identity, source and origin of each specimen.

The inclusion of pieces of ivory in addition to whole tusks in the annual quota is not problematic provided that such pieces have been derived from natural breakage or another verifiable origin and are not finished or partly finished products [i.e. that such pieces do not meet the definition of 'worked ivory' in Resolution Conf. 10.10 in paragraph a) under AGREES] and are marked as indicated in paragraph c) on page 2 of Prop. 11.21.

The proposal indicates that the ivory will only be exported to countries that have adequate internal controls and have made the commitment not to re-export. The Secretariat is aware of only one country, Japan, that has stringent internal controls and that has made the commitment not to allow re-export of ivory.

- ii) Trade in live specimens: The proposal does not give an indication of the number or destination of live specimens that Botswana intends to trade. The proposal restricts such trade to appropriate and acceptable destinations. This designation may have caused confusion in the past but will be clearly defined if proposal Prop. 11.25 is adopted.
- iii) Trade in hunting trophies: The current level of sport hunting exports falls far below the sustainable limit for this population.
- iv) Trade in hides and leather goods: Botswana has not yet accumulated elephant hides for international trade but wishes to do so in future. The Secretariat is not aware of any manufacturing of elephant leather goods in Botswana for commercial trade and the

reference to such items may refer to the planned re-export of material to be imported from another country. Botswana should clarify this.

Comments from the Parties

Cuba: “Cuba concurs with the remarks by the Secretariat and supports the proposing Parties. The proposed export quota are moderate and sustainable in relation to the size of the elephant populations in the countries concerned Cuba recognizes the efforts made by Botswana, Namibia and Zimbabwe to comply with all the compromises related to the trade in elephant products, and to maintain internal control over these products.”

Norway: “Prop. 11.21, 11.22, 11.23 on the maintenance of the population of *Loxodonta africana* of Botswana, Namibia and Zimbabwe in Appendix II (Botswana, Namibia, Zimbabwe) are of similar character as proposal no. 11.20, and Norway support the sustainable use of these populations with the proposed limitations, cf. annotations.”

Comments from the Secretariat

The Secretariat recommends that the non-ivory related aspects of this proposal be accepted. Concerning ivory, it recommends that the proposed export quota for raw ivory be accepted but that exports not be permitted for a period of at least 18 months after CoP11. This period of time will allow for obtaining more data from the implementation of the MIKE and ETIS monitoring systems. Also in this period, the Secretariat will propose to the Standing Committee a trade control system based on the provisions of Decision 10.1 (including the precautionary undertakings of Parties that exported ivory in 1999). The granting of the approval to export raw ivory should rest with the Standing Committee, on the basis of compliance with the proposed trade control system.

Recommendation from the Secretariat: **Accept** a) the non-ivory related aspects of the proposal and, b) the ivory quota on the condition that no trade takes place within 18 months after the Conference of the Parties, and that the Standing Committee has agreed to a trade control system based on the conditions of Decision 10.1.

Prop. 11.22: Maintenance of the Namibian population of *Loxodonta africana* in Appendix II

Amendment of annotation °604 regarding the Namibian population of *Loxodonta africana* to read:

°604: For the exclusive purpose of allowing, in the case of the population of Namibia:

- a) trade in hunting trophies for non-commercial purposes;
- b) trade in live animals for non-commercial purposes to appropriate and acceptable destinations (as determined by the national legislation of the country of import);
- c) trade in hides and leather goods; and
- d) trade in registered stocks of raw ivory (whole tusks and pieces) of Namibian origin owned by the Government of the Republic of Namibia for commercial purposes, to trading partners that have been verified by the CITES Secretariat to have sufficient national legislation and domestic trade controls to ensure that ivory imported from Namibia will not be re-exported and will be managed according to all requirements of Resolution Conf. 10.10 concerning domestic manufacturing and trade, and subject to a maximum annual quota of 2,000 kg ivory

(Namibia)

Provisional assessment by the Secretariat

Namibia requests that its population of the African elephant be maintained in Appendix II and in effect that annotation °604 be amended to provide for an annual quota for raw ivory of 2000 kg and trade in live specimens, hunting trophies and hides and leather goods. With this proposal, Namibia complies with the provisions of paragraph D, Annex 4 of Resolution Conf. 9.24 on the renewal of quotas.

Concerning the request to maintain this population in Appendix II, see the comments on proposal Prop. 11.21.

- a) Concerning the requirements for trade in raw ivory (and other elephant products), the Secretariat refers to its comments on proposal Prop. 11.21, which equally apply to this proposal.

b) Concerning the scope of proposed trade:

- i) Annual quota for raw ivory of 2,000 kg: The proposal provides a detailed summary of ivory stocks under the control of the Management Authority of Namibia, indicating that out of a total of 34,953.95 kg in storage, 2,177.27 kg whole tusks and 1,172.55 kg pieces of raw ivory have been accumulated from natural mortality and management activities (i.e. problem animal control). Taking into account that Namibia did not export its entire quota in 1999 and has not previously disposed of raw ivory pieces, this would mean that since the provision of stock information for the proposal submitted to the 10th meeting of the Conference of the Parties, Namibia's ivory stocks have increased by an average of approximately 1000 kg a year. The Secretariat considers the proposed quota to be conservative relative to the size of the elephant population of Namibia. As explained in the proposal, at a natural mortality rate of 1-5%, the national population of approximately 10,000 elephants would produce approximately 1,000 – 5,000 kg of ivory per year at a low crude average combined tusk weight of 10 kg per individual. Not all ivory from natural mortality is recovered and mortality rates may vary considerably from year to year, but it serves as an indication that the proposed quota is conservative.

The Secretariat is aware that Namibia has maintained its registration and inventory system developed for the experimental trade of 1999 which records the identity, source and origin of each specimen. It would therefore be relatively simple for the Secretariat to verify that exports of the quota are traced to an appropriate source within Namibia.

The inclusion of pieces of ivory in addition to whole tusks in the annual quota is not problematic provided that such pieces have been derived from natural breakage or another verifiable origin and are not finished or partly finished products [i.e. that such pieces do not meet the definition of worked ivory in Resolution Conf. 10.10 in paragraph a) under AGREES] and are marked as indicated in paragraph c) on page 12 of Prop. 11.22.

The proposal indicates that the ivory will only be exported to countries that have adequate internal controls and have made the commitment not to re-export. The Secretariat is aware of only one country, Japan, that has stringent internal controls and that has made the commitment not to allow re-export of ivory

- ii) Trade in live specimens: The proposal does not give an indication of the number or destination of live specimens that Namibia intends to trade. The proposal restricts such trade to appropriate and acceptable destinations. This designation may have caused confusion in the past but will be clearly defined if proposal Prop. 11.25 is adopted.
- iii) Trade in hunting trophies: The current level of exports of sport hunting trophies falls far below the sustainable limit for this population.
- iv) Trade in hides and leather goods: Namibia has not yet accumulated elephant hides for international trade but wishes to do so in future. The Secretariat is not aware of any manufacturing of elephant leather goods in Namibia for commercial trade and the reference to such items may refer to the planned re-export of material to be imported from another country. This aspect should be clarified by Namibia, but the Secretariat is aware of the presence in Namibia of manufactured items imported prior to Namibia's accession to CITES in 1991.

Comments from the Parties

Cuba and Norway: See above under proposal Prop. 11.21.

Namibia: *“Regarding trade in live specimens: Namibia does not intend to trade extensively with live animals, but wishes to reserve the right to dispose of occasional live specimens for non-commercial purposes, as is also allowed under an Appendix I listing. It must also be noted that there are still a few elephants on commercial farms, which originated from South Africa, which may in future be considered for re-export.*

Regarding trade in hides and leather goods: Namibia has not accumulated hide in the past, but intends to start doing so in order to gain maximum benefit from elephants that have to be destroyed for management reasons. Revenues from the sale of elephant hide would be managed in the same way as revenue from ivory, i.e. to support conservation. In addition, registered trophy manufacturers who currently process hunting trophies (including those of elephants) would be enabled to use elephant hide for manufacturing of elephant leather goods, should commercial trade be approved. Alternatively, it may be possible that hide is exported in an un-processed state for processing elsewhere."

Comments from the Secretariat

The Secretariat recommends that the non-ivory related aspects of this proposal be accepted. Concerning ivory, it recommends that the proposed export quota for raw ivory be accepted but that exports not be permitted for a period of at least 18 months after CoP11. This period of time will allow for obtaining more data from the implementation of the MIKE and ETIS monitoring systems. Also in this period, the Secretariat will propose to the Standing Committee a trade control system based on the provisions of Decision 10.1 (including the precautionary undertakings of Parties that exported ivory in 1999). The granting of the approval to export raw ivory should rest with the Standing Committee, on the basis of compliance with the proposed trade control system.

Recommendation from the Secretariat: **Accept** a) the non-ivory related aspects of the proposal and, b) the ivory quota on the condition that no trade takes place within 18 months after the Conference of the Parties, and that the Standing Committee has agreed to a trade control system based on the conditions of Decision 10.1.

Prop. 11.23: Maintenance of the Zimbabwean population of *Loxodonta africana* in Appendix II

Amendment of annotation °604 regarding the Zimbabwean population of *Loxodonta africana* to read:

°604: For the exclusive purpose of allowing in the case of the population of Zimbabwe:

- a) trade in registered stocks of raw ivory (whole tusks and pieces) of Zimbabwean origin stored at the central government store for commercial purposes, to trading partners with adequate controls and enforcement measures; that will not re-export, and subject to a maximum annual quota of 10,000 kg ivory;**
- b) trade in hunting trophies for non-commercial purposes;**
- c) trade in live animals for non-commercial purposes to appropriate and acceptable destinations;**
- d) trade in hides; and**
- e) trade in leather goods and ivory carvings for non-commercial purposes**
(Zimbabwe)

Provisional assessment by the Secretariat

Zimbabwe requests that its population of the African elephant be maintained in Appendix II and in effect that annotation °604 be amended to provide for an annual quota for raw ivory of 10,000 kg and trade in live specimens, hunting trophies and hides and leather goods. With this proposal, Zimbabwe complies with the provisions of paragraph D, Annex 4 of Resolution 9.24 on the renewal of quotas.

Concerning the request to maintain this population in Appendix II, see the comments on proposal Prop. 11.21.

- a) Concerning the requirements for trade in raw ivory (and other elephant products), the Secretariat refers to its comments on proposal Prop. 11.21, which equally apply to this proposal.
- b) Concerning the scope of proposed trade:
 - i) Annual quota for raw ivory of 10,000 kg: The proposal provides a detailed summary of ivory stocks under the control of the Management Authority of Zimbabwe, including stocks owned by communities participating in the CAMPFIRE programme, indicating a total of 24,435.62 kg in storage. No information is provided about the inclusion of ivory of unknown origin or seized ivory in this amount (although the number and weight of tusks seized in Zimbabwe are given in an annex). Zimbabwe appears to accumulate about

5,000 kg of ivory per year without major population reduction exercises. The Secretariat considers the proposed quota to be conservative relative to the size of the elephant population of Zimbabwe. At a natural mortality rate of 1-5%, the national population of approximately 70,000 elephants would produce approximately 7,000 – 35,000 kg of ivory a year at a low crude average combined tusk weights of 10 kg per individual. Not all ivory from natural mortality is ever recovered and mortality rates may vary considerably from year to year, but it serves as an indication that the proposed quota is conservative.

The Secretariat is aware that Zimbabwe has maintained its registration and inventory system developed for the experimental trade of 1999, which records the identity, source and origin of each specimen. It would therefore be relatively simple for the Secretariat to verify that exports of the quota are traced to an appropriate source within Zimbabwe.

The inclusion of pieces of ivory in addition to whole tusks in the annual quota is not problematic provided that such pieces have been derived from natural breakage or another verifiable origin and are not finished or partly finished products [i.e. that such pieces do not meet the definition of worked ivory in Resolution Conf. 10.10 in paragraph a) under AGREES] and an appropriate marking system is developed.

The proposal indicates that the ivory will only be exported to countries that have adequate internal controls and have made the commitment not to re-export. The Secretariat is aware of only one country, Japan, that has stringent internal controls and that has made the commitment not to allow re-export of ivory.

- ii) Trade in live specimens: The proposal does not give an indication of the number or destination of live specimens that Zimbabwe intends to trade. The proposal restricts such trade to non-commercial purposes. This designation may have caused confusion in the past but will be clearly defined if proposal Prop. 11.25 is adopted.
- iii) Trade in hunting trophies: The Secretariat is somewhat concerned that the current quota for the sport-hunted elephants (i.e. 400) exceeds the guideline of 0.005% of the standing population (i.e. 350). This guideline, developed in Zimbabwe, is conservative and is not the only way to determine a sustainable hunting offtake, but should be used unless other information on the recruitment of adult males is provided. It is problematic to monitor the exports of hunting trophies from Zimbabwe (and indeed almost all hunting trophies) because of the variable terminology used in reporting exports or imports. Zimbabwe, and indeed any other country exporting or importing elephant tusks, is requested not to use the code TRO for any elephant tusk, but the code TUS.
- iv) Trade in hides and leather goods: The proposal indicates that approximately 30 tonnes of elephant hide has been accumulated and that this amount will be auctioned in December 1999. These may be exported from Zimbabwe in accordance with the annotation 604. The Secretariat is not aware of any problems associated with previous exports of elephant hide from Zimbabwe.

Comments from the Parties

Cuba and Norway: See above under proposal Prop. 11.21.

Comments from the Secretariat

The Secretariat recommends that the non-ivory related aspects of this proposal be accepted. Concerning ivory, it recommends that the proposed export quota for raw ivory be accepted but that exports not be permitted for a period of at least 18 months after CoP11. This period of time will allow for obtaining more data from the implementation of the MIKE and ETIS monitoring systems. Also in this period, the Secretariat will propose to the Standing Committee a trade control system based on the provisions of Decision 10.1 (including the precautionary undertakings of Parties that exported ivory in 1999). The granting of the approval to export raw ivory should rest with the Standing Committee, on the basis of compliance with the proposed trade control system.

Recommendation from the Secretariat: **Accept** a) the non-ivory related aspects of the proposal and, b) the ivory quota on the condition that no trade takes place within 18 months after the Conference of the Parties, and that the Standing Committee has agreed to a trade control system based on the conditions of Decision 10.1.

Prop. 11.24: Transfer to Appendix I of the populations of *Loxodonta africana* currently listed in Appendix II (India, Kenya)

Provisional assessment by the Secretariat

The proposal from India and Kenya requests the transfer of the populations of the African elephant of Botswana, Namibia and Zimbabwe to Appendix I. It should therefore be evaluated primarily with reference to the information provided for these three populations. The rather lengthy proposal provides a considerable amount of information on the African elephant in general, although most information is somewhat dated and already available in the 1995 African Elephant Database. It does not, however, contain up-to-date information on the three populations that are the subject of the proposal, contrary to Resolution Conf. 9.24, third RESOLVES. No information is presented that would justify a transfer of the elephant populations of Botswana, Namibia and Zimbabwe to Appendix I in accordance with the criteria for inclusion of species in Appendix I as contained in Annex 4 of Resolution Conf. 9.24. The three elephant populations are not small, do not have restricted distributions, are not in decline and their status is such that it is highly unlikely that they would meet other criteria for inclusion in Appendix I within five years.

A lengthy justification is nevertheless presented in the proposal to justify its submission. Many elements are regrettably based on misinterpretations of the text of the Convention and the provisions of Resolution Conf. 9.24, to which the following comments are directed.

- a) The proponents only refer to Article II, paragraph 1, of the Convention. However, proposals to amend Appendices I and II, should meet the relevant criteria in Resolution Conf. 9.24. The populations of the three countries concerned clearly do not meet the criteria for inclusion in Appendix I, although the populations of most of the other range States probably do.
- b) The supporting statement further refers to paragraph A of Annex 4 to Resolution Conf. 9.24. This paragraph relates to the precautionary measures for the transfer of taxa from Appendix I to Appendix II. At its 10th meeting, the Conference of the Parties had considered these measures before deciding to agree to the transfer of the three populations from Appendix I to Appendix II. It is therefore unclear why the proponents refer to this paragraph.
- c) The references in the proposal [e.g. paragraph 2) and 3)a)-d) on page 1, and paragraph 2.7 of Prop. 11.24] to the precautionary measures in paragraph B.2. of Annex 4 of Resolution Conf. 9.24 are not correct. This paragraph only applies to the transfer of a population from Appendix I to II. The only precautionary measures in Annex 4 of Resolution Conf. 9.24 that apply to a population already in Appendix II are contained in paragraphs C and D, which provide for a specific remedial procedure through the Secretariat and/or the Standing Committee.
- d) It can be concluded from the first page of the proposal that it was submitted because the Standing Committee has agreed to a mechanism to halt trade and transfer Appendix-II populations to Appendix I under certain circumstances and in view of perceived escalations in illegal hunting and trade and perceived non-compliance with Decision 10.1. The procedure agreed to by the Standing Committee at its 41st meeting (Geneva, Switzerland) in accordance with Decision 10.1 provides for the Depositary Government and not any other Party to submit a transfer proposal under this mechanism if so required. Neither the Secretariat nor the Standing Committee considered that a request for such a proposal was justified (see also proposal Prop. 11.25 below).
- e) The use of the word 'retrospectively' (paragraph 3 on page 1) seems to suggest that the proponents believe that the Parties made a mistake in 1997. Emphasis is given to 'appropriate enforcement controls', but from the paragraph below it is clear that no problems were detected.

- f) The possibility of an immediate re-transfer to Appendix I is contained in paragraph g) of Decision 10.1, to which the proponents refer. The mechanism for this was agreed by the Standing Committee at its 41st meeting. Having discussed the trade in ivory and other products at each of its meetings since the 10th meeting of the Conference of the Parties, the Standing Committee has so far not received information to justify the initiation of the retransfer of the populations to Appendix I.

The Conference of the Parties should therefore consider this proposal on the basis of the provisions in Annex 1 of Resolution Conf. 9.24, as it would for any other one requesting the inclusion of a species in Appendix I.

Contrary to the opinions given in the proposal about a perceived inability to monitoring illegal killing and trade, the Secretariat has established a reporting system for incidents of illegal killing and trade. Through Notification to the Parties No. 1998/09, of 31 March 1998, the Secretariat asked to be provided with information on ivory seizures and illegal hunting of African elephants. This Notification and accompanying notes were re-issued on 30 November 1999 (Notifications to the Parties Nos. 1999/92 and 1999/93). It is disappointing to note that only very few of the incidents mentioned in the supporting statement have been submitted through this reporting system and have thus been verified. Confidential sources and newspaper clippings do not easily permit verification of their reliability by third parties. The absence of any information on illegal killing and trade before 1997 makes it difficult to determine whether this list of incidents really reflects an increase or only confirms a constant level of illegal hunting and trade. The relative intensity of efforts made to combat illegal hunting and trade should also be taken into account before a final conclusion can be reached. Although the proposal is highly critical of the ability of MIKE and ETIS to determine the cause of trends in illegal killing and trade, it nevertheless provides no justification for its own conclusion that the limited trade in 1999 has had a negative impact on elephant populations. (Also see agenda item 35).

In paragraph 7 of the proposal, the proponents claim to be 'entirely unsatisfied that the current arrangements will prevent the mixing of legal and illegal streams of ivory...' The Secretariat is convinced that one of the strongest aspects of the unprecedented trade control system adopted by the Conference of the Parties in 1997 is exactly that only registered stocks of verifiable origin could be exported, as was strictly supervised by the Secretariat.

Comments from the Parties

Cuba: *"concurrs with the Secretariat and does not support this proposal."*

Japan *"has national legislation on international trade in endangered species to implement CITES properly and also on domestic trade in endangered species which is not a requirement of the convention."*

Further more, the legislation has been amended several times to comply with the decisions taken at CoPs and Standing committee meetings. Notably, the measures for domestic control on ivory trade were approved at the 41st Standing Committee meeting as fulfilling Decision 10.1.

The proposal from Kenya and India requests the transfer of the populations of the African elephant of Botswana, Namibia and Zimbabwe to Appendix I. It refers to Japan's domestic control measures on Ivory trade but many of the references are based on misunderstandings of Japan's measures or simply misleading description.

Japan makes a strong objection to the proposal of Kenya and India.

Japan's domestic control system for ivory

In addition to the border control based on the Foreign Exchange and Foreign Trade Law, Japan takes the following series of measures for the appropriate domestic control based on the law for the Conservation of Endangered Species of Wild Fauna and Flora (LCES); registration of whole tusks, registration by those engaged in the business of dealing with cut pieces of tusks (traders and manufactures), registration by those engaged in the business of dealing with ivory hankos/inzais

(wholesalers and retailers), obligation imposed upon registered traders, manufactures, wholesalers, and retailers to compile records of their transactions, and Certification of ivory products.

First, only legally obtained whole tusks can be registered and then become available for transaction. Without registration, they cannot be transferred nor traded. Secondly, obligation of registration and compilation of records of the transactions are imposed on ivory traders, manufactures, and wholesalers and retailers of hankos/inzais. With these measures, the chain of transactions can easily be traced, and introduction of illegal ivories is prevented at raw material stage. This obligation also allows government to initiate an investigation if the situation of stocks and transaction of ivory suggests smuggling. In addition, when ivory products are recognized as having been produced from legally obtained raw tusks, through accompanied management card, the producer may obtain a seal certifying to that effect. This measure contributes in developing appropriate market and it is also beneficial for consumers.

Proposal of Kenya and India

The following descriptions correspond to each reference about Japan's domestic control measures in the Proposal 11.24.

Paragraph 2, Page 29 - Further, although certification seals are available for attachment to carvings "recognized as having been produced from legally obtained tusks", and there is a penalty for affixing a seal to a carving other than the one for which it was issued, it is neither mandatory for such seals to be affixed nor illegal to sell a carving without a seal.

Paragraph 3, Page 29 - Thus, though the certification system can be used to identify a legal carving by a dealer wishing to do so, it would appear to be of little or no use in preventing the sale of illegally-acquired ivory on the Japanese retail market.

As mentioned above, Japan's compulsory domestic control on ivory trade is basically comprised of registration of whole tusks, registration of ivory traders, manufactures, and wholesalers and retailers of hankos/inzais, and compilation of ledgers. This compulsory system is completed one and adequate to prevent illegal transaction. The certification system is only an additional measure and in this context, even if it is voluntary, the domestic ivory trade control system itself is none the less appropriate. Furthermore, regardless it is voluntary, substantial number of Hanko products are sold with seals, which is effective to evict illegal trade.

Paragraph 4, Page 29 - Although the Japan Federation of Ivory Arts and Crafts Association (JFICA) has agreed to abide strictly by the LCES, the federation holds less than 70% of the registered raw ivory currently in stocks.

The obligation of registration and compilation of records of the transactions are imposed on all ivory traders, manufactures, and wholesalers and retailers of hankos/inzais, regardless they are the members of JFICA or not. The amount of stock held by members of the federation is irrelevant to the implementation of the LCES.

Paragraph 5, Page 29 - Further, the units of measurement used to record ivory in commerce differ between manufacturers and retailers, with manufacturers required to record ivory by weight while retailers record the number and size of pieces. Such a system makes it difficult to trace ivory through the chain of commerce.

It is easy to convert the number and size of pieces into weight. The above paragraph is not based on the fact, it is easy to trace ivory through the chain of commerce.

Paragraph 6, page 29- However according to an article in a hanko (signature seal) industry journal, there are possibly over 40,000 ivory retailers in Japan, including stationery stores and mail-order companies. At an inspection rate of four per week, it would therefore take over 830 years to inspect each dealership once.

The total number of registered retailers for ivory hankos is around 10,000 and "over 40,000" is not a fact. Based on the obligation of reporting the compiled records of the transaction, preceding a site

inspection, the reports from all retailers for ivory hankos are checked. Then the government inspects such retailers whose reports contain uncertainty prior to other retailers. The site inspection under LCES is to differentiate the products of legally acquired ivory from those of illegal sources, as is the same as the Customs control. In the report of the CITES Panel of Experts on the African Elephant, although it was pointed out that more inspection was needed for retail trade, it does not mean all retailers must be inspected on site. In the report, Japan's Custom control was commended as being able to easily extend the targeting of problem shipments to ivory, and it was not requested to inspect all freight at the border¹⁰. As it stated above, in this scheme, the government checks the reports of the compiled records of the transaction from all retailers for ivory hankos, and in addition to the report checking, the arrangements for the site inspection have been strengthened considerably to rectify the deficiency on the need of more inspection which was pointed out by CITES Panel of Experts, with the increase of number of inspections and the creation of new posts of inspectors in the regional offices. It is possible to inspect about 1,500 - 2000 retailers annually. For the reasons mentioned above, the criticism by Kenya and India is far from the fact and their estimation of 830 years for inspection on all registered retailers is apparently misleading, and regrettably with no respect on scientific discussion.

Paragraph 11, Page 31 - India

One of these seizures was of "hanko" indicating a link between ivory from India and Japan

There is no relation between the seizure in India and Japan's domestic ivory trade control. If someone tried to smuggle ivory into Japan from India, it would be found by customs at the border based on the Foreign Exchange and Foreign Trade Law. Even if it passed the border, it would be found through the chain of commerce under the domestic ivory trade control base on the LCES.

Conclusion

It is clear that the critics in the proposal about Japan are not based on the fact and provide no justification of the deficiency of Japan's domestic control on ivory trade.

Japan's domestic control system is properly functioning and able to evict smuggled ivories."

Kenya: "Kenya was surprised, not only by the content, but also by the tone of the Secretariat's comments on this proposal, co-sponsored by India. We respect that there may be some individuals within the Secretariat who do not agree with our views on elephant conservation and trade, but we were extremely disappointed to see this difference of personal opinion reflected in the Secretariat's official assessments."¹¹

Regarding the content of your assessment of this proposal, we believe that, far from "misinterpreting" the Convention, we have in fact interpreted it entirely accurately.

The Secretariat claims to have assessed Prop. 11.24 in accordance with the terms of Resolution Conf. 9.24. However, we believe that it has been extremely selective in deciding which criteria to use. In particular, the Secretariat ignores the precautionary approach set out in the first "Resolves", which states:¹²

¹⁰ CITES Panel of Experts on the African Elephant, 1997. Review of the proposals submitted by Botswana, Namibia and Zimbabwe to transfer their national populations of Loxodonta africana from CITES Appendix I to Appendix II. Report of the CITES Panel of Experts on the African Elephant: pp. 47.

¹¹ The Secretariat strongly objects to this allegation. All positions in its provisional assessment of the amendment proposals are those of the Secretariat as a whole, solely based on the text of the Convention and recommendations and criteria decided by the Conference of the Parties and, where appropriate, the Standing Committee.

¹² The Secretariat does not agree with the comments from Kenya. Annex 4 of Resolution Conf. 9.24 outlines the precautionary measures applicable when considering proposals to amend the appendices of CITES. As explained in the provisional assessment, the paragraphs that are clearly applicable for the retransfer to Appendix I of species included in Appendix II, as proposed in proposal Prop. 11.24, are paragraphs C, D and E of Annex 4 to Resolution Conf. 9.24.

“RESOLVES that when considering any proposal to amend Appendix I or II the Parties shall apply the precautionary principle so that scientific uncertainty should not be used as a reason for failing to act in the best interest of the conservation of the species;”

Kenya understands that this clause applies, not just to the specific sub populations considered in a proposal, but to the species as a whole. It was therefore appropriate for Kenya to look at the question of the effect of downlisting the three southern African populations on all other elephant populations in Africa and Asia to the best of our ability, and with whatever input could be obtained from our fellow range States.

*The Secretariat states that Kenya’s proposal “does not, however, contain up-to-date information on the three populations that are the subject of the proposal, contrary to Resolution Conf. 9.24, third RESOLVES”. In fact this clause states only “that proposals to amend Appendices I and II should be based on the best information available and presented in the format in Annex 6, unless otherwise justified”. There is no requirement here that information be either up-to-date or specific to the sub populations - only that it be the best information available. Kenya believes that it has met this requirement. It is for the Parties to judge this, based on what other information may be brought forward in debate - not for the Secretariat to do so in a preliminary analysis that provides no better information.*¹³

Furthermore, the proposal was sent to all range States, with requests for comments, and all range States were invited to attend a conference, at Kenya’s expense, to make additional corrections and comments. The updates received were incorporated into the proposal. This was “the best information available” to the proponents.

The Secretariat states that the populations of Botswana, Namibia and Zimbabwe do not meet the criteria for Appendix I set out in Res. Conf. 9.24. Kenya disagrees, and refers in particular to Criterion D:

“The status of the species is such that if the species is not included in Appendix I, it is likely to satisfy one or more of the above criteria within a period of five years.”

Kenya believes that if poaching were to return to the dangerous levels of the 1980s, Criterion D would apply. The speed with which poachers decimated Zimbabwe’s population of black rhinoceros, as well as the recent spate of poaching incidents in that country, show that such a return, and its effects, remain very real possibilities. Indeed, it is well known that the wave of elephant poaching experienced during the 1980s moved from north to south of the continent. It had reached Zambia and was on the doorstep of range States further south when the Appendix I listing came into effect.

We also note that the Secretariat has ignored Annex 3 on Split Listing, in particular the statement that “Listing of a species in more than one Appendix should be avoided in general in view of the enforcement problems it creates.” This statement, in fact, could be taken as a precise summary of Kenya and India’s proposal.

While Annex 4 on precautionary measures, Criterion B.2, refers to proposals to transfer species from Appendix I to Appendix II, rather than the reverse, it is Kenya’s view that this criterion was not properly applied at CoP10. Therefore our proposal is correct in seeking to remedy what we believe to have been a violation of Resolution Conf. 9.24 Annex 4 in the first instance.

Proof of the lack of adequate enforcement is now plentiful, as detailed in our proposal, which contains a list of ivory seizures and poaching incidents since 1997. Moreover, it seems obvious to us that the precautionary Annex should be applied not only to the elephant populations of the proponent countries but to the effect on the two species across their range.

¹³ The Secretariat disagrees with this comment from Kenya. More up to date information on the elephant populations of Botswana, Namibia and Zimbabwe than contained in proposal Prop. 11.24, was presented at CoP10. This information can certainly be regarded as ‘best information available’, and should have been included in the proposal. The Secretariat further refers to the footnotes 1 and 2 on pages 3 and 4 of this Annex.

This highlights a flaw in the listing criteria, in that, once a population is on Appendix II, there is nothing in Annex 4 which allows that population to be returned to Appendix I if its listing on Appendix II is found to be causing enforcement problems elsewhere. For this reason, Kenya and India have been forced to apply the precautionary Annex retrospectively. This flaw in Resolution Conf. 9.24 should be clarified in the near future but, in the meantime, Kenya and India have taken the concept of precaution to mean that Annex 4 can be applied retrospectively to assess any impacts.

The Secretariat's interpretation of Decision 10.1 is, in our opinion, incorrect. The relevant clause requires that "the Standing Committee has agreed to a mechanism to halt trade and immediately re-transfer down-listed populations to Appendix I in the event of non-compliance with the conditions of this decision or the escalation of illegal hunting of elephants and/or trade in elephant products due to the resumption of trade."

The requirement was for the Standing Committee to agree to a re-transfer mechanism, so that Parties would have this available should circumstances warrant its adoption. The decision as to whether to use this mechanism is up to the Parties. It is not up to the Standing Committee, and is certainly not up to the Secretariat. The Standing Committee was not given the discretion, in Decision 10.1, to refuse to come up with a re-transfer mechanism unless it felt that re-transfer was justified, and the Secretariat was given no role at all in this process.

As the Secretariat itself pointed out in a footnote to the Decision, however, the only possible mechanism under the treaty is a proposal to amend the Appendices. In our opinion the proper thing to have done was, therefore, for the Standing Committee to have instructed the Depository Government to prepare such a proposal for use at CoP11 should the Parties require it. For the Secretariat to state in its comments that "Neither the Secretariat nor the Standing Committee considered that a request for such a proposal was justified" is to assume that the Parties had given these bodies the discretion to refuse to carry out the Parties' specific instructions if they felt there was no need to do so. This assumption is incorrect. The Standing Committee has, therefore, failed to do what the Parties required. Kenya and India have, with this proposal, remedied that failure.¹⁴

With regard to the issue of a monitoring system, Kenya is, indeed, critical of MIKE, as are many other range States, CITES Parties and elephant experts. As we have stated in the proposal, it is our firm belief that, two and a half years after the decision to downlist the three elephant populations subject to the establishment of a system capable of assessing trends in illegal killing and/or trade and capable of establishing the cause of any change in trends, no such system exists or is likely to exist in the foreseeable future.

We do not regard the Secretariat's interim system as a substitute for the comprehensive, scientific and statistically reliable system which the Parties believed would be established soon after CoP10 and upon which they based their decision to allow the downlistings to take place."

Namibia: *"Namibia wishes to support the assessment made by the Secretariat.*

To clarify on the statement made by the proponents under paragraph 6, Namibia was invited to a meeting suggested to be an elephant range State dialogue, with no indication given that any proposal to transfer the Namibian elephant population to Appendix I would be discussed at such a meeting."

Norway *rejects this proposal, "The proposal does not document that the African Elephant populations in Botswana, Zimbabwe and Namibia are neither small nor declining. Since the Parties at the last COP in 1997 adopted a strict trade control system we have not received any information that the control system does not function. Norway also finds that in the long term is very important to gain accept and local support for nature conservation through local involvement in the management of species like the elephant."*

Switzerland: *See also general comment 1 on page 3 of this Annex.*

¹⁴ The Secretariat wishes to point out that the statement by Kenya is incorrect. See also the Secretariat's provisional assessment, the comments from Switzerland and document Doc. 11.31.1.

“Biological data on other elephant populations than those currently listed on Appendix II, as well as any biological data relating to the time period prior to 1997, are irrelevant.

According to the mechanisms agreed upon, it is the Depositary Government and not any other Party which is to submit such a re-transfer proposal. Neither the Secretariat nor the Standing Committee considered such a re-transfer to be necessary.”

See Annex 2 for comments from the Convention on Migratory Species.

Comments from the Secretariat

The Secretariat notes that the IUCN review confirms that the elephant populations of Botswana, Namibia and Zimbabwe do not meet the criteria for inclusion in Appendix I. Comments provided by Kenya do not remedy the deficiencies in the proposal that were outlined in the Secretariat’s provisional assessment. This conclusion is supported by the comments received from other Parties. The Secretariat therefore recommends that this proposal be rejected.

Secretariat’s recommendation: **Reject**

Prop. 11.25: Amendment of the annotation 604 concerning Appendix II populations of *Loxodonta africana* (Switzerland)

Provisional assessment by the Secretariat

The Secretariat requested Switzerland as the Depositary Government for CITES to submit a proposal to update annotation 604 in terms of paragraph D, Annex 4, Resolution Conf. 9.24. The proposed establishment of zero quotas for the populations concerned were deleted from the proposal by Switzerland once it was known that proposals had been submitted to renew or amend export quotas for raw ivory.

Switzerland included in its proposal the matter of the provisions to trade in live specimens to appropriate and acceptable destinations and/or for non-commercial purposes, as currently reflected in Prop. 11.25. The Secretariat concurs with the explanatory amendment proposed in Prop. 11.25 and supports this proposal.

The Secretariat is aware that all elephant range States referred to in annotation 604 have been consulted, although this is not reflected in the proposal.

Comments from the Parties

Cuba: See under proposal Prop. 21 above.

Secretariat’s recommendation: **Accept**

Prop. 11.26: Transfer of the Australian population of *Dugong dugon* from Appendix II to Appendix I in accordance with the provisions of Resolution Conf. 9.24, Annex 3 (Australia)

Provisional assessment by the Secretariat

Adequate information has been presented that the population concerned does not meet the biological or trade criteria for inclusion in Appendix I. There are insufficient grounds for concern that the current listing of this population on Appendix II will lead to enforcement problems because Australia (like other range States) has not permitted any commercial trade for more than 10 years. In fact, the Secretariat believes on the basis of the information provided in the proposal and the records of international trade in this species since 1988 (a total of one commercial shipment and 17 other transactions primarily consisting of scientific specimens), that the Australian population, and indeed the global population, does not even qualify for inclusion in Appendix II. The Secretariat will therefore recommend to the Animals Committee to include this species in its periodic review of the Appendices (see Doc. 11.25) as a candidate for removal from the Appendices altogether. It is of concern that the proponent, as a range State of the species, has not yet reported on international

trade since 1996. When there is a trade-related concern it stands to reason that, as a first step, all existing mechanisms within CITES be used to address such concerns, including the reporting of all international trade on an annual basis.

Comments from the Parties

Australia: *"In light of Secretariat's comments on this proposals it should be noted that, Australia has not argued that its population meets the criteria established under Resolution Conf. 9.24 Annex 1. Australia has sought the uplisting of its national population on the basis of Resolution Conf. 9.24 Annex 3, after discussing with other range States whether the split listing of the species was a cause for enforcement concern. While the majority of range States did not see a cause for concern, a major range State for a nearby population expressed considerable concern that having the Australian population on Appendix II was causing them concern with regard to illegal trade in their own population. It was on this basis that Australia sought the uplisting, not in order to increase the protection of its own population, but rather in order to assist in the protection of the global population. Australia's reports for 1997 and 1998 have recently been sent to the Secretariat."*

Japan: *"Japan supports the judgement of the Secretariat that there is no specific reason to move this species to Appendix I because abundant population of this stock is maintained at a stable level by means of appropriate management measures of the Australian government and because there is no specific problem of split listing occurring. Therefore, Japan opposes to this proposal."*

Kenya: *"As a range State, Kenya supports the proposal from Australia to transfer its population of dugong to Appendix I. We share the view of Mozambique, as reported in the proposal, that such a transfer would aid enforcement in other parts of the species' range, including Kenya."*

Dugongs have declined greatly in Kenya in recent years. Though plentiful in the Lamu district in the 1960s, aerial surveys in the late 1980s resulted in only a handful of sightings, over the grass beds south and west of Wasini and Kisite Islands.

We are deeply concerned that the Secretariat has chosen to ignore the comments supporting Australia's proposal from ten other range States, particularly as no range State has opposed Australia, while Indonesia and Mozambique in particular welcomed it. In doing so the Secretariat has also ignored, as it did in the case of the African elephant, the recommendation against split-listing in Res. Conf. 9.24 Annex 3.

The Secretariat justifies this position not only by arguing that the dugong does not belong on the CITES Appendices at all, but by stating that it intends to take this matter up with the Animals Committee. We do not understand under what portion of the Secretariat's mandate such comments can be justified. The proposal before the Parties is to transfer a single population to Appendix I, not to remove part or all of the species' population from the Appendices. Ten range States, including Kenya, support Australia's proposal. Given this level of support, we are surprised that the Secretariat's assessment is completely opposite to that of the range States."

Norway: *rejects this proposal. "The proposal in our view fails to demonstrate how international trade effects the Australian population of Dugong".*

Switzerland: *See general comments no's 3, 4 and 5 on page 4 of this Annex.*

United States of America: *"Dugongs were once widely distributed in the tropical and sub-tropical coastal areas of the Indian Ocean and the Southwest Pacific. The species' range extends from eastern Africa and Madagascar east to the eastern coast of Australia and Vanuatu. The species has been extirpated or is extremely rare in much of its former range, largely because of over-hunting. All subpopulations of dugong, other than the one inhabiting coastal Australia, are currently listed in Appendix I. Australia currently protects its dugong population through domestic commercial harvest prohibitions, and researchers estimate stock size at 85,000 individuals. Some regional populations near the southern Great Barrier Reef have dropped by more than 50% in the last decade, but in general the Australian stock is considered to be stable and among the most abundant known."*

Although Australian dugongs may not meet the criteria of Resolution Conf. 9.24 for inclusion in Appendix I on the basis of trade threats or population status, Australia and two regional range countries (Indonesia and Madagascar) believe that transferring the Australian population to Appendix I will assist in regional law enforcement and anti-poaching efforts, and simplify CITES permit issuance. Eight other range countries consulted by Australia (Brunei, Cambodia, China, Philippines, Singapore, Solomon Islands, Vanuatu, and Yemen) also support the proposed transfer. In addition, Resolution Conf. 9.24, adopted by the CITES parties in 1997, specifically recommends that "split-listings" (those involving multiple populations of a species listed in different Appendices) should be avoided where possible. For these reasons we support the Australian proposal"

The Secretariat's assessment presumes that Australia has submitted this proposal as per the criteria in Resolution Conf. 9.24 Annex 1. However, we believe that Australia seeks the transfer to Appendix I of its dugong population on the basis of Conf. 9.24 Annex 3. In the proposal, Australia summarizes consultation with other range States on whether the split listing of the species is causing enforcement problems. In this consultation, a major neighbouring range State (Indonesia) expressed concern that having the Australian population on Appendix II may facilitate illegal trade in specimens from their own population. This argument is important, and persuasive. It therefore appears that Australia seeks this transfer to strengthen global dugong protection, rather than taking obviously redundant protective measures for its own population of the species."

See Annex 2 for comments from the Convention on Migratory Species.

Comments from the Secretariat

The Secretariat acknowledges that Australia has now submitted all outstanding annual reports since the provisional assessment was made. The IUCN review confirms that the population concerned does not meet the criteria for inclusion in Appendix I. Australia, in its comments, indicated that the majority of range States did not see cause for concern. Notwithstanding the comments received from Parties on this proposal, the Secretariat is not convinced that the current split listing of dugong populations can indeed cause problems for any Party or facilitate illegal trade (and the Secretariat would indeed appreciate receiving more information in this regard from the Parties that mentioned that they have experienced problems). Australia does not allow any commercial exports of this species, even though the Australian population is listed in Appendix II, and the level of international trade for more than a decade has been negligible and entirely non-commercial. Split listing should therefore not present any implementation or enforcement problem. The Secretariat is also not convinced that the issuance of permits for minor amounts of non-commercial trade will be more simple under Article III than Article IV, as suggested by the United States of America.

Secretariat's recommendation: **Reject**

Prop. 11.27: Transfer of all populations of *Vicugna vicugna* that are in Appendix I to Appendix II, for the exclusive purpose of allowing international trade in cloth made with wool sheared from live animals, under the name VICUÑA-BOLIVIA (Bolivia)

Provisional assessment by the Secretariat

The proposal refers to the transfer of 'all populations of vicuña to Appendix II' but it is clear from the supporting statement that the proponent refers only to the transfer of all Bolivian populations of vicuña that are in Appendix I. Because of a low incidence of illegal trade, the size and trend of the Bolivian vicuña populations, expanding community involvement in vicuña management, existing international agreements and the low impact of shearing as a management method, the Secretariat supports the transfer of all the relevant Bolivian populations to Appendix II. It would, however, like to recommend that the smallest populations (C, F and I in Table 2) be exploited with exceptional care. It further recommends that Bolivia should establish an annual export quota for vicuña cloth and inform the Secretariat accordingly. The application of annotation '06 concerning marking of products in trade also needs to apply.

Bolivia has not submitted an annual report for 1996 or subsequent years and is urged to take steps to remedy this situation as soon as possible. If the proposal is accepted, Bolivia should report annually on trade in accordance with paragraph d) of Resolution Conf. 8.11 (Rev.).

Comments from the Parties

Cuba: *"Cuba supports the proposal and the comments made by the Secretariat. The management plan implemented by Bolivia and other Andean countries is a fruitful one and forms an example of conservation and sustainable utilization of the species. The Bolivian population continues to increase and counts now more than 45,000 specimens according to the information presented at the 19th meeting of the Convention on Vicuña. Approval of this proposal is beneficial for the species and for local communities."*

Norway: *"If sustainable use and effective trade controls can be implemented Norway is positive towards this proposal."*

Switzerland: See general comment no. 5 on page 4 of this Annex.

See Annex 2 for comments from the Convention on Migratory Species.

Comments from the Secretariat

The comments received from the Parties, and the information contained in the assessment of IUCN, support the Secretariat's earlier assessment that this proposal should be accepted.

Secretariat's recommendation: **Accept**

Prop. 11.28: Deletion of the zero quota for populations of *Vicugna vicugna* listed in Appendix II for trade in cloth made of wool sheared from live animals, under the name VICUÑA-BOLIVIA (Bolivia)

Provisional assessment by the Secretariat

This proposal refers to the current zero export quota applicable to Bolivian populations of vicuña that were transferred to Appendix II as approved by the 10th meeting of the Conference of the Parties. Because of the low incidence of illegal trade, the size and trend of the three Bolivian vicuña populations in Appendix II (amounting to more than 32,000 individuals out of a national population in excess of 45,000), expanding community involvement in vicuña management, existing international agreements and the low impact of shearing as a management method, the Secretariat supports this proposal. It further recommends that Bolivia should establish an annual export quota for vicuña cloth and inform the Secretariat accordingly. See also the remark on annual reporting in the comments on Prop. 11.28.

Comments from the Parties

Cuba and Switzerland: see proposal Prop. 11.27.

See Annex 2 for comments from the Convention on Migratory Species.

Comments from the Secretariat

The comments received from the Parties, and the information contained in the assessment of IUCN, support the Secretariat's earlier assessment that this proposal should be accepted.

Secretariat's recommendation: **Accept**

Prop. 11.29: Transfer to Appendix I of all populations of *Moschus* spp., listed in Appendix II, (India, Nepal, United States of America)

Provisional assessment by the Secretariat

This proposal to transfer all Appendix II musk deer populations to Appendix I does not present adequate information on which to base an assessment of the appropriateness of such a transfer. It particularly lacks recent data on population status or trends. Virtually no information is provided on

monitoring or conservation measures, which may indicate that better protection and management at the national level are the principal conservation issues.

The musk deer has been included in Phase IV of the Significant Trade review of the Animals Committee under the provisions of Resolution Conf. 8.9 and Decision 10.79. The process of reviewing the conservation status and trade in musk deer has been recently initiated. The Secretariat considers it to be premature to alter the current status of any population or species in the appendices until the review process has been completed and the relevant Parties have been advised on the outcome of the review and appropriate conservation and trade control measures. Exporting countries should nevertheless review their procedures concerning the authorization of trade in *Moschus* specimens and strictly apply Article IV (i.e. only authorize exports on the basis of adequate non-detriment findings), accurately report on trade, and identify products in trade to species level. Exports of products derived from captive breeding operations should strictly comply with the provisions of Resolution Conf. 10.16.

The Secretariat notes that the only two *Moschus* range States that have expressed support for this proposal (including one of the proponents) are range States of the species with their populations already listed in Appendix I.

Comments from the Parties

Nepal: *"As co-sponsor of the proposals, we would like to stress that the information on biological and trade data furnished on both the species in the proposals are quite sufficient to support the taxa for listing in Appendix I. We believe that uplisting the species in Appendix I will help controlling the poaching as well as illegal trade on those species and ultimately ensure the long-term conservation of the species."*

Norway: *rejects the proposal. "The proposal does not demonstrate data on population trend as one of the basic criteria to be fulfilled before moving species from Appendix II to Appendix I. The trade in musk deer products is now under review and it is expected that the study will propose appropriate conservation measures."*

Russian Federation: *"Regrettably, the stated in the proposal information on the musk deer population status in Russia and on its capture do not correspond to the reality because of the incorrect initial data and wrong further assessments."*

The data on numbers of musk deer in Russia (Green, Kattel, 1997) are decreased more than twice in comparison with reality. In all substitutive entities of the Russian Federation counts of numbers of commercial animals are conducted annually, and this information is communicated to the Information-analytical Center for Commercial Animals of the Department of Hunting Resources under RF Ministry for Agriculture. These materials are used by the RF Scientific Authority for CITES to prepare the motivation of export quotas. However, to clarify the current status of musk deer population in Russia, CITES Management and Scientific Authorities in Russia held a meeting of experts on December 2, 1999, in which representatives of the Russian Academy of Sciences, of the Information-Analytical Center for Commercial Animals of the Department of Hunting Resources under the RF Ministry for Agriculture, of the Institute of Nature Protection, and of WWF, took part.

On the basis of annual animal counts it was recognized that in some regions of the country, nearby the human settlements, as a result of intensive hunting the numbers of musk deer has decreased, however, as a whole the numbers of musk deer is stable, and in some regions it is even growing. So all the Meeting participants, but one of three representatives from the RF Academy of Sciences, came to a conclusion that in general the numbers of musk deer in Russia during the last years has been stable and, as 10 years ago, it reaches approximately 150,000 of specimens (Western Siberia – 1,8 thousand, Eastern Siberia – 81,7 thousand, Far East – 72,9 thousand). Mr. A. Vaisman (Russian Programme of TRAFFIC) agrees with this estimation of the numbers and quotas of musk deer capture.

Capture of musk deer in Russia is regulated by establishment of annual capture quotas, which are established in corresponding substitutive entities of the Russia Federation. These quotas do not exceed 4% of the numbers of musk deer, and do not cause damage to the population. Moreover, normally these quotas are not used entirely during the 1998-1999 hunting season the capture quotas

for musk deer reached 4900 specimens, but in fact 2769 animals were captured, i.e. 56,5%. In the 1999-2000 hunting season the quota for musk deer capture is fixed at the level of 4326 specimens (2.9 % of live-stocks). This includes 2466 males, which are planned to give 59,655 kg of musk pod. This amount (plus 23,6 kg of musk pod, stored up during the previous years and hitherto not realized) is declared as an export quota for 2000, and this information was communicated to the CITES Secretariat.

In several regions, where the numbers of musk deer is low (Republic of Altai, Khakasia, Yakutia, Amur area), hunting is prohibited, and the Sakhalin subspecies is put on the Russia Red Data Book List. Quotas for musk deer capture will be decreased for the forthcoming season in the Far East region.

The calculations, made by V.I. Prikhotko (the RF Academy of Sciences) and provided in the section 3.1 of the Proposal, are mistaken. He bases his conclusions on the fact that the average weight of musk pod is 14.6 gr (380 kg: 26000 males = 14.6 gr). Factually, the average weight of musk pod is 25 gr (the last consignment of the exported musk pod from the Siberian subspecies weighed 13 kg 270 gr and contained 499 pieces of pod, i.e. the average weight of 1 pod is 26.6 gr while the pod of the Far Eastern subspecies is easier – 15-23 gr, in Buriatia fresh musk pod weighs 29 gr). So, during 1989-1996 not 26000 males were captured, as V.I. Prikhotko considers, but 15200 specimens only, i.e. 1900 males were captured every year. Even according to V.I. Prikhotko's most pessimistic evaluations, taking into account an amendment for the average weight of pod (25 gr), annual capture of musk deer in total (males and females) in Russia is not beyond the scope of 10 percentage level and does not influence essentially the total live-stock. It should be added, that in 1999 the export quota for the musk pod in 1999 has not been used entirely: demand being 71,1 kg (stock of the 1998-1999 season), CITES export permits were issued for 45,11 kg only.

Thereby, in Russia annual quotas for musk deer capture and the declared quotas for export of its pod do not influence essentially the numbers of this species, which has been stable during the last 10 years.

Taking the above into account, the Management Authority for CITES in Russia STRONGLY OBJECTS AGAINST removing of the Russian population of musk deer (*Moschus moschiferus*) from the CITES Appendix 2 to Appendix 1. Moreover, the prohibition for commercial operations with the musk deer pod will cause significant change for the worse in the living conditions of the native population in Siberia and Far East. Sale of the products of hunting is one of the main Article of living for these peoples.

At the same time, there are a number of problems, and foreign agencies and international organizations can render real assistance to settle them. These are: undertaking the all Russia count of musk deer, development of conservation strategy for this species, organization of a meeting on the problems of musk deer conservation."

Switzerland: See general comments no.'s 1, 2, 4 and 6 on pages 3, and 4 of this Annex.

United States of America: "The Secretariat's comments state that this proposal does not present adequate information on which to base an assessment of the appropriateness of such a transfer. The Secretariat has particularly criticized the lack of recent data on population status or trends. We believe that there are more data available, about which the Secretariat may not be aware, although we recognize that the lack of detailed analysis of recent trade data in the proposal may have hampered a thorough assessment of the appropriateness of the transfer. We have attempted to rectify this shortcoming in the following discussion. Furthermore, we have attempted to clarify and provide a better interpretation of the available data on recent population status and trends. This includes discussion of new information not cited in the proposal, which is contained in references that we have been able to obtain since November 1999. We will also be consulting with the other proponent countries over the next few weeks on all of these issues.

Before discussing trade and population data, however, we note that the Secretariat is apparently unaware of the position of Mongolia in making the statement that "...the only two *Moschus* range States that have expressed support for this proposal (including one of the proponents) are range States of the species already listed in Appendix I." In fact, two range States, India and Nepal, are co-proponents of this proposal, while a third range State, Mongolia, has expressed support for the

proposal. (A copy of Mongolia's correspondence is attached). While the musk deer populations of India and Nepal are in Appendix I, the musk deer population of Mongolia is in Appendix II. Both China and, more recently, the Russian Federation have expressed opposition to this proposal. The Russian Federation's opinion was not mentioned in the proposal because no communication was received from the Management or Scientific Authority of Russia until January 16, 2000, although we sent our consultation letter to them in April 1999. Other range States were consulted by the United States, but did not respond to our letter requesting their opinion on the appropriateness of this proposal.

International Trade and Harvest Rates

In response to the Secretariat's comments, we have attempted to analyze and interpret WCMC trade data for raw musk and musk derivatives for the years 1990-97. These data, provided to us by WCMC on September 24, 1999, were included in the original proposal submitted to the Secretariat in November 1999, but were not analyzed in depth in that proposal due to space limitations.¹⁵ We believe these data clearly indicate that substantial quantities of raw musk and musk derivatives have been in international trade since 1990, and that there are a number of issues of concern relative to that trade.

Reported trade (imports) of raw musk for 1990-97 is summarized in Table 1. During that eight-year period (data for 1997 may be incomplete), a total of 1,456 kilograms (kg.) of raw musk was reported to have been imported by CITES States. It is possible to use known quantities of raw musk in international trade to derive an estimate of the number of musk deer harvested to supply that trade (Homes 1999). According to Homes (1999) and data provided by Dr. Edgard Espinoza of the U.S. Fish and Wildlife Service National Forensics Lab, approximately 40 adult male musk deer are required to produce one kilogram of musk (i.e., an average musk pod weighs 25 grams). Furthermore, it has been estimated that 3-5 musk deer are harvested for every adult male with a sufficiently large musk gland (Green 1986, Jackson 1979 and Pridhod'ko 1997 cited in Homes 1999). This is because musk deer are typically taken with nondiscriminating harvest methods (i.e., methods which do not discriminate by species, sex, or age class), principally snaring. For example, in Baiyu County in Sichuan Province, China, 200,000 snares were found in musk deer habitats in 1990-91 (Guo et al. 1997).

Using these conversion factors, we have calculated that a minimum of 58,256 adult male musk deer were harvested to provide the raw musk documented in international trade for 1990-97, and that 174,768 to 291,280 total musk deer were likely harvested as a result. This total does not include the musk deer harvested within China for Chinese domestic use and export (below we discuss what is known about musk consumption and musk deer harvest within China.), nor does it include musk deer harvested illegally in any range country.

WCMC trade data indicate that the Republic of Korea confiscated 913 kg. of musk and 54 unidentified items in 1996 and 1997 from one or more unidentified countries (recorded as XX in the WCMC data). Three shipments were involved, one of 892 kg., one of 21 kg., and one of 54 unidentified items. The 913 kg. represents a harvest of 36,520 male musk deer, and a likely total harvest of 109,560 to 182,600 musk deer. It is possible that the 892 kg. figure represents a typographical error in the trade data; Bennett and Moore (1998) mention that 89 kg. were seized in Korea in April 1996. Eighty-nine kilograms represents a harvest of 3,560 male musk deer.

The trade data for raw musk include a number of questionable transactions that give cause for concern, including the following:

1. The Republic of Korea imported 350 kg. of raw musk from Mongolia in 1994 and 1995. This represents a harvest of 14,000 male musk deer, and a likely total harvest of 42,000 to 70,000 musk deer. These transactions occurred before Mongolia became a CITES Party (date of entry into force - April 4, 1996). The Convention allows Parties to trade with non-Parties only if CITES-comparable documentation is issued by the non-Party. In this case, export documentation

¹⁵ The Secretariat does not understand this reference to space limitations. Decision 10.15 requires that an amendment proposal be accompanied by a substantially completed supporting statement.

should only have been issued by Mongolia if all the requirements of Article IV were met, including the required non-detriment determination. We suspect that this determination was not made, especially considering that Mongolia's musk deer population was estimated to be 44,000 individuals in 1985.

2. The Republic of Korea imported 126 kg. of raw musk from Uzbekistan in 1994 and 1995. This represents a harvest of 5,040 male musk deer, and a likely total harvest of 15,120 to 25,200 musk deer. As Homes (1999) has pointed out, Uzbekistan is not a range State for musk deer. Thus, these records must actually refer to re-exports of musk from Uzbekistan that originated elsewhere. Homes (1999) has suggested that the musk most likely originated in the Russian Federation. In 1994-95, the Russian Federation was serving as the Management Authority for Uzbekistan, yet there are no reported exports of raw musk from Uzbekistan in 1994-95, and the Russian Federation only reported exporting 6.245 kg. of raw musk to Korea in 1994-95 (WCMC).
3. The Republic of Korea imported 125 kg. of raw musk from Kyrgyzstan in 1995. This represents a harvest of 5,000 male musk deer, and a likely total harvest of 15,000 to 25,000 musk deer. Homes (1999) has stated that musk deer may occur in Kyrgyzstan, but in very low numbers. It is unlikely that 125 kg. of musk could be harvested at all, much less sustainably, in that country. Homes (1999) has suggested that much of this musk "may therefore actually have originated elsewhere – in all likelihood the Russian Federation." As in the previous case of Uzbekistan, the Russian Federation was serving as the Management Authority for Kyrgyzstan in 1995, yet there are no reported exports of raw musk from Kyrgyzstan in 1995, and the Russian Federation only reported exporting 6.245 kg. of raw musk to Korea in 1995 (WCMC data for 1990-97).
4. In 1994, 1995, and 1996, the Republic of Korea imported 617 kg. of raw musk from Cambodia. This represents a harvest of 24,680 male musk deer, and a likely total harvest of 74,040 to 123,400 musk deer. Cambodia is not a range State for musk deer, thus, these records must actually refer to re-exports of musk from Cambodia that originated elsewhere. It appears that the Republic of Korea should not have accepted documents listing Cambodia as the country of export rather than the country of re-export. The more significant questions are: Where did this raw musk come from and how did Cambodia acquire it? There are no reported exports of raw musk to Cambodia for 1990-97 (WCMC data 1990-97). The nearest range States for musk deer are Vietnam, Myanmar/Burma, and India. Musk deer have been protected in Vietnam since 1963, in Burma/Myanmar since 1994, and in India since 1972 (Green and Kattel 1997). The populations of India and Burma/Myanmar have been in Appendix I since 1975.
5. The Russian Federation has issued annual export quotas for 1995-99. WCMC trade data, shown below, indicate that these quotas have been exceeded in at least two out of the three years for which there are data.

| <u>Year</u> | <u>Export Quota</u> | <u>Reported Imports</u> | <u>Reported Exports</u> |
|-------------|---------------------|-------------------------|-------------------------|
| 1995 | 70 kg. | 10 kg. + 852 "pieces" | 94.72 kg. |
| 1996 | 40 kg. | 87.682 kg. | 0 |
| 1997 | 40 kg. | 51.0 kg. | 48.0 kg. |
| 1998 | 35 kg. | ---- | ---- |
| 1999 | 134.6 kg.* | ---- | ---- |

(* includes 63.5 kg. of musk from previous years)

As our original proposal indicates, the breakdown of the former Soviet Union and development of a market economy in the Russian Federation stimulated a significantly increased demand for raw musk beginning in 1989. Using the reported import data in Table 1, the Soviet Union/Russian Federation exported 234.9 kg. of raw musk in 1990-97. This represents a harvest of 9,396 male musk deer, and a likely total harvest of 28,188 to 46,980 musk deer. However, if the questionable exports from Kyrgyzstan and Uzbekistan are included, the figure becomes 485.9 kg. This represents a harvest of 19,436 male musk deer, and a likely total harvest of 58,308 to 97,180.

Official Soviet/Russian figures for musk collection between 1989-1993 reached 240 kg, with the size of the take in different regions proportional to the number of the deer (Prikhodko and Ovsyanikov 1998). Prikhod'ko (1997 cited in Homes 1999) further estimated that from about 1989 to 1996, the overall quantity of raw musk traded from eastern Soviet Union/Russian Federation amounted to about 350-380 kg., of which one-third was estimated to come from illegally harvested animals. This latter quantity was estimated by Pridhod'ko (1997 cited in Homes 1999) to represent the capture of 23,000 to 26,000 male musk deer, or a total capture of 90,000 to 104,000 musk deer. However, Pridhod'ko used different conversion factors than the ones we have used here. Using our conversion factors, 350-380 kg. of raw musk represents a harvest of 14,000 to 15,200 male musk deer, and a likely total harvest of 42,000 to 76,000 musk deer.

China plays a very small role in the international trade of raw musk, but is a major exporter of musk deer derivatives (Homes 1999), principally commercial Traditional Chinese Medicines (TCM) (see Table 2). Unfortunately, it is impossible to use known quantities of musk deer derivatives in international trade to derive an estimate of the number of musk deer harvested (Homes 1999), because the reporting units (cartons, boxes, individual items, etc.) cannot be used to derive an estimate of the quantity of musk contained in those derivatives. A different approach must be taken. In China prior to the 1990s, the purchase and distribution of some important TCM materials, including musk, was highly controlled by TCM companies owned by provincial governments (Guo et al. 1997). These TCM companies maintained records of the quantities of raw musk they purchased. Some of these data, taken from the China Red Data Book of Endangered Animals - Mammals (ESSC 1998), were presented in our original proposal under Section 3.1 National utilization, and are summarized in Table 3 below.

Table 3. Estimated annual musk production in selected provinces of China (data taken from ESSC 1998).

| | | |
|------------------|------------------------|---------------|
| Anhui Province | 1957 | 31.1 kg. |
| | 1967: | 1.64 kg |
| Guizhou Province | 1965: | 112 kg |
| | 1970s: | 30 kg. |
| | Probably extinct today | |
| Qinghai Province | 1960s: | > 1,000 kg. |
| | 1972: | 1,800 kg. |
| Shaanxi Province | 1960s: | ~ 100 kg. |
| | 1971-76: | 50-60 kg. |
| | 1977-80: | ~ 200-300 kg. |
| | 1984-85: | 30 kg. |
| Shanxi Province | 1957: | 25.3 kg. |
| (Wutaishan) | 1970s: | 1-2 kg |
| Sichuan Province | prior to 1980s: | 300-600 kg. |
| | 1980: | 862 kg. |
| | Since 1981: | < 300 kg. |

According to Sheng and Ohtaishi (1993), approximately 500,000 musk deer were killed every year in China in the 1960s. This corresponds to an average annual musk production rate of 2,500 to 4,167 kg. Wang et al. (1993) estimated that in the 1950s and 1960s, the total annual output of musk from all species from Yunnan, Sichuan, and Guizhou Provinces was about 1,500 kg. In 1982-84, annual musk production for these three provinces had declined to only about 500 kg., accounting for approximately 20 to 25 percent of the total musk production in China (Wang et al. 1993). Thus, annual musk production in China in the early 1980s was estimated to be 2,000 to 2,500 kg. This represents an annual harvest of 80,000 to 100,000 male musk deer, and a likely total annual harvest of 240,000 to 500,000 musk deer.

In the 1990s, the breakdown of the state monopoly on TCM materials has made it more difficult to estimate current domestic musk usage within China. It has recently been estimated that current, annual medicinal demand for musk in China is between 500 and 1,000 kg. (WWF/IUCN 1997 cited in Bennett and Moore 1998). This estimate is supported by the results of a limited survey of TCM manufacturers in China, carried out by the ESSC in 1996 (Guo et al. 1997). The ESSC sent a questionnaire to 104 key TCM manufacturers regarding their use of various raw materials, including musk, from 1990-95. Useful responses were received from 13 TCM manufacturers. Seven of these 13 manufacturers (54 percent) reported using musk. The annual average consumption of musk for all seven manufacturers during 1990-95 was 255.294 kg. (Guo et al. 1997). Extrapolating this consumption rate to all 104 key manufacturers yields an average annual consumption rate of 2,057 kg. Thus, the 500 to 1,000 kg. estimate appears to be conservative. This represents an annual harvest of 20,000 to 40,000 male musk deer, and a likely total annual harvest of 60,000 to 200,000 musk deer.

Population Status and Trends

Here we reiterate information contained in that proposal, and add additional information obtained since November 1999, in order to address the criticism that our original proposal lacks recent data on population size or trends. We only discuss countries whose populations are in Appendix II.

China. Inferences about musk deer population size, status, and, most importantly, trend in China are based primarily on trends in harvest and, especially, musk production over the years. Because of the ongoing high demand for musk, the high prices paid for musk, and the nondiscriminating techniques used to harvest musk deer, trends in musk production are, in general, a good indicator of musk deer population trends. The most recent population estimate, from the China Red Data Book of Endangered Animals, is that there are 200,00-300,000 total musk deer in China, with an estimated 100,000-200,000 Moschus moschiferus and Moschus berezovskii, 100,000 Moschus chrysogaster, and Moschus fuscus very rare (ESSC 1998). Population trend in China has been steadily downward since the 1960s. The ESSC (1998) estimated that there were over one million forest musk deer (M. berezovskii) in the 1960s, but the number had declined to only 600,000 in 1978-80. Likewise, the Himalayan musk deer (M. chrysogaster) population of Qinghai Province declined from an estimated 180,000 individuals in the 1960s to only 30,000 in the 1970s (ESSC 1998). In 1982-84, forest musk deer had declined to the point that it was difficult to purchase its musk in most of Guizhou Province, western and southern Sichuan Province, and middle and eastern Yunnan Province (Wang et al. 1993). Wang et al. (1993) said that forest musk deer were relatively more abundant in western Sichuan and northwest Yunnan, but that "the total abundance is dropping sharply." Data in Table 3 show a similar declining trend for all musk deer, as do the data in Guo et al. (1997) for the years 1990-95 (see Table 8 in this reference). Their results showed a marked decline in purchases of musk by TCM companies in five provinces (Sichuan, Xizang, Qinghai, Yunnan, and Shaanxi) from 1990 (when 384.895 kg. were purchased) to 1995 (when only 12.677 kg. were purchased). According to the manager of the Shaanxi TCM company, their musk purchases fell to an all-time low of 12 kg. in 1994; this is a significant drop in comparison to their record high purchase of 200 kg. (Guo et al. 1997). The situation in Sichuan Province was even more severe. Musk purchase plummeted from more than 200 kg. per year during 1990-93 to less than 2 kg. per year in 1994-95. During approximately the same time period (early 1990s), Yang (1997 cited in Guo et al. 1997) determined that musk deer population density at six sites in Sichuan Province (ranging from wildlife sanctuaries to non-protected areas) decreased by 12 - 95 percent.

Korea. According to Won and Smith (1999), the musk deer was once at least locally abundant in the high mountainous region in the northeastern, northwestern, east-central, and southwestern portions of the Korean peninsula. However, the musk deer has been hunted to the brink of extinction in Korea (Won and Smith 1999). By the late 1960s, the musk deer was almost extirpated from most of its former range. The total population in Korea was estimated at under 40 individuals in 1981 (Woo 1990 cited in Won and Smith 1999).

Mongolia. The musk deer population of Mongolia was estimated to be 44,000 in 1985, but no formal population censuses have been conducted in Mongolia since then (S. Banzragch, CITES Management Authority of Mongolia, in litt. to Office of Scientific Authority, U.S. Fish and Wildlife Service, May 1999). Musk deer numbers began to decline sharply in the 1950s due to poaching (S. Banzragch, in litt.). Mallon (1985) reported that *M. moschiferus* was uncommon throughout its range in Mongolia. More recently, Bennett (1995) reported that nomad communities in northern Mongolia had reported sharp population declines as a direct result of poaching for the trade. Richard Reading, a mammalogist who has worked extensively in Mongolia, stated that musk deer in Mongolia "...are very rare and have declined greatly in recent years" (pers. comm. with A. Moore, 1998, cited in Bennett and Moore 1998).

Russian Federation. Following the break-up of the Soviet Union, musk deer populations across the region are believed to have declined significantly as a result of poaching for the wildlife trade. Poyarkov and Chestin (1993) reported that in the 1970s, the Russian population consisted of around 100,000-120,000 individuals, but by 1991 this had declined by about 50 percent (to 50,000-60,000). Their estimate is supported by Green and Kattel (1997) who offered a current population estimate for Russia of just 56,000-60,000, distributed as follows: 29,000-30,000 animals in the Altai and Sayan region, 18,000-19,000 in the region of Lake Baikal, 5,000-6,000 in Siberia, 4,000-5,000 in the Russian Far East and 300-350 on Sakhalin Island (Green and Kattel 1997). In Khabarovsk Krai (in the Russian Far East) the population is estimated to have declined by around 60% in the early 1990s, and it was predicted (TRAFFIC International 1994) that this population would be eliminated within three to four years if the poaching continued unabated. Poyarkov and Chestin (1993) place the total number of Sakhalin musk deer (listed in the Russian Red Data Book) at just 300 individuals.

Pridhod'ko (1998) estimated that the Russian musk deer population numbered 160,000-170,000 individuals at the end of the 1980s. He further concluded that, based on the estimated quantities of musk harvested in 1990-93, the total musk deer population must have declined by 50 to 70 percent during that period. Thus he estimated that the total population numbered just 53,000 to 60,000 in 1993. However, Pridhod'ko apparently did not account for potential recruitment during that time period, and the conversion factors he used to calculate numbers harvested could have resulted in an overestimate. Using Pridhod'ko's estimate of 350-380 kg. and our conversion factors, we estimate that 42,000 to 76,000 musk deer were harvested during the period 1989-96. Using our harvest figures and not accounting for potential recruitment, we would obtain a population estimate of 84,000-128,000 in 1996, a decline of 25 to 48 percent.

Table 1. Reported Imports of Raw Musk, 1990-1997*.

| Year | Total Raw Musk Imports Reported by Country of Import (kgs) | Country of Export | No. Male Musk Deer Harvested (calculated as 40 males / kg musk) | Total No. Musk Deer Harvested (calculated as 3-5 x number of males) |
|------|--|-------------------|---|---|
| 1990 | 10.02 | SU | 401 | 1,203 - 2,004 |
| 1991 | 15 | SU | 600 | 1,800 - 3,000 |
| 1992 | 7 | SU, RU | 280 | 840 - 1,400 |
| 1993 | 23.2 | RU | 928 | 2,784 - 4,640 |
| 1994 | 31.0 | RU | | |
| | 69.0 | KH | | |
| | 100.0 | MN | | |
| | 51.0 | UZ | | |
| | Year Total 251.0 | | 10040 | 30,120 - 50,200 |

| | | | | |
|---------------|-----------------|---------|--------------|--------------------------|
| 1995 | 10.0 | RU | 30340 | 91,020 - 151,700 |
| | 0.5 | CN | | |
| | 125.0 | KG | | |
| | 298.0 | KH | | |
| | 250.0 | MN | | |
| | <u>75.0</u> | UZ | | |
| Year Total | 758.5 | | | |
| 1996** | 87.682 | RU | 13627 | 40,882 - 66,335 |
| | 3.0 | CN | | |
| | <u>250.0</u> | KH | | |
| | Yr. Total | 340.682 | | |
| 1997** | 51 | RU | 2040 | 6,120 - 10,200 |
| Totals | 1456.402 | | 58256 | 174,768 - 291,280 |

* WCMC data provided to FWS on 9/24/99

** 1996 and 1997 data are possibly incomplete

We urge the Secretariat to consider the aforementioned information, which we believe clearly demonstrates that the taxa qualify under Resolution Conf. 9.24 for inclusion in Appendix I. We further urge the Secretariat to reconsider its opposition to this proposal. [Note: References cited are available on request]."

Comments from the Secretariat

While the Secretariat appreciates the additional information provided in comments received from Parties it regrets that this information was not made available as part of the initial proposal. Mongolia is indeed a range State of *Moschus moschiferus* as pointed out by the United States of America. On the basis of the additional information provided by the Parties, as well as the IUCN review, the Secretariat agrees that all *Moschus* species are likely to meet criterion C of Annex 4, Resolution Conf. 9.24, although the populations of several species are unlikely to meet criterion A of the same Annex. The Secretariat nevertheless believes that the review of Significant Trade by the Animals Committee, pursuant to Resolution Conf. 8.9, should be allowed to run its course, i.e. that remedial measures be identified and proposed to the range States of the species concerned. The Secretariat believes that this is a vital process within CITES that should be supported by all Parties. Resolution Conf. 8.9 has been designed to take timely remedial action in order to avoid that unsustainable trade would result in the need to transfer a species to Appendix I. Transferring a species to Appendix I once the review process is in place would contradict the intent of the Conference of the Parties when it adopted this Resolution. The Secretariat therefore recommends that this proposal be withdrawn. It also recommends that Parties do not issue CITES documentation for trade in specimens of this species until the review process has been completed. None of the species is in imminent threat of extinction and there remains ample scope for improving resource management and trade controls. The Secretariat is furthermore concerned that the considerable level of illegal trade in musk from Appendix II populations will not be affected by an Appendix I listing, which would nevertheless foreclose options for legal trade.

Secretariat's recommendation: **Reject**, but Parties should not issue CITES documentation for trade in specimens of this species until the review process has been completed.

Prop. 11.30: Inclusion in Appendix I of all subspecies of *Ovis vignei* not yet listed in the appendices (Germany)

Provisional assessment by the Secretariat

This proposal refers to the listing of all populations of the urial subspecies *O. v. arkal*, *O. v. bochariensis*, *O. v. cycloceros*, *O. v. punjabiensis* and *O. v. severtzovi* in Appendix I. None of these populations is currently included in the appendices (see Decision 10. 46), nor are any subspecies recognized in the standard reference for mammalian nomenclature (Resolution Conf. 10.22). The Secretariat will therefore request the Nomenclature Committee to make a recommendation regarding the acceptability of the subspecific names prior to the discussion of this proposal at CoP11. Comments provided below will be revised on the basis of any recommendation received of the Nomenclature Committee.

The proponent has made a commendable effort to compile information on a complex species for which information is fraught with taxonomic problems. The proposal nevertheless lacks important information and published sources (in some instances) for information specific to all of the subspecies (except the nominate form which is already in Appendix I and therefore not a part of this proposal) on threats, national utilization, illegal trade, national legislation and protection, population monitoring, habitat conservation and management measures. Taxonomic uncertainty about the urial persists, e.g. some intergradation occurs between *O. v. cycloceros* and *O. v. arkal* (and possibly other forms) and *O. v. severtzovi* is even regarded by some as belonging to a different species (i.e. the argali sheep *Ovis ammon*).

Most populations mentioned in the proposal (although it is not clear whether all populations of all subspecies are included in the supporting statement) appear to be relatively small, possibly declining (but scientific information about population trends is largely absent), and under pressure from habitat loss and local consumption. On this basis, and largely as the result of small population sizes and probable declines, three of the subspecies (*O. v. bochariensis*, *O. v. punjabiensis* and *O. v. severtzovi*) appear to meet the biological criteria for inclusion of species in Appendix I [i.e. paragraphs Ai), Bi), Biv) and Cii) in Annex 1 of Resolution Conf. 9.24].

The remaining two subspecies (*O. v. arkal* and *O. v. cycloceros*) do not meet the biological criteria for inclusion of species in Appendix I but may possibly meet criterion Bi) for inclusion of a species in Appendix II [Annex 2a, Resolution Conf. 9.24] in terms of population size and distribution, if it can be shown that harvesting of specimens from the wild population for international trade has or may have a detrimental impact.

It is clear from the proposal that international trade occurs only in the form of sport hunting trophies and at a very low level. Export data for the subpopulations not included in the appendices are understandably limited and fragmented, but seem to suggest that only about 35 specimens of all five subspecies together have been imported into the United States of America over the period 1996 to 1999. Only 17 specimens were imported into the European Union from 1992 to 1999 for *O. v. severtzovi*, but comparative data for other subspecies are not provided. Reference is made to trophy hunting pressure but it seems that the actual level of hunting is very low and potentially within the ability of even the smallest subpopulations to sustain such offtakes. No information is presented to indicate that international trade in sport hunting trophies has caused any decline. The Secretariat therefore concludes that none of the subspecies is subject to significant international trade or appears to be under threat from international trade.

Similarly it seems that illegal international trade is essentially unknown, with only one possible case of attempted illegal trade in 1995 (which could have been in specimens of the subspecies already in Appendix I). The Secretariat therefore concludes that international trade is not a significant threat to the populations concerned, based on the current level of international trade and the ability of the main destinations of sport hunting trophies (the United States of America and the European Union) to restrict imports under domestic legislation.

Resolution Conf. 9.24, in paragraph b) under the second RESOLVES, indicates that a species 'is or may be affected by trade' (this being a pre-requisite for inclusion in Appendix I) if 'it is known to be in trade' [subparagraph b)i)]. On this basis, and in view of the recorded trade in hunting trophies in

two of the three subspecies that appear to meet the biological criteria for inclusion in Appendix I, *O. v. bochariensis* and *O. v. severtzovi* appear to meet the trade criteria for inclusion in Appendix I as well. *O. v. punjabiensis* is not in trade, however, as Pakistan as the sole range State does not allow sport hunting of this subspecies. *O. v. punjabiensis* therefore should not be included in Appendix I except to prevent split-listing.

The primary conservation problem concerning all the subspecies mentioned is undoubtedly habitat loss and apparently inadequately regulated offtake for domestic consumption. The Secretariat is concerned about three issues:

- a) inclusion in Appendix I, should the Conference of the Parties adopt this proposal, should not substitute for, or detract from, the urgent need to provide better *in situ* protection of urials and their habitat, which may need to include a strengthening of protected area management, stricter enforcement of hunting regulations and similar measures – especially as international trade is not the principal threat. It is questionable indeed whether an Appendix I listing could bring any real benefit in the short term for the populations concerned;
- b) in paragraph 5.1 of the supporting statement, reference is made to potential actions by importing countries concerning hunting trophies in cases where hunting is not 'clearly beneficial for the species survival ... In this way clear incentives can be established for trophy hunting programmes ... to fulfil certain criteria as recommended by the Caprinae Specialist Group'. This statement goes beyond Article III of CITES in implying that importing countries should refuse imports that are not 'clearly beneficial' for the survival of the species concerned when in fact Article II requires a determination that the purpose of import will not be detrimental to the survival of the species concerned [Article III 3(a)]. Stricter domestic measures should not be part of considerations on whether a species should be included in Appendix I. It would be highly regrettable and counterproductive if importing countries focused on the matter of refusing imports of hunting trophies when trophy hunting may provide in some instances the only real incentive to protect urial populations or their habitat. The range States for urial are probably in need of various forms of technical and financial support for urial conservation, but can probably do without further restraints on trade for non-commercial purposes on the basis of stricter domestic measures of importing countries; and
- c) as recommended in Annex 3 of Resolution Conf. 9.24, the split-listing of taxa in general, and split-listing on the basis of subspecies in particular, should be avoided as far as possible in view of the problems created for enforcement. The Secretariat is reluctant to recommend, however, that the entire species be included in Appendix I given that some populations do not seem to qualify for inclusion.

Comments from all range States were not attached to the proposal, contrary to what is said in the proposal, but at least three range States oppose this proposal

If the subspecific designations used in this proposal are not accepted by the CITES Nomenclature Committee, the Secretariat would support the inclusion of the national *O. vignei* populations of Pakistan, Tajikistan, Turkmenistan and Uzbekistan. In addition, the national *O. vignei* populations of Afghanistan, Iran and Kazakhstan (a non-Party) should be included in Appendix II. The effect of this recommendation is that all the populations referred to in this proposal as subspecies, that independently meet the criteria for inclusion in Appendix I would be included in that appendix. All other populations, excluding the national population of *O. vignei* in India, which is already in Appendix I, would be included in Appendix II.

Comments from the Parties

Germany: In opposition to the Secretariat's comment the proposal reflects all published sources available at the moment on the relevant species. The criteria for the inclusion of a species in Appendix I are - according to Res. Conf. 9.24 - that the species "is or may be affected by trade" and that the biological criteria of Annex 1 of the Resolution are met. However, following the definition given in Res. Conf. 9.24 it is not required that the decline is caused by trade. On the contrary, a species will also qualify for the inclusion in Appendix I if trade is only one of several threats to the population. The proposal clearly shows that trade is one of several factors (like habitat loss or local

consumption) for the decline of the species. Germany is therefore convinced that the criteria for an inclusion in Appendix I are met. Germany has consulted all range States, however, not all of them have reacted yet. These reactions have been attached to the proposal.

Switzerland: See general comment no. 1 on page 3 of this Annex.

United States of America: "We are continuing to review information contained in the proposal, and the relevant literature and information available on this species. Our initial scientific evaluation questions whether all subspecies qualify for inclusion in Appendix I, or whether listing by subspecies is the best approach (versus listing by country populations). We do, however, believe that all currently unlisted subspecies/populations of urial should be included in either Appendix I or II. We are leaning toward a split listing on the basis of country populations rather than subspecies."

Comments from the Secretariat

In spite of the quality of the information provided by Germany, the IUCN review shows that considerable uncertainty nevertheless persists about several aspects of the biology and ecology of the species. The Secretariat, taking these and other comments into account, recommends that the proposal be rejected unless it is amended to refer only to the inclusion in Appendix I of the national populations of *Ovis vignei* of Pakistan, Tajikistan, Turkmenistan and Uzbekistan and all other populations are included in Appendix II. (If the sub-specific designations used in the proposal are upheld by the Nomenclature Committee, the proposal could be amended to propose the inclusion of *O.v. bochariensis*, *O.v. punjabiensis* and *O.v. severtzovi* in Appendix I with all remaining sub-species in Appendix II. This is, however, not favoured by the Secretariat; cf. Resolution Conf. 9.24, Annex 3).

Secretariat's recommendation: **Reject**, unless the proposal is amended to:

- a) include in Appendix I the national populations of *Ovis vignei* of Pakistan, Tajikistan, Turkmenistan and Uzbekistan; and
- b) include in Appendix II all populations of *Ovis vignei* not included in Appendix I

Prop. 11.31: Transfer of the Argentinean population of *Rhea (Pterocnemia) pennata pennata* from Appendix I to Appendix II, in accordance with the precautionary measures of paragraph B.2.b), Annex 4, of Resolution Conf. 9.24. (Argentina)

Provisional assessment by the Secretariat

The Darwin's rhea has been included in Appendix II since the Convention entered into force, and was transferred to Appendix I at the second meeting of the Conference of the Parties (San Jose, 1979) following the adoption of a proposal submitted by Peru. The supporting statement of that proposal largely referred to the status of *P. pennata tarapacensis* in Peru, and contained no information on the population status of the other two subspecies. The current proposal is well prepared and contains all information in the required detail. The supporting statement clearly demonstrates that this subspecies does not qualify for inclusion in Appendix I. The information on the proposed management of the population, once it is transferred to Appendix II, is more than sufficient to comply with the provisions of paragraph B.2.b) of Annex 4 to Resolution Conf. 9.24.

Comments from the Parties

None.

Comments from the Secretariat

The assessment by IUCN confirms the provisional assessment by the Secretariat.

Secretariat's recommendation: **Accept**

Prop. 11.32: Transfer of the North American population of *Falco rusticolus* from Appendix I to Appendix II, with a zero quota for export of wild birds (United States of America)

Provisional assessment by the Secretariat

This proposal to transfer the gyrfalcon to Appendix II is exemplary in being highly informative yet concise. The level of international trade in this species is relatively small in relation to population size and trade consists almost entirely of captive-bred specimens. This population does not meet the biological criteria for inclusion of a species in Appendix I, because the population is not small, restricted or declining. It can also be argued that the population does not meet the criteria for inclusion of a species in Appendix II because no international trade in wild specimens is allowed by either range State [paragraph f) under the second RESOLVES, Resolution Conf. 9.24] and that even unregulated trade is highly unlikely to cause a deterioration in status in the near future [paragraph A, Annex 2a, Resolution Conf. 9.24] given the availability of captive-bred specimens. It is appropriate, however, to retain the population in Appendix II on the basis of the precautionary measure in paragraph B1 of Annex 4 of Resolution Conf. 9.24 and indeed in terms of Article II 2(b) of the Convention.

It should be noted that this population has been the subject of several previous amendments. The entire species was included in Appendix II in 1975 and subsequently transferred to Appendix I in 1979. The North American population was transferred to Appendix II in 1981 and retransferred to Appendix I in 1985 – and is now proposed to be transferred to Appendix II again.

The Secretariat wishes to note its concern that export and import data for the period 1995-1997 for this species correspond so poorly even taking into account delays in the submission of annual reports by some Parties (based on annual reports of international trade in live specimens, summarized below for 1995-1997) given that most trade occurs in individually identifiable live specimens between countries with good resources.

| Year | Exports reported by Canada | Imports recorded from Canada |
|------|--|--|
| 1995 | 50 | 38 |
| 1996 | 36 | 20 |
| 1997 | 59 | 34 |
| Year | Exports recorded from the United States of America | Imports recorded from the United States of America |
| 1995 | 52 | 52 |
| 1996 | 50 | 25 |
| 1997 | 52 | 118 |

The Secretariat therefore recommends that both range States review their procedures for recording and reporting trade in live specimens of this species.

Neither range State of the population concerned has yet submitted an annual report for 1998 but both have requested extensions.

Comments from the Parties

Norway supports this proposal. *“It is documented that the North American population is not declining or meeting the biological criteria, nor is it allowed to trade in wild specimens. To distinguish between wild and captive birds, an identification system (eg DNA fingerprinting) could be a solution concerning trade in captive bred birds to avoid possible negative effect on the wild European population.”*

Comments from the Secretariat

Also given the IUCN review of this proposal, the Secretariat maintains its support for it.

Secretariat's recommendation: **Accept**

Prop. 11.33: Transfer of *Eunymphicus cornutus cornutus* from Appendix II to Appendix I (France)

Provisional assessment by the Secretariat

This proposal, like the next one, contains limited information. Reference is made to a number of annexes, but these have not been provided. Trade data are scanty, but the few that are provided do not establish that international trade is a threat to the survival of this species. At the end of the supporting statement reference is made to the need to include this species in Appendix I because of its similarity with *E. cornutus uvaeensis*. However, this would be contrary to the provisions of Article II of the Convention, which provides such a possibility only for Appendix-II taxa. In addition Annex 3 to Resolution Conf. 9.24 recommends that split-listings should be avoided.

Comments from the Parties

France provided the following observations regarding the provisional assessments of the Secretariat:

1. *Resolution Conf. 9.24 Resolves that that any species that is or may be affected by trade should be included in Appendix I if it meets at least one of the biological criteria included in Annex I to that Resolution. The wild population of *Eunymphicus cornutus* is small, that of *Eunymphicus cornutus uvaeensis* is very small (criterion A ii), it is fragmented and occurs on very few locations (criterion (B i) and the area of distribution decreases (criterion B iv).*
2. *Resolution Conf. 9.24 stipulates in paragraph A. of its Annex 4 that, in the case of uncertainty, either as regards the status of the species or as regards the impact of trade on the conservation of a species, the Parties shall act in the best interest of the conservation of the species.*

Switzerland: See general comments no.'s 3, 4 and 6 (partly) on page 4 of this Annex.

"The biological criteria for inclusion in Appendix I seem to be fulfilled. In addition there is habitat loss. There is international trade and certainly trade potential (expensive birds). Therefore we do not quite understand the position of the Secretariat in Notification 1999/97. We are aware however of the risk that, should the species be transferred to Appendix I, it might become increasingly attractive for collectors and the illegal market. Maybe strictly enforcing the provisions of Article IV would therefore still be the better option than a transfer to Appendix I."

Comments from the Secretariat

After the Secretariat had distributed its provisional assessment to the Parties, France provided details on the trade in *Eunymphicus cornutus uvaeensis*, which is now attached to the amendment proposal. For both subspecies it is clear that trade only occurs in captive-bred specimens, the wild specimens traded were either live birds for zoos or blood samples. The Secretariat would agree that it could have made this more clear in its earlier assessment. Therefore the provisions of paragraph f) under the second Resolves of Resolution Conf. 9.24 also apply. The assessment by IUCN confirms that only *E. c. cornutus* qualifies for Appendix I. A split listing for this species should, however, be avoided. For the reasons mentioned and mindful of the comment from Switzerland regarding drawing attention to a species, the Secretariat is of the opinion that its provisional assessment was correct. Trade in this species is apparently well regulated and in conformity with the provisions of Article IV of the Convention, since no permits are issued for the export of wild specimens for commercial purposes. Illegal trade, if existing, will not change if the species is moved from Appendix II to Appendix I. The Secretariat recommends that France withdraws its two proposals concerning the two subspecies of *Eunymphicus cornutus*.

Secretariat's recommendation: **Reject**

Prop. 11.34: Transfer of *Eunymphicus cornutus uvaeensis* from Appendix II to Appendix I (France)

Provisional assessment by the Secretariat

The information provided in this proposal is limited and contradictory in places. The population of this subspecies is certainly small. A recent census estimated the population at about 800 individuals, on the basis of which the subspecies might qualify for inclusion in Appendix I. Data on the illegal collection of nestlings only concerns 1993, although there should be better information available on the basis of the current monitoring of nesting sites. Trade in captive-bred specimens can not be quantified, but elsewhere in the proposal it is suggested that all specimens in trade are of wild origin. Yet the table provided indicates that at least 22 captive-bred specimens of this subspecies have been exported since 1992. The information provided in paragraph 3.2 does not correspond to what is indicated in the table. One could even deduce that the population has increased slightly, although not much, since 1993 because of the absence of trade in wild specimens, and despite threats to the habitat. The Secretariat believes that much more information is needed to justify the inclusion in Appendix I. In addition Annex 3 to Resolution Conf. 9.24 recommends that split-listings should be avoided.

Comments from the Parties

France: See proposal Prop. 11.33.

Switzerland: See Prop. 11.33. "*Juveniles of this subspecies cannot be distinguished from juveniles of the nominate form.*"

Comments from the Secretariat

See proposal Prop. 11.33 above.

Secretariat's recommendation: **Reject**

Prop. 11.35: Inclusion of *Garrulax canorus* in Appendix II (China)

Provisional assessment by the Secretariat

The proposal to include the hwamei or melodious laughing thrush in Appendix II provides only limited information on population status and trends. It is clear, however, that the species has been traded on a large scale with considerable re-exports from Hong Kong. Authorized exports decreased in 1996 and 1997. An export ban was put in place in 1998 but some illegal trade seems to be occurring. Inclusion of the species in Appendix II in accordance with paragraph B.i) of Annex 2a of Resolution Conf. 9.24 will assist China and other range States to prevent unsustainable offtake. Exporting countries would accordingly be required under Article IV to determine that exports are not detrimental to wild populations [Article IV paragraph 2(a) and 3] which may need the development of alternative management strategies that would not result in such large incidental removals of females or mortalities associated with the transport of live specimens in accordance with [Article IV, paragraph 2(c)]. The proposal does not provide an indication of the level of consultation with other range States.

Comments from the Parties

Switzerland: See general comments no.'s 1 and 3 on pages 3 and 4 of this Annex. "*According to the information provided, this is a very common bird with a huge area of distribution. The population numbers 1 - 1,2 million individuals. This means that (assuming a breeding population of about 500'000 pairs), each year at least 1,5 million birds can be and are removed from the population by mortality and capture, without any negative effect. The international trade volume, which is obviously only a very small fraction in relation to the volume of the domestic market, thus is fully sustainable. In view of that, we have difficulties in understanding the position of the Secretariat in Notification 1999/97.*"

Comments from the Secretariat

In the light of the comments from Switzerland, the information contained in the IUCN review of this species and further consideration of the nature of the trade control problem faced by China, the Secretariat is now of the opinion that the proposal does not meet the criteria for inclusion of the species in Appendix II. The Secretariat therefore recommends that this proposal be withdrawn and that China considers the inclusion of this species in Appendix III.

Secretariat's recommendation: **Reject**

Prop. 11.36: Inclusion of *Cuora* spp. in Appendix II in accordance with Article II, paragraph 2(a), of the Convention and criterion B of Resolution Conf. 9.24 Annex 2a (Germany, United States of America) *Cuora amboinensis*, *Cuora flavomarginata*, *Cuora galbinifrons*, *Cuora trifasciata*; and in accordance with Article II, paragraph 2(a), of the Convention, criterion A of Resolution Conf. 9.24, Annex 2a and/or Article II, paragraph 2(b), of the Convention, criterion B of Resolution Conf. 9.24 the species: *Cuora aurocapitata*, *Cuora mccordi*, *Cuora pani*, *Cuora yunnanensis*, *Cuora zhoui*

Provisional assessment by the Secretariat

A commendable effort has been made in the proposal to provide detailed information to support the inclusion of the Asian box turtles in Appendix II by compiling all available information for nine species and 13 range States. The proposal separates the nine species in two categories, i.e. four species (*C. amboinensis*, *C. flavomarginata*, *C. galbinifrons* and *C. trifasciata*) that qualify for inclusion in Appendix II in terms of Article II, paragraph 2(a), and five species endemic to China (*C. aurocapitata*, *C. mccordi*, *C. pani*, *C. yunnanensis* and *C. zhoui*) that qualify as 'look-alike' species under Article II, paragraph 2(b). While little information is available on the population status and trend for any of the species, all appears to be in trade in significant volumes or in demand for trade (as food items or as live specimens).

C. amboinensis, *C. flavomarginata*, *C. galbinifrons* and *C. trifasciata* meet the criteria for inclusion in Appendix II (paragraphs A and B of Annex 2a, Resolution Conf. 9.24). Exporting countries should establish national export quotas and review their procedures concerning the authorization of trade in *Cuora* specimens and strictly apply Article IV (i.e. only authorize exports on the basis of adequate non-detriment findings), accurately report on trade, and identify products in trade to species level. Exports of products derived from captive breeding operations should strictly comply with the provisions of Resolution Conf. 10.16.

C. aurocapitata, *C. mccordi*, *C. pani*, *C. yunnanensis* and *C. zhoui* similarly meet the criteria for inclusion in Appendix II (paragraph A, Annex 2b, Resolution Conf. 9.24). Some of these species appear to be extremely rare and in demand for international trade (although not currently traded in large volumes) and the range State should maintain strict control over trade in addition to improving measures to protect the relevant populations *in situ*. Exports of specimens derived from captive breeding operations should strictly comply with the provisions of Resolution Conf. 10.16.

The proposal does not indicate that all range States have been consulted, but the Secretariat is aware that at least some range States have been requested to comment.

Comments from the Parties

Germany: "Germany has consulted all range States. Only the Philippines officially replied who support the proposal. "

United States of America: "The Secretariat mentions that the proposal does not indicate that all range States have been consulted in regard to this proposal. We acknowledge this oversight, which likely resulted from mis-communication between the two proponent countries during preparation of the proposal. That consultation did indeed take place, as follows: In April and May 1999, the United States sent consultation letters to all CITES range States for *Cuora* turtles (Bangladesh, Brunei, Cambodia, China, India, Indonesia, Malaysia, Philippines, Singapore, Thailand, and Vietnam) regarding the appropriateness of CITES listing proposals for two *Cuora* species, *C. amboinensis* and *C. trifasciata*, or for the genus *Cuora* as a whole. Bangladesh and Malaysia supported listing

C. amboinensis in Appendix II, Indonesia stated that it would likely support the species' listing, Brunei Darussalam and India supported listing the entire genus, China supported both *C. amboinensis* and *C. trifasciata* for Appendix-II listing, and Singapore stated that *C. trifasciata* may qualify for Appendix II. The Philippines was willing to co-sponsor the proposed inclusion of *Cuora* turtles in Appendix II. We did not receive responses from the other range States."

Comments from the Secretariat

The Secretariat recommends that this proposal be adopted, also taking into account the comments received from the two proponents concerning consultation with range States.

Secretariat's recommendation: **Accept**

Prop. 11.37: Inclusion of *Clemmys guttata* in Appendix II (United States of America)

Provisional assessment by the Secretariat

Domestic trade in spotted turtles nevertheless seems to be the major threat to this widespread and arguably abundant species. Inclusion of the species in Appendix II in accordance with paragraph B.i) of Annex 2a of Resolution Conf. 9.24 is likely to assist the range States to prevent unsustainable offtake. For that reason, the Secretariat supports the proposal.

Comments from the Parties

Switzerland: See general comment no. 3 on page 4 of this Annex. *"Indeed the proposal does not convince that international trade is a problem for the species resp. that any problem could not be solved on the national level without engaging the international community."*

Comments from the Secretariat

In the light of the comments from Switzerland, the information contained in the IUCN review and further consideration of the nature of the trade control problem faced by the United States of America, the Secretariat is now of the opinion that the species does not qualify for Appendix II, and recommends that this proposal be withdrawn. The United States of America may, however, wish to consider including the species in Appendix III.

Secretariat's recommendation: **Reject**

Prop. 11.38: Transfer of *Geochelone sulcata* from Appendix II to Appendix I (France)

Provisional assessment by the Secretariat

The supporting statement refers to the final report on this species presented to the Animals Committee in 1996. The Animals Committee has evaluated this report and decided not to make primary or secondary recommendations to any of the range States. It only decided to ask Mali to clarify the legal status of the species and the basis for the non-detriment findings. Unfortunately, Mali still had not responded at the time of the 15th meeting of the Animals Committee in 1999, but no further actions were considered. The trade data for the years 1995-1997 do not demonstrate any strong increase in trade (other than for re-exports from the United States of America). The exports from Ghana and Togo could be an issue of concern, and need to be addressed by the Secretariat. Specimens currently traded by these countries are all ranched. The supporting statement does not contain new information from verifiable sources on recent developments regarding the status of the species, to justify that the Animals Committee's decision of 1997 was incorrect.

Comments from the Parties

Switzerland: See general comments no.'s 1, 2 and 4 on pages 3 and 4 of this Annex. *"In regard to the assessment of the population size, we cannot find any information on the survey methods (when certain climatic conditions prevail the animals will hide)."*

Comments from the Secretariat

The information provided by IUCN supports the Secretariat's position that the species does not qualify for inclusion in Appendix I. The Secretariat recognizes that there are some problems with the trade in this species, and will continue monitoring this trade, in particular with regard to trade in ranched and captive-bred specimens from non range States.

The Secretariat believes that, in the interest of future work regarding the development of breeding programmes in range States similar to those in place for *Malacocheirus tornieri* and its programme of work to assist Scientific Authorities (see also document Doc. 11.40), it is premature to discuss this proposal. It therefore maintains its opposition to this proposal.

Secretariat's recommendation: **Reject**

Prop. 11.39: Transfer of *Malacocheirus tornieri* from Appendix II to Appendix I (Kenya, United States of America)

Provisional assessment by the Secretariat

The supporting statement recognizes that there is no information available on the current population size of the species concerned. Threats to the species are habitat destruction and collection for international trade. Since 1995 a moratorium on trade in wild-collected specimens has been in place based on a recommendation from the Standing Committee. In the context of that decisions it is important to carefully evaluate some of the information included in the supporting statement.

The information in the WCMC trade database on exports from Mozambique (1997) and Zambia (1995) is based on permits issued, not on actual exports. For instance, 1400 of the 2,125 exported by Mozambique would appear to be destined for the USA. However, none of them seem to have been imported by that country. It seems unlikely that the shipments would have entered undetected, because some permits covered 400 specimens. The Secretariat has rejected permits submitted to it for confirmation. Trade from the Netherlands and the USA should not have been contained in the table on the total trade volume. The export by the Netherlands is actually the return of a shipment to Tanzania of specimens illegally exported from that country. Trade from the USA is either in captive-bred specimens, or in specimens originally imported from the United Republic of Tanzania. The total trade volume is therefore much lower than indicated in the supporting statement.

Of the two main range States only the United Republic of Tanzania is trading in this species. Recent exports (1997) from Tanzania were in ranched specimens (F1), not wild-collected ones. Recognizing that there might be a problem with this trade, the Secretariat has organized, in 1998, a workshop in the United Republic of Tanzania, specifically on the issue of the breeding of this species and of a few other ones. Members of the Animals Committee, the Management and Scientific Authority of the United Republic of Tanzania and traders participated in this workshop. Breeding installations were also inspected. At the workshop, agreement was reached that the United Republic of Tanzania could export, in 1999 and under specific conditions, the remaining stock of captive born specimens. After exhaustion of this stock, trade would only be permitted in specimens of a specific size class (for the year 2000, specimens of a carapax length of no more than 5 cm). The United Republic of Tanzania has to report annually on the production of the breeding operations concerned, and on the quantities exported, before new quota will be established. Trade in wild-collected specimens remains prohibited. The report on this workshop can be obtained from the CITES Secretariat. In view of the measures in place with regard to the current trade from the United Republic of Tanzania and the lack of information on the current population size, the Secretariat is of the opinion that a transfer to Appendix I is not justified.

Comments from the Parties

Kenya: "The Secretariat draws attention to the statement in the proposal regarding the lack of current information on population size. We would point out that the criteria in Annex 1 of Resolution

Conf. 9.24 for listing species on Appendix I do not require that population sizes to be known.¹⁶ Specifically, Criterion C requires only that population trends be known. In the case of the pancake tortoise, as the proposal states, wild populations are declining and the reason for this decline is over-collection for international trade. As noted in the proposal, the species has a very low reproductive output with females normally laying only one egg per clutch, and consequently it is highly vulnerable to over-exploitation. Hence, the species clearly meets the criteria for listing on Appendix I.

The Secretariat further states that there has been a Standing Committee moratorium on the trade in wild-caught specimens since 1995. This is misleading. The 1995 trade moratorium refers only to exports from Tanzania and this was partially rescinded recently with Tanzania being allowed to export so-called ranched specimens. As detailed in the proposal, according to data submitted by exporting Parties in annual reports, since 1995 as many as 3259 pancake tortoises have been traded internationally. It is of concern that, in recent years, most specimens in trade originated from two countries, Mozambique and Zambia, where the species does not exist in the wild. The only explanation can be that these were collected from the wild, possibly illegally, in Kenya or Tanzania.

The Secretariat's comments suggest that the international trade figures contained in the proposal, which were obtained from the World Conservation Monitoring Centre (WCMC), are inflated. The Secretariat argues that the export figures provided to the WCMC by Mozambique and Zambia in their CITES annual reports are based on permits issued, not actual exports.

The Secretariat also argues that some of the exports were supposedly destined for the United States but apparently never arrived. We wish to note that the export permits in question were issued in 1997 and that it is possible that if the permits were used late in 1997, or even in 1998, the relevant import data may not have been contained in the 1997 annual report submitted by the United States. The proposal was written before 1998 trade data were complete. We recognise that the data provided to WCMC in CITES annual reports are imperfect and that, for any given species, recorded export levels rarely exactly match recorded import levels. Nonetheless, it is clear that somewhere between 889 and 3259 Pancake tortoises were traded internationally between 1995 and 1997.

Applying the precautionary approach by assuming that the higher number is correct, we believe that measures should be taken now to address the detrimental impact of international trade on this species.

The Secretariat's comments also note that, of the two range States, only Tanzania is exporting specimens and that these are so-called ranched specimens.¹⁷ This statement, while true, ignores the fact that two African countries where the species does not occur, Zambia and Mozambique, have recently exported thousands of wild-caught specimens. These animals must have originated in Kenya or Tanzania. Hence, we argue that, despite measures taken in Tanzania, the trade in wild-caught specimens continues to impact wild populations. The impact of the Tanzanian "ranching" operations on wild populations may be detrimental as well. Pancake tortoises do not have a large reproductive output. The export of 404 "ranching" tortoises in 1997 may have required the collection of as many as 400 female pancake tortoises from the wild, given the fact that females of the species normally lay one-egg clutches.

The following is additional information on the Pancake tortoise: in Kenya, shifting cultivation accomplished by bush clearing and burning is occurring in the habitat of the Pancake tortoise. In Nguni and Nuu divisions (Mwingi District) the population is estimated at 108 specimens with a ratio of young to adult of 1:3 (Malonza, 1999).

¹⁶ The Secretariat acknowledges that Resolution Conf. 9.24 does not contain the specific requirement that information on the current sizes of populations and sub-populations be reliable. The Secretariat also believes that an overly liberal interpretation of the absence of such a requirement is not appropriate. Proponents are required to submit the best information available as outlined in Annex 6 of Resolution Conf. 9.24. It may not be possible to conclude that a species meets the criteria for inclusion in one of the Appendices unless information is provided concerning population size and trend etc. The Secretariat, when it refers to the absence of reliable or adequate information in this context, therefore indicates that it may not be possible to apply with an acceptable degree of certainty, the criteria outlined in Resolution Conf. 9.24.

¹⁷ The assessment of IUCN also contains information on exports from Kenya, not included in the supporting statement of this proposal.

The area of geographic distribution is decreasing and the species has disappeared from some areas where it was reported previously. The Pancake tortoise does not occur in any protected area. Over collection seems to have almost depleted the Pancake tortoise from Nguni location which was previously the main centre for tortoise collection (Malonza, 1999).

In conclusion, we find the Secretariat's reasons for not supporting Prop. 11.39, namely that population sizes are not known and that the Tanzanian export situation is under control, to be ill-considered. The species clearly meets Criterion C in Annex 1 of RC 9.24 for listing on Appendix I due to its declining wild populations, which are being detrimentally impacted by collection for international trade. Furthermore, the Secretariat has chosen to ignore a very serious threat of over collection of females for ranching programs in Tanzania, and the apparently illegal collection of thousands of pancake tortoises in Tanzania and Kenya for export from Zambia and Mozambique."

Switzerland: See also general comments no.'s 1, 2 (see additional comments) and 6 on pages 3 and 4 of this Annex. *"In 1998 there was a workshop in Tanzania, organized by the Secretariat, where agreement was reached that Tanzania could export in 1999, under specific conditions, the remaining stock of captive born specimens and beginning from 2000, trade would only be permitted in specimens of a specific age class (up to 5 cm), with annual reporting, whereas trade in wild-collected specimens would remain prohibited. Therefore it might be premature to discuss this proposal."*

United States of America: The first two paragraphs of the comments are identical to the first two paragraphs of the comments from Kenya, with the exemption of the following sentence: *"We regret that exports have been authorized in recent years that have caused the species to so qualify."*

"We are familiar with the management recommendations submitted by the Secretariat and members of the Animals Committee, to the government of Tanzania, but we are not convinced that those management measures (e.g., limiting exports to animals below 5 cm carapace length) have been implemented. We agreed to cosponsor this proposal submitted by one of the two range States for the species, due to our assessment that the species meets several of the biological criteria in Conf. 9.24 for inclusion in Appendix I."

Comments from the Secretariat

Both Kenya and the United States of America repeated in their comments trade figures for which the Secretariat has already explained in its provisional assessment that these may not be entirely correct. The proponents did not provide comments on the Secretariat's observations concerned. Some of these shipments involved were destined for the United States of America (two permits for a total of 200 specimens, issued by Zambia; three permits for a total of 800 specimens issued by Mozambique). The Secretariat finds it difficult to accept that the United States of America authorized the imports from non range States as the latter can not have issued valid export permits. Therefore, these trade figures must be incorrect.

In its assessment, the Secretariat has never argued that the species would not qualify for Appendix I. The Secretariat's objection is directed towards the negative effect the uplisting will have on the efforts that the Secretariat and the United Republic of Tanzania are making to develop sustainable trade in captive-bred specimens. The Secretariat is surprised that the United States of America, having authorized the import of a substantial proportion of the specimens traded, is not convinced that the management measures have been implemented. The limited export of specimens with a specified carapax length is supposed to be implemented in the year 2000, whereas the export quota for 1999 relates to an agreed clean-out of larger, captive born-specimens.

The Secretariat believes that, in the interest of future work regarding the development of similar breeding programmes in range States and its programme of work to assist Scientific Authorities (see also document Doc. 11.40), it is premature to discuss this proposal. It therefore maintains its opposition to this proposal.

Secretariat's recommendation: **Reject**

Prop. 11.40: Transfer from Appendix I to Appendix II of that part of the Caribbean population of *Eretmochelys imbricata* inhabiting Cuban waters, pursuant to Resolution Conf. 9.24, for the exclusive purposes of allowing:

- 1. the export in one shipment of all existing registered management stocks of shell accumulated from Cuba's management programme between 1993 and March 2000 (up to 6,900 kg) to Japan for total consumption within Japan with no re-export; and**
- 2. the export each year thereafter, to Japan or to other Parties with equivalent controls which will not re-export, of not more than 500 specimens**
(Cuba, Dominica)

Provisional assessment by the Secretariat

Extensive information is presented in this proposal to support the conclusion that the Cuban population of the hawksbill turtle does not meet the criteria for inclusion of the species in Appendix I. The population is not small (Resolution Conf. 9.24, Annex 1, paragraph A), does not have a restricted range (Resolution Conf. 9.24, Annex 1, paragraph B), is not declining (Resolution Conf. 9.24 Annex 1, paragraph C) and the status of the population is such that its transfer to Appendix II in accordance with Resolution Conf. 9.24 Annex 4 would be highly unlikely to lead to the species satisfying the criteria for inclusion in Appendix I within five years (Annex 1, paragraphs A-C).

The proposed trade in accumulated stocks derived as the by-products of a strictly regulated domestic fishery will not be detrimental to the population. The proposed export of stocks of shell (which should preferably be referred to as scales or carapaces to avoid confusion with other uses of the term 'shells' in CITES, see Notification to the Parties No. 1999/85) from a further 500 individuals harvested per year refers to a domestic harvesting programme that will continue regardless of the outcome of this proposal. The quota of 500 is considered to be cautious and sustainable.

The proposal contains a comprehensive framework for trade, in the form of:

- i) an undertaking by Cuba (paragraph 2.2.12 a. of Prop. 11.40) that would result in the withdrawal of Cuba's reservation;
- ii) undertakings by Cuba (paragraphs 2.2.12 b. - h. of Prop. 11.40) that would result in the internationally supervised export of a single shipment of accumulated registered stocks to Japan; restricting annual harvests to 500 individuals; the allocation of funds for specified conservation, management and research activities; the provision of an annual report on trade to the Secretariat; Cuban support for and participation in regional turtle conservation and management programmes; and a report from Cuba on the conservation and management of *E. imbricata* to the 12th meeting of the Conference of the Parties;
- iii) an outline of exemplary stock management procedures (section 4.1.2 of Prop. 11.40) including a detailed marking and registration system; and
- iv) an outline of the trade control system in Japan as a designated importing country (section 4.1.3 of proposal Prop. 11.40 paragraphs a. and b.) and a detailed procedure that will be followed once trade is authorized (paragraphs c. - q.).

The Secretariat considers that the proposed trade framework is more than adequate for all intended purposes and exceeds the level of control required for trade under Article IV. The proposed procedures for the export of the relevant stock of turtle shell allow for external verification and reconsideration at the 12th meeting of the Conference of the Parties in the event that the above-mentioned procedures were not fully complied with. Concerning the possible involvement of any other Party, if the proposal is accepted, the Conference of the Parties should give the Secretariat a mandate to evaluate the relevant trade controls and report to the Standing Committee after which trade could be permitted.

In conclusion, the Secretariat, whilst noting that some Parties may be concerned about the resumption of commercial trade in hawksbill turtle specimens, considers that the control system proposed is more than adequate; the stocks to be traded are the by-products of legitimate domestic harvesting; the most likely impacts of the proposed trade will be positive, i.e. justifying the level of

controls in place domestically, supporting community and economic development in the broader sense, and contributing to the monitoring of turtle populations and the maintenance of trade control measures. The Secretariat therefore supports the proposal with an appropriate annotation that the inclusion in Appendix II is exclusively to allow the export from Cuba of a maximum of 6,900 kg registered stocks of scales or carapaces and an annual quota representing the harvest of a maximum of 500 individuals from within the territorial waters of Cuba.

Comments from the Parties

Brazil: "We would like to express our concerns about proposals Prop. 11.40 and Prop. 11.41. The hawksbill sea turtle is considered as critically endangered by the IUCN/SSP Red list criteria. It is migratory species, and consequently, a shared natural resource. Therefore, it should be considered that the conservation strategy for this species, as well as the other sea turtle species, has come to a global level, gathering all the countries where they occur.

Therefore, down listing this species from Appendix I to Appendix II compromises populations that use Cuban waters as part of their home range, and consequently, compromises all the conservation efforts made by different countries also used by them.

A possible social justification does not apply since most of the countries inhabited by the hawksbill share serious economic and social problems. Conservation measures should be based on alternatives that do not risk the survival of species.

The sea turtle conservation work performed in Brazil during the past 20 years is a clear example on how species protection can promote social benefits through ecologically sustainable economic alternatives.

For all of the above, we would like to express the position of the Brazilian Government against the transferring of the populations of hawksbill sea turtles (Eretmochelys imbricata) from Appendix I to Appendix II of the CITES Convention."

Kenya: "As a range State, Kenya opposes these proposals. We stated our reasons for doing so in a letter to the Management Authority of Cuba. Our views, as stated in that letter, have not changed.

Kenya accepts, and agrees with, the conclusion of the IUCN Marine Turtle Specialist Group (MTSG) that the hawksbill turtle is Critically Endangered throughout its global range. Kenya does not believe that any species classified as Critically Endangered should be removed from Appendix I if there is any demand for its parts or products in international trade.

This is certainly the case for the hawksbill turtle, whose shell scutes (tortoiseshell) are among the most valuable wildlife products in the world. We further believe that downlisting even part of the global population may harm efforts to conserve the species as a whole.

We are aware that the Critically Endangered designation has been criticised. However, we believe that these criticisms have been answered by the MTSG [Meylan, A.B., and Donnelly, M. 1999. Status justification for listing the hawksbill turtle (Eretmochelys imbricata) as Critically Endangered on the 1996 IUCN Red List of Threatened Animals. *Chelonian Conservation and Biology* 3(2):200-224.] The Status Justification concludes: "...we consider the hawksbill turtle to be Critically Endangered under the current IUCN criteria, based on abundant data documenting declines of at least 80% in most populations over a period of less than three generation times."

The breeding hawksbill population of Kenya, like the populations of other continental African countries bordering the Indian Ocean, has suffered serious declines and is very small today, with only about fifty females nesting annually. With such a highly depleted population, we cannot support any measures that would place our turtles at greater risk. Although we are far from the Caribbean Region, our turtles are subject to the same global market forces, including demand for tortoiseshell products, as those of your near neighbours. We therefore take very seriously the following statement by Dr. Karen Bjorndal:

"Every case of illegal trade and every request to re-open any form of legal international trade encourages fishermen to continue to stockpile scutes, in the belief that eventually they will be rewarded when markets re-open or when opportunities for illegal trade arise. By continuing to vacillate in the commitment to end international trade in hawksbill products, we prevent the cessation of trade from having its full impact on the conservation of hawksbills." [Bjorndal, Karen A. 1999. Conservation of hawksbill sea turtles: Perceptions and Realities. Chelonian Conservation and Biology 3 (2): 174-176.]

Our experience with the African elephant in recent decades has made us well aware of the risk trade in valuable products from an endangered species in another country can pose to our own populations of that species. We consider the hawksbill turtle to be an exactly parallel case.

Kenya believes that, as has happened with the African Elephant, even debating a proposal of this nature may encourage further illegal trade in tortoiseshell. We therefore disagree with the recommendations of the Secretariat, which we believe ignore the risks to the global population if these proposals are accepted."

Mexico: informed the Secretariat that it has provided detailed comments on this proposal to Cuba. It believes that, because of the migratory nature of the species, more range States should participate. It also believes that more scientific information is needed before this proposal can be adequately considered. It therefore cannot support this proposal.

United States of America: *"Although the United States recognizes and appreciates the considerable efforts made by Cuba to conserve sea turtles in the Caribbean, we cannot support this proposal. As a range country, we provided comments to Cuba, based on the information provided to us in a proposal summary dated September 27, 1999. Those comments were already provided to the Secretariat, and are attached. We understand that Mexico, as a range State, offered comments in opposition to the draft proposals, although they were not noted in the final proposals.*

Existing information shows that the Caribbean regional population of hawksbill sea turtles is comprised of genetically distinct stocks. Analyses of genetic samples taken from hawksbill turtles on foraging grounds across the region have revealed conclusively that these genetically distinct stocks are mixed on their feeding grounds. Samples collected from hawksbill turtles inhabiting foraging grounds in Cuba reveal that 30% to 58% of these individuals did not originate on Cuban nesting beaches. We are particularly concerned with the harvest of turtles in Cuban waters that are genetically aligned with source nesting populations in Puerto Rico and the U.S. Virgin Islands. Detailed systematic surveys that can begin to assess nesting trends in Cuba have only recently started, the extent to which the Cuban harvest has impacted populations outside of Cuba is also largely unknown, and we are concerned that the current (and proposed) harvest is unsustainable, and threatens hawksbills throughout the Caribbean. Hawksbill populations are declining or depleted in 22 of the 26 geopolitical units in the Wider Caribbean area for which some status and trend information is available. Globally, the species has experienced a decline of 80% in the last 3 generations (105 years), and it is unlikely that more than 15,000 females nest annually. The species has therefore been categorized by the IUCN as critically endangered. The species does not qualify for transfer to Appendix II under Conf. 9.24: it both satisfies the biological criteria of Annex 1 for inclusion in Appendix I (particularly paragraphs C and D), and does not satisfy the precautionary measures in Annex 4 paragraph B.2.b. of Conf. 9.24.

Based on our current understanding of the status of the hawksbill in the Caribbean we do not believe it prudent for any range country to be harvesting hawksbills for domestic or international consumption. We are very concerned that any reopening of the hawksbill shell trade will undermine hawksbill conservation efforts not only in the Caribbean, but around the world. Based on CITES annual report data and other information, the illegal trade of hawksbill turtle products, as well as other sea turtle species, is the highest volume, most widespread, most long-term, and persistent illegal trade of any CITES Appendix I species in the Convention's 25 year history. We are unable to confirm that adequate enforcement controls are in place to prevent illegal trade in hawksbill turtle (or other sea turtle) specimens from Cuba or other hawksbill sea turtle range States in the Wider Caribbean, if an Appendix II listing were adopted by the COP."

The hawksbill sea turtle is a highly migratory species whose biological status cannot be viewed and assessed based on conditions and information within the boundaries of a single nation. Genetic and tagging evidence clearly demonstrate that foraging populations in any one country represent multiple nesting populations outside of its own territorial boundaries. Based on analysis of genetic samples from Cuba, over 30- 58 percent of hawksbills foraging in Cuban waters are in fact from nesting populations outside of Cuba (including the United States). This proportion may be even higher since these studies did not consider the fact that one of the haplotypes is shared by multiple nesting assemblages as well as Cuba's. Given that hawksbill nesting populations are declining or depleted in 22 of the 26 geopolitical units with known status within the Wider Caribbean (Meylan et al 1999), it cannot be concluded that the "Cuban population of hawksbills" is not declining. In fact, if one only looks at the hawksbills nesting within Cuba, it is still not possible to conclude that the "Cuban population" is not declining since nesting surveys within Cuba are far from comprehensive and detailed systematic surveys only began in 1997(Moncada et al. 1999). This is clearly an insufficient time period to draw conclusions about current nesting trends in Cuba. Moncada et al. (1999) also concluded that the full extent of nesting in Cuba is unknown. The view that scutes from hawksbill carapaces proposed for trade by Cuba are merely the by-products of a strictly regulated legal "domestic fishery" that will continue regardless of the status of this proposal begs the question as to why Cuba should be further rewarded for conducting a fishery impacting the depleted or declining populations of hawksbills nesting within the boundaries of its neighbours in the Wider Caribbean. This is a particular concern for the U.S. as nesting populations in Puerto Rico and the U.S. Virgin Islands are severely depleted from historic levels and significant long term recovery efforts have been and are continuing in the United States and may be undermined if one of the proposals were adopted.

The Cuban proposal states that there are sufficient hawksbills in Cuban waters to sustain harvest at some level; however, Cuban scientists have concluded in scientific publications (Carrillo et al 1999) that the extent to which the Cuban harvest has impacted populations outside Cuba is largely unknown and the sustainability of the current (and proposed) harvest cannot be confirmed. An analysis of the Doi model used by Cuba to justify the sustainability of its harvest suggests that errors in life history parameter estimates greatly affect the resulting population estimates (Heppell et al 1995). These authors suggest additional research is needed to improve the life history parameters for any model used to set harvest levels and recommended modifications to the Doi model to improve its utility. The size and stability of the *Eretmochelys imbricata* 'population' in Cuban waters remain highly questionable. Citations to Doi et al. 1992, Heppell et al. 1995, and Heppell and Crowder 1996 apparently mistake the large numbers in the Heppell papers as an estimate of the size of the population. In fact, these numbers merely demonstrated that the Doi model is inappropriate and that population estimates from such models are unreliable. Further, sea turtle species with high early mortality and delayed maturity (such as hawksbills) may require very large populations to maintain even a small stable adult population (Crouse et al. 1987, Crouse 1999). The reportedly stable harvest of 5000 turtles/year was not adjusted for fishing effort and was only documented for only 22 years. However, increases in fishing effort can produce 'stable' harvest numbers from declining populations for a generation, and a single hawkbill generation is closer to 35 years (Meylan and Donnelly 1999). Mortimer (1995) has demonstrated that declines in sea turtle populations may not be detectable as declines in harvest for a full generation's time.

The Secretariat states that the trade control system proposed "exceeds the level of control" required under Article IV. However, based on CITES annual report data and other information, the illegal trade of hawksbill turtle products as well as other sea turtle species is the highest volume, most widespread, most long-term, and persistent illegal trade of any CITES Appendix I species in the Convention's 25 year history. We are unable to confirm that adequate enforcement controls are in place to prevent illegal trade in hawksbill turtle (or other sea turtle) specimens from Cuba or other hawksbill sea turtle range States in the Wider Caribbean, if an Appendix II listing were adopted by the COP. The species does not qualify for transfer to Appendix II under Conf. 9.24: it both satisfies the biological criteria of Annex 1 for inclusion in Appendix I (particularly paragraphs C and D), and does not satisfy the precautionary measures in Annex 4 paragraph B.2.b. of Conf. 9.24. We strongly urge the Secretariat to consult sea turtle biologists, consider the above, and then reconsider its views on this proposal. [Note: References cited are available on request]."

See Annex 2 for comments from the Convention on Migratory Species.

Comments from the Secretariat

The assessment by IUCN contains detailed information on the composition of the population in Cuban waters, including specimens from nesting sites other than Cuba. The Secretariat notes that the assessment by IUCN supports its position that the populations as defined in the proposal do not meet the criteria for inclusion in Appendix I. It also notes that IUCN's current classification of this species as Critically Endangered has been questioned in recent publications. In addition, a management regime is in place that would satisfy the requirement for a precautionary measure in the event of a transfer to Appendix II (see paragraph B.2.b of Annex 4, Resolution Conf. 9.24). These were the main biological reason for the Secretariat to support this proposal in its provisional assessment.

The Secretariat should like to point out, however, that the component of the proposal referring to the measures to be taken by Japan and other possible importers, has so far not been addressed

Secretariat's recommendation: In view of the wide variety of opinions expressed on this proposal, the Secretariat recommends that the meeting of the Conference of the Parties addresses the various aspects in detail, whereby – given uncertainty about the composition of the population occurring in Cuban waters, see IUCN review – the views of the range States of the species in the wider Caribbean should form an important element in the decision taking process. The measures to be taken by importing countries also need to be addressed.

**Prop. 11.41: Transfer from Appendix I to Appendix II of that part of the Caribbean population of *Eretmochelys imbricata* inhabiting Cuban waters, pursuant to Resolution Conf. 9.24, for the exclusive purposes of allowing the export in one shipment of registered management stocks of shell accumulated legally in Cuba from a national management programme between 1993 and March 2000 (up to 6,900 kg) to Japan for total consumption within Japan with no re-exports
No further annual export from the traditional harvest is sought and all other specimens of *E. imbricata*, including wild stocks in Cuban waters, will be treated as specimens of species in Appendix I and international trade in them shall be regulated accordingly (Cuba)**

Provisional assessment by the Secretariat

This proposal becomes redundant when Prop. 11.40 is adopted. However, from the comments of the Secretariat with regard to Prop. 11.40 it should be clear that it will support this proposal in case the first one is not adopted.

Comments from the Parties

Mexico: see above under Prop. 11.40.

United States of America: *"Please see the discussion under Prop. 11.40, above; all comments are the same. We note further that Cuba has submitted two proposals for the same species, but which specify different sets of proposed annotations. We believe that it is not appropriate for a Party to submit more than one proposal for the same species or population, somehow hedging its bets that if the Parties do not adopt the first they might adopt the second. If this proposal were to be accepted as a precedent, then in the future there would be potentially no limit on how many proposals a Party might submit on the same species, each with a slight variation in its scope of effect. The Rules of Procedure of the COP allow a Party to amend a proposal, prior to voting, and that is the more appropriate avenue. We believe that it would be more appropriate for Cuba to decide which proposal it would like the COP to consider, and to withdraw the other. This procedural view is independent of our position on the specifics of this proposal."*¹⁸

See Annex 2 for comments from the Convention on Migratory Species.

¹⁸ Nothing in the Convention or the Rules of Procedure of the Conference of the parties preclude the possibility for a Party to make different proposals concerning the same species. The Secretariat believes it should be the right of individual Parties to determine which strategy to follow in this respect.

Comments from the Secretariat

The observations of the Secretariat, as contained in its comments to proposal Prop. 11.40, equally apply to this proposal. Irrespective of the outcome of the discussion on the subject in this or future meetings of the Conference of the Parties, the Secretariat believes that this could be a good opportunity to initiate the development of strictly controlled trade mechanisms to deal with possible future downlistings or eliminations of legally acquired stockpiles. The Secretariat therefore suggests that this proposal be adopted on a number of conditions. These conditions should be similar to the ones adopted at the tenth meeting of the Conference of the Parties with regard to trade in ivory of the African elephant.

These conditions could involve the following requirements: a verification of the stock by the Secretariat and a representative of the Region to the Standing Committee within three months after this meeting of the Conference of the Parties; commitments from importing states regarding internal controls and prohibition of re-exports; withdrawal of any reservations held by the Parties involved, within 90 days after this meeting of the Conference of the Parties; and the development of a trade control system by the Secretariat similar to the relevant conditions contained in Decision 10.1, for approval by the Standing Committee.

Secretariat's recommendation: See proposal Prop. 11.40.

Prop. 11.42: Transfer of populations of Sian Ka'an, Quintana Roo of *Crocodylus moreletti* from Appendix I to Appendix II (Mexico)

Withdrawn

Prop. 11.43: Transfer of *Varanus melinus* from Appendix II to Appendix I, in accordance with criteria Ai), Bi) and iv), Cii) and D of Resolution Conf. 9.24, Annex 1 (Germany)

Provisional assessment by the Secretariat

The proposal to transfer the quince monitor lizard to Appendix I presents, in effect, no data on this species, its population status, population trend, area of distribution, threats, national utilization, national protection status, monitoring and management measures and only incomplete data on international trade. No adequate justification is presented to transfer the species from Appendix II to Appendix I and the Management Authority of Indonesia was not consulted. Consultation with Indonesian traders is not sufficient. The Secretariat accordingly cannot support this proposal.

The Secretariat would however, recommend that the Management Authority of Indonesia takes steps to assess the status of this species, protect its habitat where applicable, establish an appropriate export quota or other harvesting restriction (with which the Secretariat is available to assist) and to record trade in Varanus spp. accurately to species level.

Comments from the Parties

Germany: "The Management Authority of Indonesia has been officially consulted, but no comments have been received until now. The proposal comprises all data known to date, including data on distribution and threats. Considering the fact that the species has only been discovered recently, information on population status and trade is obviously limited. However, as referred to under 3.4 of the proposal, there is an actual indication for a growing demand which implies a relevant trade impact on the wild population in the near future."

Switzerland: See general comments no.'s 1, 4 and 6 on pages 3 and 4 of this Annex.

Comments from the Secretariat

The Secretariat, taking into account the comments received from Germany and Switzerland, as well as the IUCN review, maintains its earlier assessment. It would, however, like to suggest that Indonesia establish a conservative annual export quota for this species, in consultation with the Secretariat, to ensure that it is exploited sustainably.

Secretariat's recommendation: **Reject**

Prop. 11 44: Inclusion of *Crotalus horridus* in Appendix II (United States of America)

Provisional assessment by the Secretariat

The United States already presented a proposal to include the timber rattlesnake in Appendix II to the 10th meeting of the Conference of the Parties (Harare, 1997; document Prop. 10.63), but it was withdrawn during the meeting. At that time, the Secretariat recommended that it not be accepted, because the major threats did not relate to international trade. Although the current proposal is well documented, it also demonstrates on the basis of available trade data, that international trade has been strongly decreasing since 1995, and therefore the proposal does not comply with the criteria of Annex 2a of Resolution Conf. 9.24. The main problem the species is facing can more likely be solved by the range State.

Comments from the Parties

Switzerland: See comments on Prop. 11.37. *"Practically the same proposal as in 1997, when it was withdrawn. Indeed the international trade in live animals and products of this species is practically nonexistent. Main reasons for the decline are habitat loss and mass killings during the "Rattlesnake Roundups". The species is not protected in all of its range."*

United States of America: *"The Secretariat states in its assessment that the United States submitted a proposal to include this species in Appendix II at COP10, but withdrew that proposal. While that statement is correct, we note that the current proposal (Prop. 11.44) is significantly different than the proposal submitted to COP10, and should be considered independently, on its own merits. The Secretariat further states that the proposal should be rejected since the major threats to the species are not international trade. We see nothing in Resolution Conf. 9.24 that requires trade to be the major threat to a species in order to include that species in Appendix II. The criteria for inclusion in Appendix II state that a species qualifies if "It is known, inferred or projected that the harvesting of specimens from the wild for international trade has, or may have, a detrimental impact on the species by either: i) exceeding, over an extended period, the level that can be continued in perpetuity; or ii) reducing it to a population level at which its survival would be threatened by other influences."*

The international trade in the timber rattlesnake is projected and inferred to be having a detrimental impact on the species on a cumulative basis, in addition to other threats to its survival. This is especially true for northern timber rattlesnake populations, which differ ecologically, physiologically, and behaviourally from southern and western populations of the same species. Considered independently, northern populations would likely qualify for listing in Appendix I, whereas southern and western populations might not qualify for listing at all. However, such a split listing within a country is not desirable under CITES. Appendix-II listing, therefore, is the most viable option to achieve the protection necessary for the truly threatened populations. Such protection would be accomplished through the Article IV process of non-detriment determination."

Comments from the Secretariat

The Secretariat should like to reiterate that this proposal was withdrawn at the last meeting of the Conference of the Parties. This occurred following a suggestion that the United States of America consider inclusion of the species in Appendix III. The Secretariat notes that the current proposal and the assessment of it by IUCN do not lead to a different conclusion. It should like to point out that the trade criteria to which the proponent refers in the first paragraph of its comments do not apply to the species under consideration. The Secretariat recommends that the proposal be withdrawn and that the United States of America again consider inclusion of the species in Appendix III.

Secretariat's recommendation: **Reject**

Prop. 11.45: Deletion of *Bufo retiformis* from Appendix II (United States of America)

Provisional assessment by the Secretariat

The Sonoran green toad has been included in Appendix II from the moment the Convention entered into force. However, as explained by the proponent (which is the only range State for this species), no legal or illegal international trade in this species has been recorded. Its deletion from the Appendix II is therefore justified, because the species does not meet the trade criterion of paragraph b) under the second RESOLVES of Resolution Conf. 9.24.

Comments from the Parties

United States of America: "The Secretariat is incorrect when it states that the proponent (United States) is the only range State for this species. As specified in Section 2.1 of the proposal, Mexico is also a range State. The result of our consultation with Mexico was not complete before the proposal was submitted (as indicated in Section 6 of the proposal). Mexico has since informed us that it supports this proposal."

Secretariat's recommendation: **Accept**

Prop. 11.46: Inclusion of *Mantella* spp. in Appendix II in accordance with Article II, paragraph 2(a), and Resolution Conf. 9.24 (The Netherlands, United States of America)

Provisional assessment by the Secretariat

Mantella aurantiaca was included in Appendix II at the ninth meeting of the Conference of the Parties. At the tenth meeting of the Conference of the Parties, in 1997, the Netherlands proposed the inclusion of four more species of this genus. The Secretariat recommended that this proposal be accepted. The proposal was withdrawn during that meeting, however, the understanding that Madagascar would undertake biological and population studies, and would envisage the inclusion of all species of *Mantella* spp. in Appendix III. The current proposal contains much more detail on the population status of the various species than the one of 1997, including indications that some of the populations are under heavy collection pressure. The trade data presented are unfortunately incomplete, and one would expect better detail on the one species that is already included in Appendix II. In addition, the WCMC trade data base contains records for imports in 1997 of 450 specimens of *M. veronica* into Belgium and 230 *Mantella* spp. into Germany. Additional information for 1998 includes 25 and 35 *M. betsileo* imported into Germany and Spain respectively, 45 and 25 *M. crocea* to the same countries; *ibidem* 124 and 25 *M. expectata*, and 85 and 25 *M. laevigata*; 400 *M. madagascariensis* into Belgium, 742 into Germany and 105 into Spain. It is therefore clear that most species of this taxon are of interest for international trade. It therefore qualifies for inclusion in Appendix II under the provisions of paragraph B.i) of Annex 2a of Resolution Conf. 9.24. The Secretariat recommends that Madagascar sets cautious export quotas for these species, like it is currently doing for other taxa. Although not mentioned in the supporting statement, Madagascar has been consulted on this proposal and the Secretariat has received a notice from Madagascar that it supports it. The Secretariat would urge the Netherlands to assist Madagascar with some of the further work that needs to be done, as recommended in paragraphs 6 and 7 of the supporting statement.

Comments from the Parties

Madagascar strongly supports this proposal.

Secretariat's recommendation: **Accept**

Prop. 11.47: Inclusion of *Rhincodon typus* in Appendix II in accordance with Article II, paragraph 2(a) (United States of America)

Provisional assessment by the Secretariat

The proposal to list the whale shark in Appendix II unfortunately does not contain adequate information on population status, population trends, threats, national utilization, international trade, illegal trade,

national protection, international measures, monitoring, habitat conservation or management measures, or any indication of consultation with range States. Some of these deficiencies could be the result of a generally inadequate information base or might be resolved through the comments expected from other Parties and competent intergovernmental organizations such as the FAO. The information presented is, however, mostly anecdotal or unpublished and does not present a compelling justification to include this species in the appendices nor allow a determination of whether this species meet the relevant criteria for inclusion in Appendix II. No information is provided to indicate that harvesting for international trade has resulted in negative impacts or that the status of this species is such that it will in the 'near future' qualify for inclusion in Appendix I unless trade is strictly regulated [paragraphs B and A of Annex 2a of Resolution Conf. 9.24].

The Secretariat is concerned about the complications that acceptance of this proposal would have for enforcement. No indication has been given by the proponent of how the probable range of products in trade (whole fins, processed fins, fin soup, oil, skin, leather, fresh meat, processed meat, etc.) could be recognized by enforcement agencies. The Secretariat considers that if the proposal were accepted Parties will not be able to control the trade adequately and it would be helpful if the proponent could develop an identification guide for distribution to other Parties prior to the meeting. The Secretariat is furthermore concerned that most range States appear not to have been consulted and have not provided national harvest or trade data for this species. The proposal should accordingly not be adopted until this aspect has been further explored.

Comments from the Parties

Cuba: *"Cuba does not support this proposal, agreeing to the comments from the Secretariat. It has not been consulted on this proposal although it is a range State. Inclusion of the species in the CITES appendices will, as a consequence, create an additional administrative burden for the Parties who will have to regulate the trade in sharks, and that is not justifiable."*

Japan: *"With respect to management of shark resources, there exists no grave impact of international trade on the resources, and the countries harvesting these this species are recommended to strengthen their resource management measures, as necessary, in accordance with the "International Plan of Action for the Conservation and Management of Sharks" adopted at the 23rd session of the FAO Committee on Fisheries last February. For this reason, Japan does not think there is any need for CITES to enforce its own control measures on international trade of sharks before FAO requirements take effect. If any necessity arises for appropriate management of any shark, such a contracting government which found should a necessity must prepare adopt and implement the national plan of action for managing shark species, but apparently this work was not done. Therefor it is inappropriate to introduce trade measure before management measure be assessed and proposing nation should provide its current situation of states of implementing of the plan of action. The Secretariat's provisional assessments does not make any reference to the International Plan of Action of FAO, but we believe that the Secretariat should take this Plan of Action fully into consideration in making its own assessment because the Plan of Action has been developed based on the discussions on sharks at COP9 and COP10."*

Japan has never received any prior-consultation on this proposal despite the fact that Japan is one of range States of this species. There seems to be some inadequacies in preparing the proposal, as is pointed out by the Secretariat. Furthermore, the proposal presents only limited information such as catch record in some restricted area, and gives no persuasive evidence on the impact that international trade causes on the whole population of this species, which is the most important element in considering Appendix listing. From these reasons, Japan considers that this proposal does not meet the requirements for Appendix listing."

Norway: *"We refer to our general statement and to our comments under Prop. 11.49. Norway can support proposals that document that they are in line with the criteria, if not they have to be rejected."*

Switzerland: *See general comments no.'s 1 and 6 on pages 3 and 4 of this Annex. "It might be quite difficult to determine which Parties are "range States" per definitionem with a species that lives – at least partly – in the international seas. While the international trade can be tackled by CITES, this does not hold true for national use (CITES works only for specimens "taken from the sea", but not*

for specimens taken within the 2000 mile zone). Identification of the products in trade (fin soup, processed fins, oil, skin, leather, cartilage products, meat) will be a problem. This problem must be solved before any listing of the species is to be considered, otherwise we fear that a listing of the species in any Appendix to CITES cannot be enforced."

United States of America: "The comments by the Secretariat on the whale shark proposal identified three problem areas: 1) Inadequate documentation of status, threats and international traffic, 2) Insufficient comment from other range States, and 3) Enforcement issue of how to identify products in trade.

1. Inadequate documentation of status, threats and international traffic. The comment that the "deficiencies could be the result of a generally inadequate information base" is accurate. The situation has been changing very fast, and much of the available relevant information is still unpublished or out of date. An example of the problem can be seen in the FAO information sheet on the species at http://www.fao.org/waicent/faoinfo/fishery/sidp/htmls/sharks/rh_ty_ht.htm. The main text of the sheet is based on a 1984 reference and states that the species is "Apparently of relatively limited interest for fisheries". However, a more recently appended sidebar entitled "Impact of Fisheries" describes the upsurge in landings and international trade, details the drops in catch-per-unit-of-effort, and concludes that overfishing is a problem. The information here that 200 tonnes of meat were exported from India in 1998, the seizure of an illegal shipment from Manila on its way to Taiwan last year (documented in the proposal), and recent news of a January 12, 2000, interception by the Philippines Fisheries Quarantine Service of approximately 1,992 kg of whale shark meat destined for Hong Kong demonstrate that international trade is now substantial. The documentation of international trade is relatively weak because whale shark products are not usually identified as such but reported as "sharks" or "miscellaneous". The whale shark fisheries and attendant international trade have mushroomed in very recent years, as noted in Resolution Conf. 9.17 for all sharks. The data are admittedly sparse, but the recent research results confirming that whale sharks are highly migratory combined with the fact that local harvesting of seasonally-available migratory aggregations has resulted in apparent depletion (of what may be ocean-basin-wide populations) suggest that international trade should be monitored while further studies of population size, structure, and status proceed.

Newly published or in-press sources containing information on long-distance migration (including some of the information cited in the proposal as from personal communications) are:

- Eckert, S. A. and B. Stewart. (2000). Migration and movements of the whale shark (*Rhincodon typus*) in the Sea of Cortez as determined by satellite telemetry. *Environmental Biology of Fishes*, in press. [Documents migratory movement from Mexico to western Pacific].
- Eckert, S. A., G. Kooyman, L. Dolar and W. Perrin. (2000). Brief summary of the Whale Shark Research Program in Borneo and the Philippines, 28 January 1998 - 2 March 1998. Hubbs-SeaWorld Research Institute Technical Report 2000-300, 10pp. [Documents migratory movement from Philippines to Vietnam].

The United States will forward additional relevant references and documentation as they become available. All of the above information further supports our view that the species qualifies, under Conf. 9.24 Annex 2, for inclusion in Appendix II. It should be noted that the recent Conference of the Parties of the Convention on Migratory Species (CMS) in Cape Town, South Africa voted to add the whale shark to its Appendix II, a list of migratory species whose conservation status requires, or would benefit from, the implementation of international co-operative agreements.

2. Insufficient comment from other range States. There are more than 100 range States for this species. As we informed the Secretariat in writing when we submitted the proposal, many of these range States were consulted at the CMS Conference of the Parties in November 1999, and agreed to provide comment; these are now arriving and the substance of those comments will be forwarded as soon as possible. Iran has recently indicated that it supports adding the whale shark to Appendix II. The balance of comments to date have favoured the proposal.
3. Enforcement issue of how to identify products in trade. The problem of enforcement is a real one, but should not be used as an argument against listing when the necessary listing criteria are

met. Similar problems will be faced in the case of the basking shark, and there will be the additional problem of distinguishing between the two giant species. We are consulting with the United Kingdom concerning possible co-operative research (involving also the Forensics Laboratory of the U.S. National Marine Fisheries Service) to develop protocols and basic field identification and information sheets to assist in the identification of products."

Comments from the Secretariat

The Secretariat remains concerned that scientific data for this species are insufficient, thus making an assessment of the appropriateness of a CITES-listing difficult. The Secretariat has taken note of the additional information provided by the proponent, the comments received from other Parties, as well as the information contained in the IUCN review. On that basis it now considers it appropriate to amend its earlier conclusion in the provisional assessment. It, however, should like to quote a very relevant sentence from the IUCN assessment: "Implementation of an Appendix-II listing would be challenging". In view of this it should also like to recommend that the implementation of the Convention for this and the other two shark species be evaluated at the 12th meeting of the Conference of the Parties to establish whether major implementation and/or enforcement problems are being encountered.

Secretariat's recommendation: **Accept**

Prop. 11.48: Inclusion of *Carcharodon carcharias* in Appendix I in accordance with Article II, paragraph 1 (Australia, United States of America)

Provisional assessment by the Secretariat

The proposal to list the great white shark in Appendix I does not present an incontrovertible argument that the species is in imminent danger of extinction from international trade. Little information is presented on population status and trends, even less on actual declines, and rarity is not a criterion for including a species in Appendix I unless there is an additional reason, e.g. a decline can be substantiated (see Resolution Conf. 9.24 Annex 1, paragraph A). The Secretariat considers that the information presented may at best show localized declines or over-harvesting, although the data in general are very limited and/or anecdotal. A case is presented that sport-fishing poses a threat in countries such as Australia, South Africa and the United States of America, but it is not clear why this practice, which mostly takes place in coastal waters, cannot be regulated under national legislation.

It is stated in paragraph 3.3 of the proposal that a 'CITES listing will assist in the conservation of the species through minimizing trade' and in paragraph 6 that 'An Appendix-I listing would help ensure that all CITES Parties are brought to the same international standard'. Both statements are not necessarily correct, and the intended benefits of a listing in Appendix I could equally be derived from a listing in Appendix II. Sportfishing *per se* will not be prohibited through a listing in Appendix I, in situations where this activity plays the equivalent role to trophy hunting of other species. The Secretariat therefore believes that an Appendix-II listing would be much more appropriate given the lack of information, the problems of enforcement (see below) and the level of benefits that will result from such a listing. range States should consider establishing quotas or other restrictions on sport-fishing and commercial fisheries.

The Secretariat is furthermore concerned about the complications that acceptance of this proposal will have for enforcement. No indication has been given by the proponent of how, apart from recognizable items derived from adults such as whole fins, jaws and teeth, other products in trade (e.g. whole fins, processed fins, fin soup, oil, skin, leather, fresh meat, processed meat, etc.) are to be recognized by enforcement agencies. The Secretariat considers that if the proposal were accepted Parties would not be able to control trade adequately and it would be helpful if the proponent could develop an identification guide for distribution to other Parties prior to the meeting. The Secretariat therefore recommends that this proposal be amended to propose inclusion of the species in Appendix II rather than Appendix I.

Comments from the Parties

Australia: *"While not necessarily disagreeing that an Appendix II listing could result in many benefits to the conservation of Great White Sharks, Australia nevertheless considers there are several errors in the Secretariat's preliminary assessment.*

Australia agrees that sports fishing can be regulated in coastal waters under national legislation. However, evidence is presented in the proposal that the species is, at least to an extent, migratory, such that even where a species is protected in some national waters the population of great white sharks within those waters can continue to decline due to overfishing outside of these protected waters. There is also evidence that trade has occurred in jaws of great whites taken illegally within States where the species is protected. CITES listing would assist in the elimination of that trade.

Generally trade in Appendix I hunting trophies occurs where there is a conservation benefit to the species, e.g. landholders receive significant payments from the hunters, making the retention of native habitat and therefore the Appendix I species financially attractive compared to conversion of the land to traditional agriculture. There are few prospects that Australia can identify that would equate to this situation in the marine environment, even within the jurisdiction of a State.

The Secretariat has identified enforcement as an issue. Australia identified in the covering letter to the proposal that it would prepare identification material for the species. The Secretariat should also be aware that it is generally the larger, more easily identifiable, sharks that are most valuable to maintaining the population of the species. Australia would also state that acceptance of all three shark species proposals would reduce the enforcement issues, as these three species are the largest shark species and many of the more valuable products are distinguishable by size as being from any one of the three species."

Cameroon does not object to the proposal, but is interested in learning from the other range States which role CITES can have in the conservation of this species.

Japan: *"As in the case of Rincondon typus / Whale shark, only limited information has been provided. Particularly, with respect to international trade, information is fatally flawed. The only information given to this effect is that "there exists international trade of this species." It seems that the Secretariat takes the view that Appendix II listing of this species is appropriate. However, Japan does not believe that we could discussion on the need to enforce trade control under the circumstances where no specific information on trade is available, even for the proposal on Appendix II listing. For this reason, Japan registers its strong opposition to such an inappropriate proposal." See also under proposal Prop. 11.47.*

Norway: *"We refer to our general statement and to our comments under Prop. 11.49. Norway can support proposals that document that they are in line with the criteria, if not they have to be rejected."*

Switzerland: See general comments no.'s 1, 3 (partly) and 6 on pages 3 and 4 of this Annex and under proposal Prop. 11.47. *"The problems with sport-fishing will have to be regulated domestically. The same holds true for the bycatch problem and/or the directed fishing for local consumption. All these problems can probably not be solved in the framework of CITES (because this is not considered as "taking from the sea", since it takes place within the 200 mile territorial zone). What could be tackled by CITES however, is any international trade in teeth and jaws."*

Spain already provided the proponent in May 1999 with a detailed explanation on why it can not support this proposal. It commented that the data do not sufficiently demonstrate a decrease of the population. In addition it seems that the problematic areas for this species are near countries or regions with adequate legislation.

United States of America: *"As per the proposal, along the eastern coast of the United States, one white shark was caught for every 67 sharks of all species in the 1960s. By the 1980's, one white shark was caught for every 210 sharks, a decline of 68 percent in only 20 years. Australian statistics were even worse. In the 1960s the ratio of white sharks to other species of sharks was 1:22. By the 1980's the ratio was 1:651, a decline of 96.6 percent. The United States believes, contrary to the*

Secretariat's assessment, that these data (along with anecdotal information) indicate a clear decline in the wild population as per Conf. 9.24, Annex 1, criterion C(i). The United States agrees that the problem of enforcement is a real one, but should not be used as an argument against listing when the necessary listing criteria are met. The same problems will be faced in the case of the basking shark and the whale shark. The United States intends to consult with Australia regarding the development of protocols and information sheets for identification of products."

Comments from the Secretariat

As indicated in its comments on proposals Prop. 11.47 and 11.49 the Secretariat agrees with the comment from Australia that including all three large shark species in the appendices would reduce the complications regarding enforcement, at least as far as certain items in trade are concerned. In view of the lack of information about population status and the relatively limited degree of international trade, and taking into account that the IUCN review confirms that the species does not qualify for inclusion in Appendix I, the Secretariat strongly recommends that the proposal be amended to one for inclusion in Appendix II. As suggested for proposal Prop. 11.47, the implementation of the Convention for this species should be evaluated at the 12th meeting of the Conference of the Parties to evaluate if major implementation and/or enforcement problems are being encountered.

Secretariat's recommendation: **Reject**, but **accept** inclusion in Appendix II.

Prop. 11.49: Inclusion of *Cetorhinus maximus* in Appendix II (United Kingdom)

Provisional assessment by the Secretariat

The proponent is commended for the high quality of presentation of information in this proposal to list the basking shark in Appendix II. Adequate information is provided to indicate declines in abundance, which are almost certainly attributable to over-harvesting. There can be little doubt that the species meets the criteria for inclusion in Appendix II. The Secretariat also tested the information provided against the criteria for inclusion of species in Appendix I and the species also qualifies (at least in terms of Resolution Conf. 9.24 Annex 1, paragraph Cii).

If this species is included in the appendices, Parties will nevertheless be presented with considerable challenges, given the wide range of raw and processed products in trade. The proponent has indicated that it will provide a draft identification guide that can serve as the basis for the development of a sheet for this species in the CITES Identification Manual, an example that will hopefully be followed by other proponents in future, when the ability of Parties to enforce a particular amendment of the appendices becomes an issue. It remains to be seen whether the products of this species can be reliably identified, especially processed or partially processed products, or material from juveniles or subadults. The Secretariat, with these reservations about enforcement issues, supports the proposal.

Comments from the Parties

Cameroon does not object to the proposal, but is interested in learning from the other range States which role CITES can have in the conservation of this species.

Japan: *"Although the Secretariat seems to strongly support this proposal, the proposal should be reviewed through full discussion of the following points:*

- *Catch data of the species are limited to those from the EU waters, but when considering it globally, much remains unknown about the state of this species. Therefore, there is no adequate scientific evidence to list this species in Appendix.*
- *Losses of fisheries targeting at this species on a global scale has resulted from economic factors such as declining demand for liver oil--the main product from this species.*
- *Sighting of this species is not scarce even today.*
- *Catch quota has been introduced for this species in the EU waters, the only area where fishing activities targeting this species take place today, and measures could be taken if the EU authorities determine that the stock be on the decline.*

- No sufficient information is available to determine that the presence of international trade is the principal motive of the catch of this species.
- Only one country targets this species, and there is little need to control distribution of incidental catch by other countries.

Because of these reasons, Japan considers that this proposal does not meet the adequacy.

We are aware that ICES, whose documents were quoted in the text of the proposal, is an international organization having scientific information on this species in the North Atlantic, and we believe that comments of the organization should be sought whether or not this species is actually threatened to extinction."

Norway: "We refer to our letter dated 10 November 1999. Very few marine species can go extinct as a consequence of commercial fisheries. In most cases such fisheries will become unprofitable and cease long before the species, or population, become threatened with extinction. The data presented on the state of the basking shark do not in our view meet the fundamental (biological) criteria. Issues concerning marine species is currently discussed in a number of fora, including FAO and a number of international fisheries organizations. In this context it should be mentioned that FAO also has raised the issue of the management of shark species in its International Plan of Action for the Conservation and Management of Sharks. Norway recommend that CITES await the conclusions of these discussions before deciding on fisheries questions"

Switzerland: See under proposal Prop. 11.47.

United Kingdom: "We very much welcome the Secretariat's support for this proposal and are grateful for the remarks on the quality of the information presented.

We note your lower order concerns about the identification of basking shark products in trade and seek to address these as follows.

Section 5 of the proposal makes clear that the basking shark is the only species of the family Cetorhinidae. It has a very distinctive appearance and in our opinion is relatively easy to distinguish from other species. The bulk of trade is in whole fins, which are extremely large and, for this reason alone, unlikely to be confused with those of any other species when detached from the body. In case any difficulty remains, we are currently producing an identification guide to help those involved in CITES enforcement.

This will include:

- drawing of a basking shark;
- detailed drawing of the caudal, pectoral and dorsal fin together with the dorsal fin root;
- drawings of fin x-rays to show the internal cartilage structure, and ;
- comparative drawings of whale shark fins, the only species of comparable size, to highlight the differences between the two species.

We understand that Australia is producing a similar guide for the great white shark, which will also assist comparative identification.

In respect of trade in meat, cartilage and oil we have funded the development of DNA test to enable their critical identification and distinction from the products of other sharks. We have identified two loci that amplify with good specificity from basking shark DNA but not from other sharks tested. This amplified DNA includes sufficient variation to discriminate basking sharks from other Lamniforme shark species, and is short enough to be amplified from very degraded material. We are currently applying this test on a variety of products from sharks of known and unknown identity. A full report on the method and results will be available at the Conference of Parties. We believe the test and identification sheets will, in addition to being of assistance to CITES Parties, also be of assistance to the implementation of the FAO International Plan of Action on sharks."

We believe that basking shark fins (the majority of trade) are readily recognisable. We do not believe that other basking shark products are any less recognisable than the products of the vast majority of species listed on CITES. We also believe that we have gone to greater lengths than many other

Parties in trying to address the issue of recognition as part of the proposal. Given the above we urge the Secretariat to set aside its reservations and give full support to the proposal at its final assessment.

Finally the Secretariat may be interested to know that since submitting the proposal on 12 November, we have received a further indication of support from one Party (Peru). Another Party (Norway) has indicated that it cannot support the proposal."

United States of America: *"The Basking Shark is widely distributed in coastal waters and on the continental shelves of temperate zones in the northern and southern hemisphere. The species is planktivorous (feeds on plankton), ovoviviparous (bears a small number of live young), and is the second largest fish in the world. The biology of the species makes it especially vulnerable to exploitation: it has a slow growth rate, a long time to sexual maturity (approximately 12-20 years), a long gestation period (1-3 years) with a similar interval between pregnancies, low fecundity, and probably small populations. Traditionally, basking sharks have been hunted for their liver, which yields an oil rich in squalene. This international market is now largely superseded, although local domestic markets exist. The international demand for the fins has increased, as it has for most shark species with market-valuable fins. The IUCN lists C. maximus as Vulnerable in the 1996 IUCN Red List based on past records of declining populations, over-exploitation of fisheries, slow recovery rates and the potential for similar declines to occur in the future due to targeted and by-catch fisheries.*

There are no directed fisheries for basking sharks in the United States. Since 1997, fishing for and retention of basking sharks has been prohibited by regulation in Atlantic waters. The prohibition was implemented as a precautionary measure to ensure that directed fisheries would not develop. Basking sharks are not regulated in a Fisheries Management Plan (FMP) in U.S. Pacific waters, but the Pacific Fishery Management Council is considering the development of an FMP for highly migratory species in the area the Council covers.

This species meets the criteria listed for inclusion of species in Appendix II in Resolution Conf. 9.24, Annex 2a, B(i), that "it is known, inferred or projected that harvesting of specimens from the wild for international trade has, or may have, a detrimental impact on the species by exceeding, over an extended period, the level that can be continued in perpetuity."

Identification of fins from many species of sharks is difficult but not impossible. However, the fins of some sharks, most notably basking sharks and whale sharks, are identifiable because of their much greater size than other species, in addition to other characteristics. A simple identification manual can address this."

Comments from the Secretariat

The Secretariat, also taking into account the comments received from Cameroon, Japan, Norway, Switzerland, the United Kingdom and the United States of America, as well as the IUCN review, recommends that this proposal be adopted. As suggested for proposals Prop. 11.47 and 11.48, the implementation of the Convention for this species should be evaluated at the 12th meeting of the Conference of the Parties to evaluate if major implementation and/or enforcement problems are being encountered.

Secretariat's recommendation: **Accept**

Prop. 11. 50: Inclusion of *Latimeria* spp. in Appendix I in accordance with Article II, paragraph 1, and Criteria Ai) and ii), Bi) and iv) and Ci) and ii), Annex 1 of Resolution Conf. 9.24 (France, Germany)

Provisional assessment by the Secretariat

The information provided in the proposal is somewhat restricted and contradictory in places. The inclusion of all coelacanths in Appendix I is nevertheless justified, principally on the grounds that both known populations of the two described species are small, localized and in demand for trade (albeit mostly trade that would not be prohibited under Article III, paragraph 3(c) (i.e. non-commercial trade). The most important source of threat seems to be targeted harvesting for scientific collections, an activity that will not be restricted through a listing in Appendix I. While the capturing of live

specimens for display may pose a threat, the specialized requirements of such displays are likely to limit the number of specimens that will be affected. It can be expected that such displays will inevitably be declared to be scientific in nature rather than commercial, and an Appendix-I listing in itself will not be sufficient to prevent negative impacts from such collections.

It is therefore important that other steps are taken by the range States to improve national protection (i.e. improving legislation and/or enforcement concerning habitat protection and zonation of commercial or artisanal fishing to exclude prime coelacanth range or reduce coelacanth by-catches), and regulate offtakes for non-commercial purposes (i.e. targeted harvesting and domestic commerce in coelacanth specimens that may be subsequently exported for scientific or other ostensibly non-commercial purposes). Assistance from other Parties will likely be needed to monitor populations *in situ* and regulate the acquisition of specimens by scientific institutions without creating incentives for more targeted harvesting.

Comments from the Parties

Germany: *"The remark of the Secretariat that under an Appendix-I-listing a harvesting for scientific activities may not be restricted is only part true. Under Art. III of the Convention permits may be granted for non-commercial scientific purposes, but on the other hand Art. III provides for a check by the importing country whether the planned activity really is non-commercial or not."*

Japan: *"Taking into account the necessary conditions for Appendix listing it is not possible to determine whether or not the species should be listed because of lack of scientific information."*

Although Japan has no intention to deny the need to establish some level of limitation to international trade in this species, We believes it necessary for the Secretariat to emphasize in its assessment that this is such an exceptional case (Namely, it may be rare species, but there is no information to conclude it is endangered or not).

On the other hand, we are quite concerned that Appendix listing on the level of genus on the assumption that unknown species might exist could result in an indefinite expansion of the listing species on Appendices. We therefore believe that species-specific Appendix listing is more appropriate. Even discover a new species urgently requiring Appendix listing, we can cope with it effectively through the amendment procedure with postal voting set forth in Article XV(2) of the Convention."

Norway: *"We refer to our general statement and to our comments under Prop. 11.49. Norway can support proposals that document that they are in line with the criteria, if not they have to be rejected."*

Switzerland: See general comment no. 6 on page 4 of this Annex.

United States of America: *"The species Latimeria chalumnae was included in Appendix I in 1989. Coelacanths (Latimeria spp.) are the sole survivors of the ancient Devonian lineage of crossopterygian fish, which played a pivotal role in the evolution of land-living tetrapods. According to the latest IUCN Red List of Threatened Animals, the global status of the species Latimeria chalumnae is Endangered, due to its small population size and limited distribution. There is only a small breeding population off two islands of the Comoros Archipelago in the western Indian Ocean. The same must be assumed for Latimeria menadoensis considering that only two specimens have been caught so far. Without protection for the entire genus in Appendix I, trade in these species (excluding L. chalumnae) is possible and likely to exist if specimens become more available. Latimeria is probably one of the most sought after fish genera for collectors and scientists. Further threats exist when Latimeria is occasionally offered in trade, and may be confused with a deep sea grouper sought in Traditional Chinese Medicine. Due to a small population size and a limited distribution, any commercial trade in coelacanths will likely have negative impacts on the existing population. Inclusion in Appendix I for the entire genus would prohibit commercial trade of currently recognize species as well as newly discovered species, such as L. menadoensis, and tightly regulate trade for scientific, educational or public display purposes. A database of such trade and information on harvest will contribute greatly to the scientific knowledge of these deep-water fishes."*

The United States generally agrees with the Secretariat's evaluation. While the Secretariat is correct to conclude that an Appendix-I listing in and of itself will not be sufficient to prevent negative impacts from scientific collections, such a listing will require the Scientific Authorities of the States of export and of import to make a finding that the export/import will not be detrimental to the survival of the species. Since most specimens are likely to be transported from the range State to another State, this will place collection for scientific or other non-commercial purposes under greater scrutiny.

We agree that steps should be taken by range States to improve national protection. A CITES Appendix-I listing can assist the efforts of range States to provide national protection through the requirement that the Management Authority of the State of export conclude that the specimen was not obtained in contravention of the laws of that State for the protection of flora and fauna, before issuing an export permit."

Comments from the Secretariat

The Secretariat agrees with the comments of the United States of America and did not imply the contrary with what is said in the comment from Germany. This is indeed a highly unusual case, as mentioned by Norway and acknowledged to some degree by Japan. The Secretariat recommends that the proposal be accepted despite uncertainties about population status.

Secretariat's recommendation: **Accept**

Prop. 11.51: Inclusion of *Latimeria menadoensis* in Appendix I (Indonesia)

Provisional assessment by the Secretariat

This proposal becomes redundant when proposal Prop. 11.50 is adopted. However, from the comments by the Secretariat with regard to proposal Prop. 11.50, it should be clear that it will support this proposal in case the first one is not adopted.

Comments from the Parties

Japan: see under proposal Prop. 11.50.

Norway: *"We refer to our general statement and to our comments under Prop. 11.49. Norway can support proposals that document that they are in line with the criteria, if not they have to be rejected."*

Switzerland: See general comment no. 6 on page 4 of this Annex.

Secretariat's recommendation: **Accept**

Prop. 11.52: Inclusion of *Poecilotheria* spp. in Appendix II (Sri Lanka, United States of America)

Provisional assessment by the Secretariat

The lack of information on the population status of all species of these Asian tarantulas makes it difficult to assess to which extent these populations may be affected by international trade. Some anecdotal information is provided for the Sri Lankan species, none for the Indian species. The proposal suggests a considerable amount of illegal trade, and because exports from Sri Lanka are prohibited, one would expect confiscations resulting from customs controls at the time of export from Sri Lanka. This information is not provided. The threat to some species seems more the result of habitat destruction and human encroachment, although other species seem to benefit from that. On the basis of the information currently available, the Secretariat does not believe that these species qualify for inclusion in Appendix II under the provisions of Annex 2a of Resolution Conf. 9.24.

Comments from the Parties

Switzerland: See general comments no.'s 3 and 6 on page 4 of this Annex. *"In view of the reproductive potential of these species and that captive breeding is indeed possible and takes place, a number of 2500 specimens imported, as reported by the USA in 5 years is negligible. We doubt, if*

submitting a proposal for an Appendix II listing with the purpose to make thus possible the adaptation of national legislation, i. e. to initiate protective measures on a national level is compatible with the aims of CITES."

United States of America: *"The Secretariat states in its assessment, "because exports from Sri Lanka are prohibited, one would expect confiscations resulting from customs controls at the time of export from Sri Lanka. This information is not provided." First, we must note that customs border controls throughout the world are more on the importing end than the exporting end (in other words, countries have more effective customs controls on imports than on exports). CITES controls are no exception; this is one of the prime factors that necessitates the treaty itself. Otherwise, one could argue that we should exclude from CITES protection any species protected by a country's domestic law. Rather, CITES listing can reinforce and assist in the enforcement of domestic statutes. Without inclusion of these species in the CITES Appendices, enforcement by importing countries of Sri Lanka's domestic legislation is not possible. That being said, we have just received information from Peter Kirk, an expert on Poecilotheria and one of only a few of biologists who have actually studied them in the wild, that there has been at least one confiscation of these tarantulas at the Colombo airport (P. Kirk, pers. comm. with OSA staff, 27 January 2000).*

In regard to biological and trade information, we wish to emphasize that these species have restricted geographic ranges and most occur in primary forest habitats that are disappearing rapidly. Peter Kirk has told us that based on his experience, these species tend to occur in low densities and have local distributions that are determined primarily by the distribution of trees that have suitable burrow holes (P. Kirk, pers. comm. with OSA staff, 27 January 2000). Thus, most species do not do well in reforested areas. Mr. Kirk mentioned that most species do not tolerate disturbance by human encroachment; he frequently has to travel 4 or 5 miles into the forest before he begins to encounter these tarantulas. Mr. Kirk also mentioned that these species have been the subject of heavy collecting pressure, especially by European collectors. He has heard informally of this genus being imported into Switzerland, Denmark and Germany in very large numbers in recent years. He states that very few of the specimens brought out of India and Sri Lanka are done via legal channels. Finally, Mr. Kirk does not believe that the current harvest rates from wild populations are sustainable. These points were perhaps not emphasized as strongly as they should have been in our original proposal. We encourage the Secretariat to re-evaluate this proposal, based on the biological and trade information presented here and in the original submission."

Comments from the Secretariat

As indicated in the IUCN assessment, most of the trade data relate to specimens of captive-bred origin, although it is recognized that illegal trade in wild-collected specimens may occur as well. The Secretariat also recognizes the comments made by the USA in its first paragraph, but our comments did not imply the contrary. The Secretariat concurs with the comments by Switzerland that the inclusion of the taxon in Appendix II for the purpose of adaptation of national legislation is not really appropriate. The two range States concerned should consider the possibility of including this taxon in Appendix III, in accordance with the relevant provisions, and develop adequate protection for the habitats in which these spiders occur.

Secretariat's recommendation: **Reject**

Prop. 11.53: To harmonize exemptions related to medicinal products by combining the current annotation #2 for *Podophyllum hexandrum* and *Rauvolfia serpentina* with annotation #8 for *Taxus wallichiana* in the Interpretation of Appendices I and II (Switzerland)

Provisional assessment by the Secretariat

This proposal is presented by Switzerland on behalf of the Plants Committee. It was developed by this Committee in an attempt to reduce the diversity of annotations with regard to certain species, to ensure that the same type of parts or derivatives are subject to CITES controls for the species concerned, and to provide a text that could easily be used for medicinal plant species included in Appendix II at this or future meetings of the Conference of the Parties.

Secretariat's recommendation: **Accept**

Prop. 11.54: Inclusion in Appendix II of roots of *Panax ginseng* in accordance with the provisions of Article II, paragraph 2(a) (Russian Federation)

Provisional assessment by the Secretariat

This proposal was sent to the Parties with Notification to the Parties No. 1999/43 in accordance with the provisions of Resolution Conf. 8.21. The Secretariat has not received any comments in writing, nor is it aware of the Russian Federation having received any. At the ninth meeting of the Plants Committee (Darwin, Australia, June 1999) the observer from the Republic of Korea expressed strong opposition against the proposal because of the large scale artificial propagation of this taxon in that country, where it no longer occurs in the wild. This was communicated to the Russian Federation.

It is clear that this species has become extinct in many parts of its original distribution area. It is still in high demand, and roots from wild origin can fetch extremely high prices. Including the species in Appendix II would assist in the implementation of the management programme currently in place in the Russian Federation. If this proposal is accepted, the Russian Federation should provide adequate identification materials to assist enforcement agencies with the implementation of it, in particular with regard to the differentiation between wild-collected and artificially propagated roots.

Since only the roots are in trade, this species should be annotated in the same manner as *Panax quinquefolius*, the American ginseng.

Comments from the Parties

Republic of Korea:

1. *Background on Panax Ginseng*

Panax ginseng, well known as Korean ginseng, is one of the six species in the genus Panax of the Araliaceae family. Panax ginseng is a medicinal herb with proven healing properties that has been used for more than 1,500 years as hematinic tonic in many Asian countries, including Korea and China. Dr. C.A. Meyer, a Russian scientist, first named this herb Panax ginseng in 1847 – a name that underlines what Dr. Meyer believed was the herb's potential to cure all diseases.

Korean farmers have cultivated the plant in lower valley fields and mountainous regions since the 16th or 17th century, developing and improving techniques used in growing ginseng and taking advantage of favourable climate and soil conditions on the peninsula for growing Panax ginseng. Through the years, three kinds of Panax ginseng came to be known: wild ginseng, wild-simulated ginseng (a type of ginseng that retains many of the health properties found in wild ginseng, and which has been cultivated in Korea's mountainous regions for about 1,000 years; it takes more than 10 years for a single plant to reach harvest) and cultivated ginseng (grown in lower valleys; requires four to six years to reach harvest).

2. *Russian Proposal: Problems that Will Arise*

To be sure, Korea agrees on the need for conserving wild ginseng as proposed by Russia. However, it is important to highlight that not all types of Panax ginseng require the same kind of protection. The three different types of Panax ginseng have the same scientific name, Panax ginseng. Because the morphological and compositional differences between wild and cultivated types are extremely subtle, it has proven difficult to tell them apart. According to the interpretation of the CITES Appendices, there is no way of distinguishing between wild species and artificially propagated ones. Therefore if the Appendix II of the CITES includes Panax ginseng, many difficulties related to discrimination against unrestricted items (such as cultivated Panax ginseng) will emerge.

The proposed international controls will affect all types of Panax ginseng since the three types are known as "Panax ginseng". By including wild ginseng in the CITES Appendix II as proposed by Russia, they may very well become unnecessary trade barriers on cultivated ginseng of major ginseng exporting countries, including Korea. Below is an appraisal of the problems regarding the effectiveness of the Convention that are likely to arise should the Russian proposal be implemented.

A. Unnecessary Regulations for Cultivated Ginseng Trade

If the CITES regulates the international trade of ginseng products through the listing of all species of Panax ginseng whether wild or cultivated, documentary evidence of its cultivation will have to be submitted, imposing an unnecessary administrative burden and regulations for cultivated ginseng trade. Cultivated Panax ginseng requires artificial production technologies and is by no means an endangered species. Controlling international trade of cultivated ginseng is not only incompatible with the *raison d'être* of the CITES but also with the original of Russia.¹⁹

The new administrative burden (with all the import/export-related procedures) that the Russian proposal may call for is the issuance of permits, which would most likely increase export expenses for producers of cultivated ginseng and impose the obligation to confirm the authenticity of cultivated ginseng when exporting to some 70 trade partners of Korea. The trade of cultivated Panax ginseng would inevitably be adversely affected.

International trade of wild Panax ginseng is negligible when checked against total ginseng trade. However, Korean trade of cultivated ginseng is carried out extensively in Asia, the Americas, and Europe (see Table 2). For some 25,000 Korean farmers (see Table 1), including Panax ginseng in Appendix II will probably entail direct losses.

Table 1 Production of cultivated Panax ginseng in the Republic of Korea

| | Farms (x 1,000) | Cultivated areas (x 1,000 ha) | Production amount (fresh ginseng basis 1,000M/T) |
|------|----------------------------|--|---|
| 1995 | 23 | 9 | 12 |
| 1996 | 23 | 9 | 10 |
| 1997 | 20 | 10 | 11 |
| 1998 | 22 | 10 | 12 |
| 1999 | 25 | 12 | 13 |

Table 2 Korea's Export of Panax ginseng (in millions of US\$)

| | Total | Hong Kong | Japan | Taiwan | Others* |
|------|--------------|------------------|--------------|---------------|----------------|
| 1995 | 140 | 48 | 41 | 26 | 25 |
| 1996 | 113 | 41 | 32 | 19 | 21 |
| 1997 | 89 | 39 | 27 | 10 | 13 |
| 1998 | 82 | 29 | 22 | 14 | 17 |

Russia insists that listing Panax ginseng in Appendix II will not interrupt the trade of major ginseng exporting countries, including Korea, on the grounds that its proposal targets ginseng roots for regulation. However, the Korean trade in ginseng roots, in the form of fresh ginseng, red ginseng (steamed & dried), white ginseng (skin peeled-off & dried), or taeguk ginseng (soaked in hot water & dried), account for 40 million US dollars, an amount nearing half of the total 82 million dollars in Korean ginseng exports for 1998.

¹⁹ Republic of Korea: The inclusion of Panax ginseng into Appendix II could be reversed when it has become obvious that it is distorting trade in cultivated ginseng. Resolution Conf. 9.24, which provides for the review of the effectiveness of the inclusion of species in the appendices, helps remedy problems that arise from unnecessary inclusions in the appendices.

B. Difficulties with Implementation by Customs Officials of Relevant Countries

As aforementioned, it is very difficult to distinguish among wild ginseng, wild-simulated ginseng and cultivated ginseng by their morphological characteristics and/or chemical constitutions. This is particularly true of sliced roots or parts of wild ginseng and cultivated ginseng. In fact, distinguishing between sliced roots or parts of wild ginseng and wild-simulated ginseng is almost impossible. Furthermore, the shape of roots, compositional elements and medicinal effect of wild ginseng, wild-simulated ginseng and cultivated ginseng vary depending on cultivation conditions, such as soil and climate, cultivation areas, and cultivation methods. There are no internationally-approved standards for identifying such differences.

For the past two years, the Korean Forestry Research Institute has conducted several researches using molecular-biological approaches (genomic DNA, isozyme, SDS-PAGE) as well as biochemical approaches (LC, LC-MS) to identify varieties of domestic and international ginseng. The institute has obtained the following results:

When marker genes from established methods such as AFLP and ISSR were used, following the probe carried out for domestic ginseng, band patterns within variation showed quite different results; in the case of isozyme and SDS-PAGE, there was a huge difference depending on the ginseng's age, making it difficult to identify whether the ginseng in question was wild or not.

In the case of LC and LC-MS, there were some differences between wild ginseng and cultivated ginseng. If every compositional element of ginseng roots is analyzed, there may be a possibility of obtaining clear distinctions. However, it takes years of analysis to establish such a marker.

Hence, according to the researches conducted, establishing a distinction between different types of ginseng is a highly complex, time-consuming task.

C. Matters of Concern in the Russian Proposal

Some issues addressed by the Russian proposal raise some questions. First, according to the Russian proposal, it is estimated that the volume of wild ginseng roots illegally procured and smuggled into China has reached, on average, an annual level of 500-600 kg. But wild ginseng is extremely scarce and the possibility that such a large amount of wild ginseng grows in Russia is surprising. If wild ginseng were truly facing extinction, annual illegal exports into China could not have reached 500-600 kg on average. Korea would like to be provided with more information on the sources used in the Russian proposal.

Second, the enforcement measures to stop this illegal trade seem inappropriate. If in the last five years Russian customs officials have indeed uncovered only 19.8 kg of ginseng roots, which is merely 1 to 2 per cent of the total volume of illegal trade as claimed in the Russian proposal, this seems to suggest that Russian enforcement measures should be strengthened. Before adopting measures that would have dire implications on trade in cultivated ginseng by including Panax ginseng in Appendix II, Korea suggests that Russia should first tighten control of the illegal trade of ginseng in Russia.

Third, according to the Russian proposal, if wild ginseng is included in Appendix II, the Russian authorities will provide identification manuals to help customs officials differentiate between American ginseng (Panax quinquefolius) and Panax ginseng. In addition to these manuals, it would appear essential that manuals on how to distinguish between wild Panax ginseng and cultivated Panax ginseng should also be provided. However, in light of the difficulties of distinguishing between the two, Korea wonders how the Russian authorities will go about suggesting methods to customs officials to separate wild from cultivated Panax ginseng.

Fourth, Russia mentions in its proposal that it currently controls the illegal trade in Panax ginseng by issuing export permits (a regulation tool that would also be required by the inclusion of Panax ginseng in Appendix II) in order to preserve wild ginseng in Russia. But if illegal trade in wild ginseng is allegedly so widespread even with such export permits, how will the inclusion of Panax ginseng into Appendix II change this? Perhaps other solutions should be explored; for example, closer

co-operation on enforcement with neighbouring countries, including China and Korea, would certainly help curb illegal trade flows.

3. Recommendations to Russia

Russia wishes to include Panax ginseng in Appendix II for the purpose of protecting wild ginseng that is said to face extinction. However, for the aforementioned reasons, Korea believes that, instead of including Panax ginseng in Appendix II, the following several approaches should be taken simultaneously:

- Development of effective ex situ conservation programs for wild ginseng habitats;
- Establishment of wild ginseng resources through in situ conservation of special areas;
- Artificial propagation of wild ginseng through tissue culture and restoration of destroyed areas;
- Development and supply mass propagation of wild ginseng extract used for food and medicinal purposes (for instance, mass production of wild ginseng cells and/or adventitious roots);
- Greater co-operation between countries on research projects; and,
- Tighter at-the-border controls and greater co-operation between customs officials to prevent smuggling.

Regarding the first and second recommendations, some Russian scientists such as Yuri Zhuravlev regard changes in habitat conditions and biological/genetic imperfections as reasons for possible extinction of wild ginseng and suggests measures to conserve wild ginseng habitats and solve its biological/genetic problems. Effective measures should be worked out internationally in parallel with such efforts.

4. Conclusion

In conclusion, under the current situation in which there exist no international standards for distinguishing wild ginseng from wild-simulated and cultivated forms by morphology and composition, Korea strongly opposes the Russian proposal as the inclusion of Panax ginseng in Appendix II will have a negative impact on international trade in wild-simulated ginseng and cultivated ginseng, both of which do not face extinction. As such, the Russian proposal goes against the spirit and purpose of CITES.

If the core problem lies in the large-scale illegal export of Russian wild ginseng to neighbouring countries including China, as was pointed out by Russia, the first-best approach should be to enhance co-operation with bordering countries as well as with other countries such as Korea. Korea, for its part, is ready to participate in consultations with concerned countries, including Russia, to tailor appropriate policies aiming at better conservation of wild ginseng. Members of the CITES should rest assured that Korea, in spite of its objection to the content of the Russian proposal, sincerely believes in the need to protect an endangered species like wild ginseng.

Comments from the Secretariat

The very detailed comment from the Republic of Korea exemplifies a problem that has not been referred to in great detail in the amendment proposal submitted by the Russian Federation. There is an enormous quantity of artificially propagated specimens in trade, but at the same time the small, remaining wild population is equally under serious threat because of the extremely high value of wild-collected roots. The Secretariat does not agree with the observation by the Republic of Korea that inclusion of this species in Appendix II would create unnecessary trade barriers or even be a threat to the many farmers that are propagating this species. This did not occur with regard to the trade in *Panax quiquefolius*. Also, the Secretariat does not agree that the listing would cause an unnecessary administrative burden. International trade in roots or recognizable parts of roots is already subject to the issuance of phytosanitary certificates, and Resolution Conf. 9.18 (Rev.) already contains provisions for the use of this type of document as a CITES certificate. Differentiating roots of wild origin from artificially propagated ones is possible and, because of the similarity in habitat one would expect that these characteristics apply to *Panax ginseng* as well. However, in view of the potential identification problems, the Secretariat would also expect that the Russian Federation, in case this proposal is adopted, would provide it with adequate identification materials for inclusion in the CITES Identification Manual. Inclusion of this species in Appendix II would be in accordance with the criteria

included in Annex 2a to Resolution Conf. 9.24. The assessment by IUCN also confirms that this species qualifies for an Appendix-II listing.

Secretariat's recommendation: **Accept**, but the species should be annotated in the same manner as is currently applicable to *Panax quinquefolius*.

Prop. 11.55: Transfer from Appendix II to Appendix I of the Argentine population of *Araucaria araucana* (Argentina)

Provisional assessment by the Secretariat

An important problem with regard to this species is the illegal collection of seeds for the purpose of artificial propagation of plants for horticultural markets elsewhere in the world. It is particularly important that slow growing species have sufficient regeneration capacity through the presence of viable seeds. Because seeds of plant species in Appendix II are, as a general rule, not covered by the Convention, continuous uncontrolled international trade could seriously affect the wild populations, despite regulatory provisions in Argentina. Seeds are also used by local communities, and Argentina should ensure that this local use is also regulated adequately. Although the species does not qualify for Appendix I listing in terms of number of specimens, it does so qualify under the provisions of paragraph B. iv) first and fifth indent, of Annex 1 of Resolution Conf. 9.24. The Plants Committee, at its ninth meeting (Darwin, Australia, June 1999), supported this proposal, arguing that the elimination of the current split listing would also provide protection to the Chilean populations in avoiding illegal trade in seeds from the populations in that country. The Secretariat shares that position.

Comments from the Parties

Cuba: "Cuba supports this proposal, agreeing with the Secretariat that it will resolve a problem of split-listing as well as the protection of a valuable resource of the local communities in the region."

Japan: "The proposal does not indicate threat of extinction or decrease of population nor influence of international trade."

Comments from the Secretariat

The IUCN assessment provides more details on the current population status of the species, as well as the trade in seeds on the national level. The information provided by IUCN indicates that the population could qualify for inclusion in Appendix I under criterion B. of Annex 4 of Resolution Conf. 9.24. Because of the existing trade in seeds, the Plants Committee supported the proposal, because it would also eliminate the current split-listing. Unfortunately, the Plants Committee has not yet been in a position to complete its review of the status of the whole species with regard to its position in the appendices. The Secretariat would like to indicate that, some time ago, it was consulted by Argentina about the possibility of including in Appendix II seeds of this species originating in Argentina. At that time, the Secretariat suggested to Argentina to consider the possibility of including its population in Appendix I, and that was the draft proposal considered and supported by the Plants Committee. In view of the above, the Secretariat still supports the position of the Plants Committee, but would like to suggest that Argentina also considers its original option of including only seeds originating in Argentina in Appendix II, at least until the Appendix listing of the entire species has been reviewed by the Plants Committee.

Secretariat's recommendation: **Accept**, but Argentina should consider the option of amending its proposal to only include in Appendix II seeds originating in Argentina.

Prop. 11.56: Exempt up to three specimens of rainsticks (Cactaceae, *Echinopsis* and *Eulychnia*) per person from CITES controls (Chile)

Provisional assessment by the Secretariat

Rainsticks are made from the skeletons of columnar cacti belonging to the genera *Echinopsis* and *Eulychnia*. The skeletons are harvested from dead plants in the wild. No plants are killed in order to obtain these skeletons. The trade in these rain sticks is partly commercial, partly as souvenirs bought

by tourists not only in the countries of origin of the species concerned but also in countries to which they have been exported. Specimens re-exported as personal effects from the latter countries are not subject to the provisions of the Convention (cf. Article VII, paragraph 3, of the Convention). However, a number of importing countries do not provide for this exemption for personal effects, and many people arriving in their home countries see their souvenirs confiscated. The Plants Committee has discussed the subject of rain sticks since its sixth meeting in 1995. Chile in particular has reported in detail on all aspects of the trade in rain sticks. The Plants Committee fully supports its proposal, and it even indicated that it would also support a proposal to exempt all rain sticks, both tourist souvenirs and commercial shipments. The exemption of three rain sticks per person will facilitate the work of Customs and other border inspectors, without causing any danger for the natural population of the species concerned.

The Secretariat, however, believes that the proposed solution, e.g. to annotate the species to the effect that up to three rainsticks per person are exempted from the provisions of the Convention, is not legally possible. The matter should rather be resolved by an amendment to Resolution Conf. 9.18 (Rev.) to this effect (compare Resolution Conf. 10.12 which contains a similar provision concerning caviar), or simply by a communication from range States that no export permits are required under Article VII 3 (b) (iii) of the Convention.

Comments from the Parties

United States of America: *"We are still evaluating this proposal. We agree with the Secretariat's recommendation that the appropriate avenue for the Parties to consider a personal effects exemption is by a proposed amendment to CITES Resolution Conf. 9.18 (Rev.), regarding regulation of trade in plants, not by a proposed annotation to the Appendices. We note, however, that such an amendment may be difficult to implement. Not all cactus rain sticks are made from the two genera proposed by Chile; they are sometimes made from Opuntia fulgida skeletons from Mexico and the United States, as reported at the sixth Plants Committee meeting in Tenerife, Spain (June 19-23, 1995). Though we understand that rain sticks made from the two most commonly traded species can be easily identified, as reported at the sixth meeting of the Plants Committee, we do not know if Customs inspectors will be able to easily identify all rain sticks by species; and inspectors may not be able to distinguish the exempted cacti species from non-exempted cacti species. We also note that the Secretariat's assessment indicates support by the Plants Committee to expand this proposed exemption to include rain sticks for both tourist souvenirs and commercial shipments. The United States believes the granting of an exemption for commercial shipments of rain sticks may raise a conservation concern for these species, since insufficient information is available to determine the effect of harvesting commercial quantities of rain sticks on the ecosystems in which they are found, as discussed at the eighth meeting of the Plants Committee in Pucón, Chile (Nov. 3-7, 1997)."*

Comments from the Secretariat

The rainsticks of the two genera concerned can be easily identified at the generic level and, in the context of the proposed exemption, identification at the species level is not relevant. The Secretariat expects that Chile will provide adequate identification materials in the event that this proposal is adopted. We would also call on the United States of America and Mexico to provide samples of rainsticks made of other Cactaceae species for inclusion of that information in the Identification Manual at the same time.

Secretariat's recommendation: **Reject** the proposal for an annotation for the reasons given in the Secretariat's provisional assessment, but **accept** an amendment to Resolution Conf. 9.18 (Rev.) by inserting the following text before the section regarding hybrids:

Regarding rainsticks RECOMMENDS

That Parties consider the harmonization of their national legislation related to personal exemptions for rainsticks of the Cactaceae genera *Echinopsis* spp. and *Eulychnia* spp. to allow for the personal goods exemption under Article VII, paragraph 3, and consider limiting this exemption to no more than three rainsticks of the species concerned per person.

Prop. 11.57: Deletion of *Kalmia cuneata* from Appendix II (United State of America)

Provisional assessment by the Secretariat

This detailed proposal clearly demonstrates that the taxon is not in international trade. The conclusion that the species does not qualify for inclusion in Appendix II is also justified. The proposal is supported by the Plants Committee and the Secretariat.

Comments from the Parties

None.

Secretariat's recommendation: **Accept**

Prop. 11.58: Inclusion of *Camptotheca acuminata* in Appendix II in accordance with the provisions of Article II, paragraph 2(a) (China)

Provisional assessment by the Secretariat

The proposal refers to a wild population of probably not more than 4,000 specimens, which therefore probably qualifies for inclusion in Appendix I under criterion A. of Annex 1 to Resolution Conf. 9.24. The proposal, unfortunately, does not provide information on numbers of specimens that are artificially propagated specimens in China, but from the data in the supporting statement it would appear that this is a high number.

With regard to the regulation of trade in parts and derivatives of this species the Secretariat would like to draw attention to the following problems:

- a) It has to be determined to which extent the regulation of international trade in products from artificially propagated specimens will contribute to the conservation of the few remaining wild specimens. Paragraph f) under the second RESOLVES of Resolution Conf. 9.24 clearly indicates that species that are traded as artificially propagated specimens only should not be included in the Appendices. Many of the recommendations made by the Plants Committee (cf. Document Doc. 11.59.2) are based on this principle.
- b) There is a very large trade in seeds. This trade is for most Appendix-II species not regulated by the Convention. It has to be determined whether this trade needs regulation as well. If that is the case, and if the proposal is approved, the species should be specifically annotated to the effect that trade in seeds is also covered by the provisions of the Convention.
- c) The proposal gives the impression that exports from China are largely in the form of the derivative camptothecin. How easily can this product be identified in trade?
- d) The proposal does not provide any information on the types of medicines containing camptothecin. Since these medicines are apparently produced outside China, it should be considered whether pharmaceutical products would need to be controlled as well.

In particular with regard to what is referred to under a) above, the Secretariat is of the opinion that this species does not qualify for Appendix II.

Comments from the Parties

Switzerland: See general comments no.'s 3 (partly) and 6 on page 4 of this Annex. *"The species is today very frequently cultivated and artificially propagated in other parts of the world than just China. It is a fast growing plant. It is therefore unclear to what extent the remaining wild population is affected now and will be in future. Since the plant is, from a commercial aspect, only interesting because it contains camptothecin, which is traded internationally (seeds, pharmaceutical products!), there will be a problem of identification, which must be solved before any listing of the species is to be considered, especially in view of the fact that there are other plants also producing camptothecin in other parts of the world."*

Comments from the Secretariat

The IUCN correctly notes in its assessment that the species meets the biological and trade criteria for inclusion in Appendices I and II. However, the extent to which wild harvesting continues is unclear. Unfortunately, China has not provided additional information in response to the provisional assessment by the Secretariat. The Secretariat therefore maintains its original position. However, if the Parties decide to adopt this proposal they should be aware that the trade is largely in seeds and that these should not be exempted through an annotation. China should demonstrate that these seeds can easily be identified and that artificially propagated ones can be differentiated from wild-collected ones. Otherwise the inclusion of this species in Appendix II would not contribute to its conservation.

Secretariat's recommendation: **Reject**

Prop. 11.59: Inclusion of *Cistanche deserticola* in Appendix II (China)

Provisional assessment by the Secretariat

From the proposal it is clear that there is a voluminous trade in parts of this species. For that reason it does qualify for inclusion in Appendix II. However, the proposal does not provide details of how harvesting will be managed. Perhaps the Plants Committee could assist China with the development of such a management programme. If this proposal is adopted the usual exemptions (seeds, seedlings in sterile containers) should apply and it should be considered whether pharmaceutical products need to be controlled. The proposal meets the criteria of paragraph B.i) in Annex 2a of Resolution Conf. 9.24. The Secretariat would support the proposal with the above mentioned exemptions for seeds, seedlings and the need to consider exempting pharmaceutical products.

Comments from the Parties

Switzerland: See general comment no. 3 (partly) on page 4 of this Annex. "*Similar concerns as with proposal Pro. 11.58: Also this species is in trade in form of seeds and pharmaceutical products. Therefore: the problem of identification must be solved before any listing of the species is to be considered.*"

Comments from the Secretariat

The assessment by IUCN, although agreeing with a possible Appendix-II listing, draws attention to a very important enforcement aspect that was not clear from the supporting statement of this proposal: *Cistanche deserticola* in trade (primarily dried stems, whole or in pieces) cannot be distinguished from other *Cistanche* species in trade. It can be argued that enforcement difficulties should not be a reason for not including a species in the appendices. However, in this particular case it would seem that enforcement poses a serious problem, that may not easily be resolved in the near future, thus making the implementation of this listing almost impossible. Unless China clearly demonstrates that materials of this taxon in trade can be easily identified at the species level, the Secretariat now is of the opinion that China should consider withdrawing this proposal for an Appendix-II listing. China could consider including its populations of *Cistanche* spp. (that is *Cistanche* spp. originating in the People's Republic of China) in Appendix III. This would permit control of the quantities exported, the monitoring of trade, and provide time for the evaluation of possible identification mechanisms. It could then consider whether to present an proposal for an Appendix-II listing to the next meeting of the Conference of the Parties. In its provisional assessment, the Secretariat already suggested possible assistance from the Plants Committee.

Secretariat's recommendation: **Reject**, but China should consider including *Cistanche* spp., originating in China, in Appendix III.

Prop. 11.60: Inclusion of *Harpagophytum procumbens* in Appendix II in accordance with Article II, paragraph 2(a); Inclusion of *H. zeyheri* in Appendix II in accordance with Article II, paragraph 2(b) (Germany)

Provisional assessment by the Secretariat

The trade data provided, though not complete for all the range States, show a continuing increase in exports of parts of *H. procumbens*. Although much information in the supporting statement is derived from personal communications, documented evidence also seems to indicate that in certain areas over-harvesting is taking place. In order to ensure that continued utilization of this resource is sustainable, it is justified to include the species in Appendix II. Inclusion of *H. zeyheri* as a look-alike species (Article II, paragraph 2(b), of the Convention) and for its potential to be exploited for the same purpose, is justified as well. In case this proposal is adopted it should be considered whether the usual exemptions should apply and it should be considered whether pharmaceutical products need to be controlled. The fruits are frequently sold as tourist souvenirs, and it should be considered whether a small number of these fruits per person, should be exempted from permit requirements by range States and/or by means of a Resolution (see under Prop. 11.56). If this proposal is adopted, importing countries may have serious problems in detecting illegal shipments because of the difficulty to identify dried tubers and parts thereof. The proposal does not make reference to consultations with range States, although the Secretariat is aware that some of them have been consulted. The Secretariat supports the proposal on scientific grounds but the enforcement difficulties referred to need to be addressed.

Comments from the Parties

Germany: "Germany does not share the Secretariat's doubts with regard to the identification of dry tubers and parts thereof. The species is mainly traded as dried tuber slices whose very characteristic shape easily can be identified. Beyond that Germany will provide identification and education material which will allow a reliable identification of specimens of that species. Germany has consulted Botswana, Namibia, South Africa, Mozambique, Zambia and Zimbabwe. Moreover, Germany financially supported a consultative meeting of the main range States in Windhoek Namibia on 20 August 1999. In the meantime only Botswana officially replied and expressed some reluctance to a listing in 2000 with regard to further research on that matter."

Namibia: "Namibia, as the major exporter of *Harpagophytum*, is fully aware of the concerns over the increase in quantities exported over the years, and is currently reviewing its management of *H. procumbens* and *H. zeyheri*. The new policy includes a restricted harvesting season, permit requirements for both harvesting and export, and a strict registration system for dealers.

Namibia wishes to point out that although it is widely recognised that harvesting may have become unsustainable in certain localities, there are vast areas within the distribution range which are totally un-exploited, namely, the commercial farming areas.

Recognizing that this resource needs to be investigated more closely, Namibia has undertaken to conduct detailed studies on distribution, abundance, harvesting methods, quotas, etc. A cross-sectorial working group has been formed to co-ordinate and address issues concerning *Harpagophytum*.

Therefore, without excluding the possibility of a future listing, Namibia does not support the current proposal at this point in time. An export permitting system for the export of dried, raw material already exists (and has for many years), and has enabled MET to monitor the level of exports over time. A CITES listing at this point will lead to complications of enforcement, as outlined in the Secretariat's assessment, as well as possibly an illegal trade, which to our knowledge is not currently a factor."

Switzerland: See general comments no.'s 1 and 3 on pages 3 and 4 of this Annex. "Since this species is in trade in form of dried plant material, nearly impossible to identify visually, there will be a problem of identification which must be solved before any listing of the species is to be considered."

Comments from the Secretariat

The Secretariat of course concurs with the view that the opinion of range States on amendment proposals is important and they are always considered carefully. However, it believes that its evaluation of amendment proposals should principally be based only upon the provisions of the Convention and relevant Resolutions. That is the reason why the Secretariat expressed support for this proposal in its provisional assessment.

The Secretariat is not entirely convinced that the materials in trade, in particular sliced roots can be identified easily, and looks forward to receiving the relevant identification materials. Because the parts traded are the secondary roots, the species, when the proposal is adopted, should be annotated in the same manner as is currently the case for *Panax quinquefolius*.

Secretariat's recommendation: **Accept**, with the annotation: Designates whole and sliced roots and parts of roots, excluding manufactured parts or derivatives such as powders, pills, extracts, tonics, teas and confectionery.

Prop. 11.61: Inclusion of *Adonis vernalis* in Appendix II in accordance with Article II, paragraph 2(a). Potted live plants to be excluded (Germany)

Provisional assessment by the Secretariat

This proposal refers to an exemption for live potted plants. This exemption is not possible, because the text of the Convention [Article I, paragraph b (i)] automatically includes all live specimens, only parts or derivatives can be exempted.

Information on current international trade in this species is scanty, and is dispensed throughout the proposal, which contains some contradictions. On the one hand it is suggested that trade from eastern European countries is not regulated, but it is clear that most of the important range States of this species (Bulgaria, Hungary, Romania, Russian Federation) seem to have adequate regulations regarding harvesting. It is interesting to note that the species has been included in Annex D ("Monitoring list") of the European Community Regulation implementing the provisions of CITES. Data on imports into the Community, which should have been available since June 1997, are not included in this proposal, but could have provided interesting information, in particular since it is suggested that the trade apparently has moved from Germany to other Community countries. Because of this lack of trade data, it is impossible to determine whether the trade is really a threat to the species, especially compared to the manifold other threats, including habitat destruction. Unless better trade information becomes available, the Secretariat believes that the proposal does not justify the inclusion of this species in Appendix II.

Comments from the Parties

Germany: *"Germany does not share the Secretariat's view on the lack of data. The data of the main countries of origin compiled in the proposal are sufficient to allow an adequate determination that trade threatens the population of the species in the sense of the criteria of Res. Conf. 9.24. These data show, that as a result to persistent harvesting populations have declined over the years so that they are now subject to new threats such as habitat loss. Owing to the low weight of the dry material the estimated amount of trade will mean a very high number of wild plants taken from the wild. Moreover the species is listed in one of the IUCN categories for threatened species for most countries of origin. It is true that the species is listed on Annex D of the EC regulation since 1997 and no relevant trade data are available yet. However, imports seem to have happened without the required import notification. In the meantime eight of the range States that have been consulted expressed their support in writing (see enclosure). [Secr: Copies of the correspondence have been received by the Secretariat]. The proposal explicitly contains information that Russia does not have adequate legal instruments for a regulation on the harvesting of the species. Russia, however, supports the proposal as a protection under CITES will assist in the efforts for adequate trade controls (see also the Secretariat's comments on Prop. 11. 54)."*

Switzerland: See general comments no.'s 1, 3 and 6 on pages 3 and 4 of this Annex. *"Similar concerns as with proposal Prop. 11.58: The plant is of commercial interest, because it contains*

glycosides, which are used in phytotherapy a. o. and the roots are used as a dye. However these medicinal substances also occur in other Adonis species. Thus the identification problem of the specimens in trade must be solved before any listing of the species is to be considered, or there will be an enforcement problem."

Comments from the Secretariat

Having carefully reconsidered the information contained in the proposal, as well as what was provided by IUCN in its assessment, the Secretariat recognizes that its provisional assessment was not entirely correct. The Secretariat now supports this proposal, but live potted plants can not be excluded. In case the proposal is adopted, the species should be annotated in a manner consistent with what is proposed in document Prop. 11.53.

Secretariat's recommendation: **Accept**, with annotation proposed in proposal Prop. 11.53

Prop. 11.62: Transfer of *Guaicum sanctum* from Appendix II to Appendix I (United States of America)

Provisional assessment by the Secretariat

The proposal does not provide reliable information on the current size of populations or subpopulations. Although Table 1 cites Mexico as the largest exporter (actually the only exporter since 1987), the proposal does not provide any detail on the population of this species in that country. In view of the quantities traded, it would seem doubtful that the total population is very small. The comments in paragraph 6 regarding the population estimates by WCMC are also confusing. It is said that the WCMC estimates were an error, but it is not said what the error was. The doubt about the population size needs clarification before the Conference of the Parties decides on this proposal. On the basis of the information currently available, the Secretariat does not believe that the species qualifies for Appendix I.

Comments from the Parties

Cuba: *"Cuba opposes this proposal, because the species does not satisfy the biological criteria (Resolution Conf. 9.24), nor is international trade in this species a problem. One could ask: Why is this transfer to Appendix I necessary? What has CITES done for this species since its inclusion? What has the proponent country done to improve the conservation status of this species in those years? The inclusion of this species in Appendix I is the expression of a defeat for CITES."*

Japan: *"The proposal does not indicate threat of extinction or decrease of population nor influence of international trade."*

Switzerland: *See general comments no.'s 4 and 6 on page 4 of this Annex. "Similar concerns as with proposal Prop. 11.58: The species is in trade as an oil called "Guacum". Therefore the identification problem of the specimens in trade must be solved before any transfer of the species is to be considered, or there will be an enforcement problem, in particular because there exist other (not endangered) species with similar medical substances and/or similar wood. Furthermore should only one *Guaicum* species be on Appendix I, additional enforcement problems would be created. There seem to exist also taxonomic uncertainties."*

United States of America: *"The Secretariat states that the proposal does not provide reliable information on the current size of populations or subpopulations. Annex 3 of Conf. 9.24 does not specifically require information on the size of populations or subpopulations. As stated in the proposal, *Guaicum sanctum* is assessed as Endangered in the World List of Threatened Trees (see section 2.3). It is classified as EN C2a, which indicates that this taxon is "facing a very high risk of extinction in the wild in the near future, as defined by...the following [criterion]:*

- C) *Population estimated to number less than 2500 mature individuals and a continuing decline, observed, projected, or inferred, in numbers of mature individuals and population structure in the form of:*

- a. severely fragmented (i.e. no subpopulation estimated to contain more than 250 mature individuals)"(Oldfield et al. 1998).

This status was indicated in our assessment of this species, which we conducted for the Review of the Appendices for the Plants Committee.

The Secretariat further states "The comments in paragraph 6 regarding the population estimates by WCMC are also confusing. It is said that the WCMC estimates were an error, but it is not said what the error was." The proposal states: "The Plants Committee advised the United States to consider the conclusions of WCMC (1998) with respect to this species, which suggest that it fails to qualify for Appendix I. However, upon further investigation, the primary author of the report acknowledged that WCMC (1998) is in error regarding Guaiaacum sanctum, and that Appendix I listing is appropriate for this species (Oldfield 1999)." The proposal does not suggest that the WCMC estimate of the population size of this species is in error. Rather, it indicates that the assessment of the WCMC regarding whether this species qualifies for listing in Appendix I is in error, given the information it presents on page 201 regarding the population size of Guaiaacum sanctum. The error is on page 9 of WCMC (1998), where it fails to note that this species qualifies for Appendix I listing, according to the information presented on page 201 of the same document, as subsequently discussed with us by the primary author.

Finally, the Secretariat states: "In view of the quantities traded, it would seem doubtful that the total population is very small." We do not believe that the amount of material in trade is necessarily a valid indicator of wild population size for any taxon. Rather, in cases where quantities in trade appear large relative to estimated wild population size, we consider the combination of these two factors to indicate that the species may warrant additional protection under CITES."

See Annex 2 for comments required under the provisions of paragraph b of the section on International Organizations in Resolution Conf. 10.13.

Comments from the Secretariat

The Secretariat acknowledges the explanations provided by the United States of America, in particular with regard to the confusion regarding the conclusions of WCMC on this species. However, the Secretariat maintains its position that the information regarding the population status of the species is far from complete, as confirmed by IUCN, and that therefore it is not possible to properly assess whether this species qualifies for inclusion in Appendix I. The Secretariat has consulted the relevant organizations. The response from FAO is contained in Annex 2 to this document, IUCN referred to its own assessment of the proposal, and no response was received from ITTO. In view of all the information available, the Secretariat sees no reason to amend its provisional assessment of this proposal

Secretariat's recommendation: **Reject**

Comments from International organizations

Regarding marine species

1. In accordance with Article 15, paragraph 2 (b), of the Convention, the Secretariat communicated copies of amendment proposals that relate to marine species to intergovernmental bodies having a function in relation to these species.
2. A response was received from the International Whaling Commission and a copy is attached to this Annex. Copies of the documentation referred to in this letter can be requested from the Secretariat.
3. A response was also received from the North Atlantic Marine Mammal Commission regarding the Norwegian proposal. A copy of it is also attached to this Annex.
4. Comments provided by FAO regarding shark species are attached to this Annex.

Regarding timber species

5. In accordance with the provisions of Resolution Conf. 10.13, paragraph b) regarding international organizations, the Secretariat has sought the view of ITTO, FAO and IUCN regarding the amendment proposal for a timber species. Their response is attached to this Annex.

Regarding migratory species

6. Comments received from the Convention on the Conservation of Migratory Species of Wild Animals (CMS) is attached to this Annex.



International Whaling Commission

Chairman
Mr Michael Canny (Ireland)

Vice-Chairman
Prof. Bo Fernholm (Sweden)

Secretary
Dr Ray Gambell OBE

The Red House
135 Station Road
Impington
Cambridge
CB4 9NP, UK

Tel: +44 (0) 1223 233971
Fax: +44 (0) 1223 232876
EMail: iwcoffice@compuserve.com

RG/JAC/27777

17 January 2000

Mr. Malan Lindeque
Chief, Scientific Co-ordination Unit
CITES
International Environment House
15, chemin des Anémones
CH-1219 Châtelaine
Geneva
SWITZERLAND

Dear Mr Lindeque,

I refer to your letter dated 7 December 1999 requesting scientific information from this Commission on the proposals to amend CITES Appendices I and II with respect to certain stocks of cetaceans.

I have to point out to you that at the 51st Annual Meeting of the IWC a Resolution was passed (IWC Resolution 1999-6, copy enclosed) by majority vote which

“DIRECTS the Secretariat, when the IWC is requested to provide comments on any proposal submitted by a CITES Party to transfer any whale species or stock from Appendix I to II, to advise the CITES Conference of the Parties that the IWC has not yet completed a revised management regime which ensures that future commercial whaling catch limits are not exceeded and whale stocks can be adequately protected;

“FURTHER DIRECTS the Secretariat to advise the CITES Conference of the Parties that zero catch limits are still in force for species of whales which are managed by the International Whaling Commission.”

Turning now to the scientific investigation of the relevant stocks concerned, the IWC Scientific Committee has carried out detailed analyses under its programme of Comprehensive Assessment of whale stocks since the introduction of the zero catch limits for commercial whaling. The agreed policy of the IWC is that we should forward to you copies of the appropriate sections of the reports of the Scientific Committee, which I now append with the following explanations.

BOTTLENOSE DOLPHINS IN THE BLACK SEA (*Tursiops truncatus ponticus*)

[Prop11.15]

The only information available to the Scientific Committee is given in *Rep. int. Whal. Commn* 42, 1992: 200-201.

./.

EASTERN NORTH PACIFIC STOCK OF GRAY WHALES (*Eschrichtius robustus*) [Prop11.15]

A Special Meeting of the Scientific Committee was held in 1990 to assess this stock. The report of this meeting was published in *Rep. int. Whal. Commn* 43, 1993: 241-259.

The Scientific Committee received important new information in the following years (*Rep. int. Whal. Commn* 45, 1995: 78-79; 47, 1997: 90-91; *J. Cet. Res. Man.* 1 (Suppl.) 1999: in press), and carried out a major new assessment in 1997 (*Rep. int. Whal. Commn* 48, 1998: 92-94).

SOUTHERN HEMISPHERE STOCKS OF MINKE WHALES (*Balaenoptera acutorostrata*) [Prop. 11.16]

The Comprehensive Assessment of these stocks was carried out by the Scientific Committee at its meeting in 1990 (*Rep. int. Whal. Commn* 41, 1991: 57-63). Slight amendments to the numbers in two Areas were later published (*Rep. int. Whal. Commn* 43, 1993: 114).

OKHOTSK SEA – WEST PACIFIC STOCK OF MINKE WHALES (*Balaenoptera acutorostrata*) [Prop. 11.17]

An estimate of population size was agreed in the Comprehensive Assessment of this stock in 1991. This was based largely on Paper SC/43/Mi3 by Buckland *et al* submitted to the meeting. (*Rep. int. Whal. Commn* 42, 1992:64-68; 387-392).

NORTH-EAST ATLANTIC AND NORTH ATLANTIC CENTRAL STOCKS OF MINKE WHALES (*Balaenoptera acutorostrata*) [Prop. 11.18]

The IWC Scientific Committee established an inter-sessional Abundance Estimation Working Group in 1995 to derive an agreed estimate of the North-east Atlantic minke whale stock. The work of this AEWG and the subsequent discussions at the 1996 Annual Meeting led to the population estimates given in *Rep. int. Whal. Commn* 47, 1997:71-77; 239-241). Further work was identified, and as reported in *J. Cet. Res. Man.* 1 (Suppl.) 1999: 11-12, the estimate given in Paper SC/48/NA1 by Schweder *et al* (*Rep. int. Whal. Commn* 47, 1997: 453-483) was accepted.

The Scientific Committee accepted the estimate of the Central stock developed by its North Atlantic minke whale Sub-committee in 1990 (*Rep. int. Whal. Commn* 41, 1991:138). It has not yet evaluated the new estimate presented by NAMMCO in 1997.

Yours sincerely,



Dr. R. Gambell
Secretary to the Commission



COMMENTS ON THE PROPOSAL FROM NORWAY TO CITES COP11 TO TRANSFER THE NORTHEAST ATLANTIC AND NORTH ATLANTIC CENTRAL STOCKS OF MINKE WHALE (*Balaenoptera acutorostrata*) FROM APPENDIX I TO APPENDIX II

Re. item 2.3 Population status - North Atlantic Central stock of minke whales.

With reference to item 2.3 (Population Status. North Atlantic Central stock of minke whales) in the proposal from Norway, it should be noted that the estimate from the 1995 surveys (NASS-95) of 72,130 (95% confidence interval 44,711 to 116,362) minke whales in the Central North Atlantic Stock Area, is the result of analysis by the NAMMCO Scientific Committee Working Group on Abundance Estimates and was accepted by the NAMMCO Scientific Committee (*NAMMCO Annual Report 1998:123*).

In this regard it should also be pointed out that the NAMMCO Council noted the advice of the Management Committee that the Central North Atlantic minke whale stock is close to carrying capacity and that removals and catches of 292 animals per year (corresponding to a mean of the catches between 1980-1984) are sustainable. The Council also noted the conservative nature of this advice (*NAMMCO Annual Report 1998: 22*).

Re. item 2.6 Role of the species in its ecosystem.

With regard to item 2.6 (Role of the species in the ecosystem) of the Norwegian proposal, it should be noted that NAMMCO is currently publishing, in its Scientific Publication Series, a volume on the role of the minke whales, harp- and hooded seals in the ecosystem (G. A. Vikingsson and F.O. Kapel (ed.), 2000, Minke Whales, Harp and Hooded Seals: Major Predators in the North Atlantic Ecosystem. NAMMCO Sci. Publ. 2). The collection of papers published in this volume is based on the findings of a NAMMCO Scientific Committee Working Group studying the role of minke whales, harp and hooded seals in the ecosystem.

Based on the Working Group's findings, the Scientific Committee concluded that minke whales, harp seals and hooded seals may have substantial direct and/or indirect effects on commercially important fish stocks. To better understand the possible effects of this consumption, the Scientific Committee recommended that knowledge be improved in a number of areas, such as variations in abundance, distribution, diet, energy requirements and prey abundance of these marine mammals, the way in which marine mammals select their prey, and the extent of consumption of fish species by other predators in the system (NAMMCO Annual Report 1997: 91-92).

It should also be noted that the correct reference for the figures for consumption by minke whales, referred to in item 2.6 as Haug in press, is:

*Folkow, L.P., Haug, T., Nilssen, K.T. and Nordøy, E.S. 2000. Estimated food consumption of minke whales *Balaenoptera acutorostrata* in Northeast Atlantic waters in 1992-1995. NAMMCO Sci. Publ. 2:In press.*

Finally, with reference to item 2.6 it should be pointed out that the NAMMCO Scientific Committee has been requested to investigate a number of issues regarding the economic aspects of marine mammal–fisheries interactions, focussing in particular on minke whales and harp seals. The Working Group first met in 1998, and the work presented by the group was considered a first step towards more complete analyses of these interactions and it was recommended to develop more complete models (NAMMCO Annual Report 1998: 13-14). This Working Group will meet in Copenhagen in February 2000, to address additional questions from the Council concerning interactions between marine mammals and fisheries (NAMMCO Annual Report 1998: 23).

Re. Item 5 Information on Similar Species – Hunting

Under this item it should be noted that NAMMCO has implemented an International Observation Scheme, under the Joint NAMMCO Control Scheme for the Hunting of Marine Mammals. Among others, the observation activities involve land-based observation of whaling in Norway and Greenland, and of pilot whaling in the Faroe Islands, carried out by international observers appointed by NAMMCO. The Joint Control Scheme includes common elements for national observation schemes for coastal whaling, as well as an international observation scheme for the hunting of all marine mammals. The Observation Scheme was adopted by the Council in 1996, and will be implemented for the third time in 2000. The Provisions for the Joint NAMMCO Control Scheme are published in the NAMMCO Annual Report 1996: 69-75.

References

Folkow, L.P., Haug, T., Nilssen, K.T. and Nordøy, E.S.
2000. Estimated food consumption of minke whales *Balaenoptera acutorostrata* in Northeast Atlantic waters in 1992-1995. NAMMCO Sci. Publ. 2: In Press.

North Atlantic Marine Mammal Commission,
1999, NAMMCO Annual Report 1998, Tromsø, Norway

North Atlantic Marine Mammal Commission
1998, NAMMCO Annual Report 1997, Tromsø, Norway

North Atlantic Marine Mammal Commission
1997, NAMMCO Annual Report 1996, Tromsø, Norway

G. A. Vikingsson and F.O. Kapel (ed.),
2000, Minke Whales, Harp and Hooded Seals: Major Predators in the North Atlantic Ecosystem.
NAMMCO Sci. Publ. 2: In Press.

NAMMCO Secretariat, January 31, 2000
c/- University of Tromsø
Norway-9037 Tromsø, Norway
E-mail E-mail: nammco-Secretariat@nammco.co
Web site: www.nammco.no



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للأمم
المتحدة

Viale delle Terme di Caracalla,
00100 Rome, Italy

Cables:
FOODAGRI ROME

Telex: 625852 FAO I
625853 FAO I / 610181 FAO I

Facsimile: 52253020

Telephone:
52256354

Our Ref.: FR 30/6

Your Ref.:

22 DEC 1999

I have received your letter of 7 December addressed to Mr Harcharik and passed to me for reply. Regarding your request, I am pleased to inform you that complete and authorised information, including additional information on impact of fisheries, conservation status and dangerousness of the species of sharks, can be found in our FAO home-page on the internet (<http://www.fao.org>). Please use the following URLs to access the specific information requested:

Carcharodon carcharias – http://www.fao.org/fi/sidp/htmls/sharks/cd_ca_ht.htm

Rincodon typus – http://www.fao.org/fi/sidp/htmls/sharks/rh_ty_ht.htm

Cetorhinus maximus – http://www.fao.org/fi/sidp/htmls/sharks/ce_ma_ht.htm

I regret to inform you, however, that at this moment we are not able to give information on Latimeridae.

Yours sincerely,

Serge M. Garcia
Director
Fishery Resources Division
Fisheries Department



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للأمم
المتحدة

Viale delle Terme di Caracalla,
00100 Rome, Italy

Cables:
FOODAGRI ROME

Telex: 625852 FAO I
625853 FAO I / 610181 FAO I

Facsimile: 52253020

Telephone:
52256354

The Forestry Department (Forest Resources Division, Forest Resources Development Service) of FAO responded as follows:

In general, we agree with the comments of the Secretariat, stating that the information contained in the background documentation proposing transfer to Appendix I is insufficient and too sketchy to provide a credible and solid justification for change in listing of Guaiacum sanctum. Some additional background to this judgement is given below.

There seems to be need for both taxonomic and genecological study, which should further clarify occurrence and threats at species and population levels of Guaiacum sanctum and the genetic variation and patterns of variation of this species throughout its range of distribution. Issues which need to be clarified include i.a. the genetic differences between the reportedly non-threatened populations of the species in Cuba and those under threat (cf. Section 2.3 of the background document). There also seems to be a need to clarify the relationship between (over-) use of this species on the one hand, and the use of related species mentioned in the documentation on the other (G. officinale, G. coulteri): the products derived from these different species are, as stated in the documentation, often not distinguished in trade.

If those products originating from threatened populations or the threatened species (G. sanctum) listed by CITES cannot be distinguished from products from non-threatened, genetically similar populations or related species providing the same products, how will restrictions of use be monitored and controlled to the ensure protection and conservation of G. sanctum? This question is especially important, as conservation of G. sanctum might conceivably best be achieved by substituting use by products from other alternative species (or populations). These latter should be placed under sustainable forest management regimes (including, if and as appropriate, sustainable harvesting).

Section 4.2, "Species management", is limited to only two lines, and mentions protection of G. sanctum in two national parks in Costa Rica. As is the case for all likely outbreeding, long-lived woody perennials, passive protection will not necessarily help safeguard the species and its genetic resources. There is a need to review and investigate needs and means of actively intervening through silvicultural measures aimed at safeguarding the variation and evolutionary potential of the species, based on information on extent and patters of variation (see above) and the ecological requirements of the species.



Convention on the Conservation of Migratory Species of Wild Animals (CMS)

Secretariat provided by the United Nations Environment Programme (UNEP)

Mr Willem Wijnstekers
Secretary General
CITES Secretariat
Maison de l'Environnement
15, chemin des Anémones
CH-1219 Châtelaine-Genève

7 February 2000

Proposals to amend Appendices I and II of CITES

Dear Secretary General

I refer to your letter of 22 November 1999 (No 1999/89) notifying Parties and interested organisations of proposals to amend the Appendices of the Convention at the 11th Meeting of the Parties and to Notification 1999/97, giving the CITES Secretariat's initial assessments.

A number of the proposals affect species also listed in the appendices to the Convention on Migratory Species, including proposal 11.14: *Tursiops truncatus ponticus*, proposal 11.24: *Loxodonta africana*, proposal 11.26: *Dugong dugon*, proposals 11.27 and 11.28: *Vicugna vicugna* and proposals 11.40 and 11.41: *Eremochelys imbricata*.

Proposal 11.14: *Tursiops truncatus ponticus*

This species is included in Appendix II of CMS and is one of the species which will be covered by the *Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area* (ACCOBAMS), when this Agreement enters into force (probably in the course of this year). CITES Appendix I listing would be consistent with the degree of protection intended by the contracting parties to CMS, and especially ACCOBAMS, for this species. The UNEP/CMS Secretariat supports the legal opinion and arguments which Dr Patrick van Klaveren, the representative of the Principality of Monaco and the Interim Secretary of the ACCOBAMS Secretariat, sent to you recently.

I shall leave it to your Secretariat's discretion whether to consult the Bern and Barcelona Conventions regarding their provisions for the conservation and possible use of this species.

Proposal 11.24: *Loxodonta africana*

You may wish to note that CMS COP6 adopted recommendation 6.5 concerning the Western and Central African populations of *Loxodonta africana*, and the CMS Scientific Council has made recommendations that this species should be subject to cooperative action.

Proposal 11.26: *Dugong dugon*

This species is also listed on Appendix II of CMS, as a species with an unfavourable conservation status which would benefit from concerted international action. However, to date no specific legal action has been taken.

Proposals 11.27 and 11.28 *Vicugna vicugna*

Vicugna vicugna is listed on both CMS appendices (all populations on Appendix II and all populations except those in Peru on Appendix I). The obligation to strictly protect the species arising from its Appendix I status (detailed in Article III paragraph 4.5 of CMS) only applies to Chile (Argentina has entered a reservation with regard to the species' listing on Appendix I) and not to Bolivia as long as it has not acceded to CMS.

The obligation arising from the species' listing on Appendix II for parties to conclude and implement a tailored agreement among the range States applies to the three existing CMS Parties (Argentina, Chile and Peru). Bolivia would be invited to participate in the development and conclusion of any Agreement, regardless of whether it is a Party to the parent convention.

It is not clear whether Bolivia's proposal affects only specimens which remain within Bolivia. If that is the case, Bolivia's proposal does not impinge on the CMS. If the individuals affected migrate into neighbouring countries which are CMS Parties, CMS has a direct interest. In any case, if the proposals are adopted by CITES COP, Bolivia would, upon accession to CMS, have to make a reservation to the Appendix I listing of the species.

Proposals 11.40 and 11.41: *Eretmochelys imbricata*

Although Cuba, the proponent for proposals 11.40 and 11.41, is not a Party to CMS, individual specimens of *Eretmochelys imbricata* occurring in Cuban waters and beaches during their migration cycle may migrate to other countries which are CMS Parties and therefore CMS may have legal impact as this species is listed on Appendix I. CMS Parties which are range States for this species have to make sure that taking the species from the wild is strictly prohibited, with exceptions permitted only in limited circumstances (scientific purposes; for the purpose of enhancing the propagation or survival of the affected species; to accommodate the needs of traditional subsistence users of such species; or extraordinary circumstances which are precise as to content and limited in space and time and do not operate to the disadvantage of the species).

The rationale of CMS is that migratory species are a common natural heritage and the burden of protection and conservation as well as the rights to exploitation should be executed only in a coordinated or concerted manner by all range States. In my opinion, the decisions of the CITES COP should be consistent with the provisions of CMS, if this consideration is duly taken into account.

Yours sincerely,

Arnulf Müller-Helmbrecht
Executive Secretary

Report of the Panel of Experts on the African Elephant on the review of
the proposal submitted by South Africa
to transfer its national population of *Loxodonta africana* from Appendix I to Appendix II

TERMS OF REFERENCE OF THE PANEL

1. The task of the Panel of Experts, was to review, in accordance with Resolution Conf. 10.9, the proposal of South Africa to transfer its population of African elephant (*Loxodonta africana*) from Appendix I to II subject to certain conditions. The Conference of the Parties requires the Panel to take into account, in particular:
 - a) in evaluating the status and management of an elephant population:
 - i) the viability and sustainability of the population, and potential risks;
 - ii) the affected range State's demonstrated ability to monitor the subject population; and
 - iii) the effectiveness of current anti-poaching measures;
 - b) in evaluating the affected range State's ability to control trade in ivory from African elephants:
 - i) whether total levels of offtake from both legal and illegal killing are sustainable;
 - ii) whether control of ivory stocks is adequate to prevent the mixing of legal and illegal ivory;
 - iii) whether law enforcement is effective; and
 - iv) whether enforcement and controls are sufficient to ensure that no significant amounts of ivory taken or traded illegally from other countries are traded within or through the territory of the affected range State; and
 - c) when appropriate:
 - i) the trade in parts and derivatives from the African elephant other than ivory and the controls on such trade in the proponent State; and
 - ii) the controls on ivory trade in specified importing countries.
2. Resolution Conf. 10.9 also requires the Panel of Experts to evaluate whether acceptance of the proposal under review is likely to have a positive or negative impact on the conservation status of the elephant population and its environment in the affected range State.
3. Regarding the need to review controls on ivory trade in specified importing countries [paragraph 1.c)ii) above], the Panel was not in a position to conduct this review because, although the proposal of South Africa indicates that trade in ivory would be conducted only with one country of import, South Africa has not announced the name of the proposed country of import and was not in a position to do so during the review by the Panel.

COMPOSITION OF THE PANEL

4. The Standing Committee agreed on the names of the potential members of the Panel of Experts by postal procedures in December 1999. The Secretariat convened the Panel, comprising the following members:
 - Jonathan Barzdo, Chief of Convention Interpretation and Servicing, CITES Secretariat, Geneva, Switzerland (Chairman of the Panel);

- C.S. Cheung, Endangered Species Protection Officer (Enforcement), Agriculture, Fisheries and Conservation Department, Hong Kong Special Administrative Region, China;
 - Martin Tchamba, Director of Conservation, WWF, Cameroon.
5. The representative of South Africa, appointed to facilitate the work of the Panel and to act as an adviser was:
- Peter Novellie, General Manager: Research, South African National Parks, South Africa.

SUMMARY REPORT OF THE PANEL'S ACTIVITIES

6. On their appointment to the Panel, all members reviewed not only the proposal to transfer the South African population of *Loxodonta africana* from Appendix I to II (subject to certain conditions) (Prop. 11.20), but also the reports of two previous Panels of Experts reviewing proposals from South Africa; documents Doc. 8.46 (Rev.) Annex 6, presented at the eighth meeting of the Conference of the Parties (Kyoto, 1992) and Doc. 9.47 (Rev.) Annex 6, presented at the ninth meeting (Fort Lauderdale, 1994).
7. The Panel took account of the work that had been done by the two previous Panels of Experts reviewing proposals from South Africa, noting that both had included one member of the present Panel (Barzdo). In planning its work, the Panel noted that, because two reviews had been conducted previously, the depth of investigation required, particularly regarding past practice and past problems, was not as great as it would otherwise have been.
8. The Panel carried out a fact-finding mission to Pretoria and Skukuza (Kruger National Park), South Africa, from 10 to 14 January 2000. During this mission, the Panel met a range of officials from national and provincial authorities. It also visited the store rooms holding ivory and elephant skins in the Kruger National Park, to review security measures as well as the procedures relating to the movement of ivory and skins into and out of these rooms and the associated record keeping. The Panel also visited the ivory store rooms of the Mpumalanga Parks Board and of the Endangered Species Protection Unit of the South African Police Service (ESPU).
9. Following the mission, the Panel invited TRAFFIC, the Species Survival Network (SSN) and the Environmental Investigation Agency (EIA) to provide any relevant information that they might have, in particular regarding evidence of illegal trade in ivory from or through South Africa.
10. TRAFFIC provided a print-out from ETIS indicating all recorded cases of illegal trade in ivory involving South Africa from 1 January 1989 to date. In response to the request to SSN, the Humane Society of the United States provided some reports for examination by the Panel. Additional reports were provided by WAG, a South African NGO. There was no response from EIA. All the information received was taken into account in preparing the report below.

REQUEST FOR ADDITIONAL INFORMATION

11. During the visit of the Panel to South Africa, it requested information to supplement the information in the proposal.
12. All the requested information has been provided and the Panel is satisfied that no information was withheld from it.

IMPLICATIONS OF THE ADOPTION OF THE PROPOSAL

13. If the proposal of South Africa were adopted, all ivory of South African origin, wherever it is currently held, would be considered as from a species in Appendix II of the Convention. However, the adoption of the proposed annotation would mean that no legal commercial trade in raw ivory would be possible except in the specified 30 tonnes from South Africa to the specified country of import (to be designated) and unless otherwise specified, re-exports of this ivory. The annotation would also mean that the international trade would be permitted in the following specimens originating in South Africa: live elephants (under specified conditions), hides and leather goods and

hunting trophies (for non-commercial purposes). This trade would be permitted wherever the specimens are currently located. All other elephant specimens originating in South Africa would be treated as if they were of an Appendix-I species.

STATUS AND MANAGEMENT OF SOUTH AFRICA'S ELEPHANT POPULATION

Viability and sustainability of the population, and potential risks

Viability and sustainability

14. On the basis of the supporting statement and additional information received, the Panel found no reason to doubt, in broad terms, the estimates of elephant numbers (over 12,000 in 1998/1999) and trends as presented. Compared to 1993/94, South Africa's metapopulation had grown by 27 per cent. This is partly a result of the natural population increase in Kruger National Park (from 1993 to 1999 it increased by 1,300 elephants) and partly a result of the expansion of the elephant range and the increase in the number of localities where elephants are found (in the same period, 684 elephants were translocated from Kruger National Park to other reserves).
15. The translocation of live elephants from Kruger National Park to other protected areas has been promoting an increase in the elephant metapopulation in South Africa in recent years. The estimates of Kruger National Park's elephants inter-calving interval (less than four years) and annual growth rate (seven per cent) are close to or exceed the maximum observed elsewhere. The population in Addo Elephant National Park is also increasing at a high annual rate of nearly five per cent a year.
16. Using the criteria of Frankel and Soule (1981), more than 90 per cent of the elephants in South Africa occur in populations that are genetically viable. This percentage is likely to increase as the newly established populations increase in size and in some cases populations become linked with others by the new acquisitions of land for conservation.

Potential risks

17. The Panel of Experts reviewing the proposal of South Africa in 1994 identified two areas of concern with respect to the possible future risks to South Africa's elephant populations:
 - a) The wide availability of firearms and ammunition largely originating from neighbouring countries. The presence of these firearms represents a significant risk to the conservation of elephant and rhinoceros in the event of weakening of the conservation authorities' ability to take effective anti-poaching measures.
 - b) Effective enforcement efforts could be compromised if the budgets of the nature conservation agencies continued to decline, especially in the light of the stated South African policy of phasing out State funding to the South African National Parks.
18. When reviewing the present situation, the Panel noted:
 - a) That the South African Government had continued to take the problem of wide availability of firearms and ammunition very seriously and was continuing to take measures to alleviate the problem, including diplomatic approaches to the countries concerned. The Panel was informed that the problem had in fact diminished considerably in recent years. A good intelligence network has been set up, and this extends to neighbouring countries through co-operation with their security forces. In this connection, it should be noted that the South African National Defence Force is active in Kruger National Park, mostly near the border with Mozambique, and is mostly concerned with the integrity of the border and movement of arms.
 - b) The Government is phasing out State funding to the South African National Parks. Currently 85% of the budget for nature conservation is generated by the Parks Board itself. It is expected that the Government will further cut its allocation in the coming years. Enforcement efforts could be compromised if the nature conservation agencies have to work with insufficient budgets. The Panel recognizes that an important motivation for the proposal, as is stated therein, is that the revenue generated by the sale of elephant products would help offset any shortfall of funds and

would provide additional resources for protected area management and to enhance the intelligence network on anti-poaching activities.

Sustainability of total levels of offtake

19. Since 1976, the boundary between the Kruger National Park and Mozambique has been elephant-proof and no migration of elephants has been possible. Monitoring shows that the resident elephant population remained stable throughout the period 1974 to 1994 as a result of the legal offtake of culled and live animals inside the Park, shooting of elephants for crop protection outside the Park and limited safari hunting in adjoining areas. In 1994, the practice of culling was suspended while the management plan for the Park was under review.
20. From 1994 to 1999 the elephant population in the Kruger National Park increased by about 17 per cent. Only 25 elephants were reported illegally killed in Kruger National Park during that period. If the illegal offtake remains at this low level, poaching is not a threat to the long term management of the Kruger elephant population.
21. Following the implementation of the new elephant management plan which aims to maintain the biodiversity characteristics of the Kruger National Park and to encourage fluctuations of elephant numbers in time and space (the park will be divided into six zones: two botanical reserves, two high-elephant-impact zones with no population reduction and two low-elephant-impact zones where numbers will be actively reduced), the elephant population is expected to continue to increase. (Hypothetically, it could double between 1999 and 2020 if the rate of increase were seven per cent per year, and if the elephants remained within their current home ranges, with no migration of elephants between the different management zones).
22. There is an annual export quota for trophy tusks from animals taken on private lands. For the year 2000, this is set at 86 tusks.
23. The Panel noted that although 25 per cent of the South African elephant population is found outside the Kruger National Park, there is no national policy for elephant management.
24. Information provided to the Panel indicates that there has been only one incident of illegal killing of elephants in South Africa outside Kruger National Park in the last 25 years. (In this one case, it is alleged that, in 1998, a hunter accompanied by a professional guide illegally shot an elephant in the Vhembe Dongola Park (far Northern Province).

South Africa's ability to monitor its elephant population

25. South Africa's elephant population has been monitored since 1903 but estimates made before 1967 are unreliable compared with later ones that were conducted using aerial census techniques. It is important to note that aerial census of most of South Africa's elephant populations is relatively accurate because of the open nature of the vegetation and good visibility in most areas.
26. The Panel agrees with the conclusion of the previous Panel that the interaction with a range of institutions involved in wildlife research of a high quality and the large resources available to Kruger National Park are reasons for having confidence in South Africa's ability to monitor its elephant population.

Effectiveness of current law enforcement measures

27. The Panel was informed that, apart from the day-to-day ranger patrols in national parks, all nine provinces of South Africa have set up anti-poaching teams and six provinces have in addition set up dedicated wildlife crime investigation units.
28. The Panel learnt that the anti-poaching sub-unit of the Endangered Species Protection Unit of the South African Police Service had been dissolved. The anti-poaching work and investigation of offences within the parks now rests with the anti-poaching team and the wildlife crime investigation unit of each province.

29. In Kruger National Park, there are currently 212 field staff actively involved in field patrols. An anti-poaching unit was set up in 1994, which, apart from carrying out anti-poaching operations inside the Park, also proactively collects information outside the Park regarding any activity that could be connected with poaching in the Park. Direct contacts have also been built up with anti-poaching agencies in Mozambique and joint anti-poaching operations have been conducted. A "hot pursuit" system is in place which allows investigators to continue an investigation into Mozambique and vice versa whenever necessary. It was noted that considerable emphasis is now placed on national and international co-operation, intelligence collection and analysis.
30. In addition, there are two Police stations in the Park and the National Defence Force is active there, primarily to maintain the integrity of the eastern border, although National Defence Force staff are reported to be available immediately to provide support to the Kruger National Park staff when required.
31. Regular meetings are held between various enforcement agencies concerned with poaching, including the Kruger National Park staff, the Endangered Species Protection Unit of the South African Police Service, the Border Police and the National Defence Force, for liaison, information sharing and co-operation.
32. The Panel is convinced that the illegal killing of elephants within South Africa is under control. Law enforcement efforts are effective, as evidenced by the figure of only 26 incidents of elephant poaching recorded from 1994 to 1999, of which, 25 happened in Kruger National Park. It is worth noting that, of these 26 poaching incidents, 12 happened in 1995 and in the past three years (1997 – 1999), the figure remained at one or two incidents a year. It was reported that some 80 per cent of the poaching was done by individuals from Mozambique entering Kruger National Park illegally. There are also indications that these people were in fact targeting rhinoceroses but killed the elephants opportunistically. Most of the individuals involved in these incidents have been arrested and their weapons confiscated. The majority of the ivory taken has been recovered.

SOUTH AFRICA'S ABILITY TO CONTROL TRADE IN IVORY FROM AFRICAN ELEPHANTS

Control of ivory stock

33. The Panel inspected the strongroom at Skukuza (Kruger National Park), where the ivory stock of Kruger National Park is held. An explanation of the procedure governing the movement of ivory from the source to the strongroom was provided. The Panel inspected the register of ivory in the strongroom as well as the documents that accompany each piece of ivory that arrives there. It found that the origin of each individual piece of the ivory could be traced back from the documents completed in accordance with the laid-down procedure. The last entry in the ivory register was a tusk that arrived under custody on 8 October 1999.
34. The Panel was also shown a computer database that contained details of all the tusks held in the strongroom. This database was said to have been in place since 1996 but was intended for inventory purpose rather than for keeping track of the movement of the ivory.
35. A random selection of tusks was made and the relevant paperwork (delivery documents and register entries) was checked to ensure that all could be accounted for, that the procedure was correctly followed and that the recorded information was correct as far as could be determined. All records were found to be in order. Three bags of ivory scraps, weighing 12.9 kg (18 pieces), 8.1 kg (11 pieces) and 3.75 kg (30 pieces), were found inside the strongroom but not recorded in the inventory. These scraps had been picked up by the rangers during their routine patrols and their origin was later verified from the documents that must accompany ivory whenever it is moved from one place to another. Most of these small ivory pieces had deteriorated seriously and, in view of their poor quality, it is unlikely that they could serve any useful purpose. The Panel was told that the three bags of ivory scraps were kept in the strongroom for temporary storage and would be destroyed in due course.
36. It should be emphasized that no irregularities were uncovered by the Panel in Skukuza and that the random selection of tusks examined were all found to be correctly marked and documented. The

Panel is satisfied that the ivory stock in Skukuza is under proper control. The existence of the three bags of scraps can be taken as an indication of the conscientious work of the field staff in the Park.

37. The Panel requested and was provided with a complete list of the stocks of ivory held by the provincial parks boards and ESPU, indicating the stock known to be of legal and illegal origin. The total for the country amounts to slightly over 37 tonnes of legal government-owned stock and somewhat over 68 tonnes of ivory that has been seized or confiscated. The Panel inspected the stock in Mpumalanga (about 1400 kg). The stock was securely held and appropriately marked but no inspection was made of the movement documents for the ivory.
38. Information was also provided on the declared privately owned stock of ivory, which amounts to nearly 66 tonnes.

Legal provisions regulating international and domestic trade in ivory

Reservation

39. South Africa still holds a reservation regarding the transfer of *Loxodonta africana* from Appendix II to Appendix I. However, following the visit of the Panel, the Management Authority of South Africa wrote to the Secretary General of CITES to confirm that, if its proposal were adopted, South Africa would withdraw its reservation.

Moratorium

40. The Panel was informed that the 'moratorium' on import and export of ivory for commercial purposes continues to be in force. No commercial import or export of ivory has been authorized by the Management Authority of South Africa since October 1989.

Nature conservation legislation

41. The hunting of elephants, and any form of transferring of ivory, including selling, transportation, possession, import or export of raw ivory in South Africa is controlled by law and requires a permit. The control is, however, implemented through provincial legislation. No legislative control is imposed on worked ivory. The Panel was informed that the drafting of a specific Endangered Species Act had been finalized and was to be adopted in 2000. Under the new Act as drafted, trade in worked ivory would be controlled and the penalties for offences would be greatly increased.
42. South Africa is a signatory to the Protocol on Wildlife Conservation and Law Enforcement of the Southern African Development Community.

Customs legislation

43. Under the Customs and Excise Act, Customs officers are empowered to detain any items that are controlled by other law. These items are listed in the "Consolidated list of restricted and prohibited goods" which is updated in a central database and accessible to the officers when screening import and export shipments. Raw ivory and ivory that is "simply prepared" is included in the list. Customs legislation does not control trade in worked ivory.

Customs Union

44. No Customs control is in place between the five countries of the Customs Union (Botswana, Lesotho, Namibia, South Africa and Swaziland). Wildlife shipments, including raw ivory, are however still subject to inspection under veterinary legislation.

Transit

45. The transit of raw ivory through South Africa is regulated under the Customs and Excise Act. All shipments must be properly declared. Any irregularities will be referred to appropriate agencies for further action.

46. It appears, however, that worked ivory is not subject to control. This raises concern about how controls can be exerted on trade in worked ivory that is not covered by the necessary permits.

Effectiveness of law enforcement

External trade

47. The Customs service requires the presentation of a permit for the import or export of any raw ivory if the shipment does not originate in, and is not destined for, one of the other countries of the Customs Union. Any irregularities detected will result in the shipment being detained. Illegal import and export cases will be handed over to the nature conservation services or the Police for investigation, as Customs officers do not have powers of arrest for such offences. The Customs service can take legal action only in cases where a shipment being imported has been misdeclared or where undeclared goods have been imported. Around five per cent of the shipments imported and exported are inspected by Customs officers under a risk-management system.

48. With the dissolution of the anti-poaching sub-unit of the Endangered Species Protection Unit of the South African Police Service, 20 staff have been cut from the Unit, leaving a staff of 30 people. The work of the Endangered Species Protection Unit is therefore now focused on investigation of illegal movements of ivory and other wildlife specimens. Border Police and the military provide support when required. It is noted that more emphasis is now placed on national and international co-operation, intelligence collection and analysis, which were reported to have effectively supported enforcement actions against poaching and illegal trade. Regular meetings are held with the various enforcement agencies.

49. The Panel was informed that organized poaching and smuggling of ivory is virtually non-existent in South Africa. This is evidenced by the statistics on ivory confiscation by the Endangered Species Protection Unit from 1990 to 1999 (see Table) which showed an overall decreasing trend in average weight of the quantity of ivory seized in each case. Both the nature conservation services and the Endangered Species Protection Unit feel that enforcement actions are effective and the Panel concurs with this conclusion.

Internal trade

50. Investigation work is done by a dedicated investigation team of the nature conservation service of each province. The Endangered Species Protection Unit takes up the duty in provinces that do not have such an investigation team. Again, emphasis is put on intelligence collection and analysis.

Evidence of illegal trade through South Africa

51. The Panel was informed by ESPU and other enforcement agencies that no organized illegal trade in ivory through or from South Africa is believed to exist. The Panel has received no evidence to the contrary. It was noted that the system of intelligence collection and the intelligence network had been enhanced to improve the probability of discovery of illegal trade.

52. The Panel examined print-outs from the ETIS database containing all records for the period 1 January 1989 to 31 October 1999 indicating: a) seizures where the country of discovery is South Africa; b) seizures where the country of origin is South Africa; c) seizures where the country of export/re-export is South Africa; and d) seizures where the country of destination is South Africa. These data tend to confirm the statement in paragraph 48 above. In fact the data indicate an overall downward trend in the number of seizures. Assuming that there is no deterioration in enforcement quality, this would suggest that the situation is improving. The reduction in the number of ESPU staff could to some extent account for the reduction in seizures made within South Africa, although this is offset by the point, made by ESPU, that there is hardly any organized smuggling there any longer. Moreover, the Panel bears in mind that the ETIS database contains data gathered from all over the world and therefore is not a simple reflection of the enforcement effort in South Africa.

53. The ETIS database records 44 incidents of illegal ivory trade involving South Africa in the five-year period January 1995 to October 1999. These involved some 662 tusks and 3,514 pieces plus 131 kg of pieces of ivory apparently either seized in, destined for, originating in, or exported/re-

exported from South Africa. (By comparison, the Panel reviewing the proposal of South Africa for the eighth meeting of the Conference of the Parties had been made aware of 45 incidents over the preceding five years, involving 317 tusks and 137 kg of ivory pieces.) Two of these records, relating to seizures in 1999 of ivory apparently having come from South Africa, account for some 90 per cent of the total number of tusks recorded as illegally traded.

54. These two records of seizures in 1999 were of concern to the Panel, which therefore sought further information. One related to 155 tusks seized in Portugal and the other to 442 tusks seized in China. The first of these seizures in fact resulted from an investigation conducted by ESPU, which discovered that three tonnes of ivory (of mixed origin) had been illegally shipped from Durban in 1996. The tusks seized apparently represented the remaining part (about half) of the original shipment. Regarding the tusks seized in China, no additional information is available and, from the information available to the Panel, it is not even clear that the tusks were shipped from South Africa.
55. Since the number of elephants killed illegally in South Africa is now extremely small (e.g. 12 in 1995, five in 1996, one in 1997, two each in 1998 and 1999) the ivory recorded as seized in other countries having come from South Africa is evidence of a continuing movement of ivory through the country, having originated elsewhere. With the exception of the two records referred to above however, the level of such recorded illegal trade is very small. The Panel recognizes of course the high probability that there is also a continuing illegal trade that is not discovered, although the level of such trade can only be a matter of speculation.
56. From non-governmental organizations, the Panel received two reports that contained information about illegal trade and trade control problems in South Africa: 'The report of the Commission of Inquiry into the alleged smuggling of and illegal trade in ivory and rhinoceros horn in South Africa', of January 1996, and 'South Africa's wildlife trade at the crossroads' published by TRAFFIC in 1996. Both of these reports are now rather out of date. The first concludes that, in the period 1975 to 1987, there was a substantial illegal trade in raw ivory passing through South Africa and that the South African Defence Force was directly involved. The Panel has received no indication from any source that a significant trade in raw ivory through South Africa is continuing. The only evidence received of a continuing commercial level of trade is the two seizures in 1999 referred to above, but one of these relates to illegal trade four years ago and the information about the other is not clear.
57. The second of the reports received by the Panel makes a variety of recommendations relating to the national legislation, administration and enforcement to improve CITES controls in general. Regarding elephants in particular however, the report comments positively on the co-ordinated efforts to strengthen legal provisions. In fact, partly as a result of the TRAFFIC report, South Africa initiated a project, funded by DANCED, to improve administration and implementation of the Convention in South Africa. Moreover, the TRAFFIC office in South Africa has commented to the Panel that they do not find major problems with South Africa's elephant management legislation and implementation, drawing attention to the much improved provincial legislation and enforcement.

CONTROL OF TRADE IN HIDES

58. The Panel had the opportunity to inspect the game processing plant at Skukuza, where products from culled animals were processed (until culling ceased in 1994). Complete information was provided regarding the processing of all elephant products including hides before they were placed into storage.
59. The stock of elephant hides accumulated from culling operations is securely held in a warehouse at Skukuza. The records relating to these were viewed. [See also Doc. 9.47 (Rev.) Annex 6.]. The total stock of elephant hides amounts to 152 tonnes. They are not tagged or marked in any way.
60. It was noted that there were several reasons why illegal killing of elephants for their skins is not known to exist and probably would not. Most notably: the value of the skin is relatively low; the skin is both very bulky and very heavy (a whole skin of an average elephant would weigh in the region of 500 kg); and, in order to be commercially usable, the skin would need to be treated within a few hours of the animal being killed. Consequently, any commercial quantities could only originate from the government stock.

61. Moreover, possession of elephant hides requires a licence/permit to prove the legality of the source.
62. Any leather goods in the market in South Africa could be traced back to the manufacturer through relevant supporting documents to prove the source, such as an invoice, or selling permit.
63. The Panel believes that the level of control of the trade in hides is sufficient considering that the risk of illegal trade is minimal.

IMPACT OF THE ACCEPTANCE OF THE PROPOSAL ON THE SOUTH AFRICAN POPULATION

64. One of the annotations in the proposal of South Africa indicates that the provisions of Decision 10.1 would still apply. This decision of the Conference of the Parties requires, in paragraph f), that before any trade in raw ivory is permitted, the range State concerned should have strengthened and/or established mechanisms to reinvest trade revenues into elephant conservation. The proposal already contains a commitment to use all revenues from the sale of ivory for projects to promote elephant conservation. If the proposal is adopted, the Secretariat and the Standing Committee would need to satisfy themselves in due course that the necessary actions had been taken to comply with Decision 10.1.
65. The proposal lists the three uses to which the revenue generated from the sale of elephant products from the stockpile at Kruger National Park would be put: monitoring and research to provide the basis for implementing the elephant management programme; increased monitoring and control of illegal hunting; and acquisition of land to promote elephant conservation in other national parks. These measures are all positive.
66. There could be a negative impact of the acceptance of the proposal for the South African population if, for whatever reason, it led to an increase in poaching of elephants in South Africa. In this connection, the experiences of the States whose elephant populations were transferred to Appendix II at CoP10 is relevant. There is not appear to be any evidence of a significant increase in poaching in those States for ivory resulting from the adoption of their proposals. The Panel, moreover, is impressed by the currently very low level of illegal killing of elephants in South Africa and notes that anti-poaching resources would be enhanced with funds from the sale of the ivory stock if this were permitted. Consequently, the Panel has no reason to believe that there would be any important negative impact of the adoption of the proposal.
67. The Panel notes, however, that concern has been expressed about the possible impact of the acceptance of the proposal on elephant populations other than that of the proponent State. Consideration of this matter is outside the terms of reference of the Panel but it should comment that the question is currently the subject of the system for Monitoring Illegal Killing of Elephants, set up as part of a process put in place by the Conference of the Parties at its 10th meeting.

CONCLUSIONS

Is the population viable and sustainable and are there particular risks?

68. Nearly 90 per cent of the elephant population of South Africa is in Kruger National Park, where it is increasing at a rate estimated at seven per cent per year. This population is certainly genetically viable. If there are questions about its sustainability, they would relate only to how large the population can grow in the available habitat.
69. Outside Kruger National Park, the number of elephants, the number of populations and the total range available are continuing to grow.
70. There is currently no apparent threat to the status of the African elephant population of South Africa.

Has the range State demonstrated its ability to monitor its African elephant population?

71. The conclusion of the Panel is exactly the same as that of the Panel that reviewed the South African proposal to the ninth meeting of the Conference of the Parties: "South Africa has a long-running programme for monitoring the elephant population of Kruger National Park.... This is one of the best-

monitored populations on the African continent.... The other populations are relatively small and, with the exception of Tembe Elephant Park, relatively easy to monitor." There is no question that South Africa has demonstrated its ability to monitor its elephant population.

Are the current anti-poaching measures effective?

72. It is quite clear that the current anti-poaching measures in South Africa are extremely effective. The work is further improved by the clear division of work areas among the Endangered Species Protection Unit, special investigation teams and anti-poaching teams.

Is the total level of offtake from both legal and illegal killing sustainable?

73. Currently the only legal killing of elephants in South Africa is limited to 43 animals a year on private lands for trophy tusks. There has been no culling of elephants in South Africa since 1994. Although culling is foreseen in the new management plan for Kruger National Park, the Panel accepts the prediction of the South African National Parks that the population will nonetheless continue to increase. Illegal killing of elephants in South Africa is at insignificantly low levels.

Is the control of ivory stocks adequate to prevent the mixing of legal and illegal ivory?

74. If the proposal is accepted, the only raw ivory that would be authorized to be traded is the stock held at the ivory strongroom at Skukuza, in Kruger National Park. The comprehensive procedure adopted to keep track of the movement of each single ivory tusk into the strongroom ensures that ivory of legal origin is not mixed with ivory of illegal origin. If the procedures to export the ivory were equivalent to those implemented for the stocks of ivory exported from Botswana, Namibia and Zimbabwe in 1999, this would ensure that there was also no possibility to mix ivory of legal and illegal origin when the ivory was transported.

Is law enforcement effective?

75. South Africa has achieved a high standard of law enforcement. The enhancement in intelligence collection will further strengthen their enforcement work.

Are enforcement and controls sufficient to ensure that no significant amounts of ivory taken or traded illegally from other countries are traded within or through the territory of the affected range State?

76. The seizures of ivory in South Africa, and in other countries where it has apparently come from South Africa, indicate the continuation of illegal trade in ivory through South African territory. Over the past five years there appears to have been a downward trend in the number of illegal shipments being discovered. This probably reflects a downward trend in the illegal trade in ivory over this period.

77. The Panel is nonetheless concerned about two large shipments of raw ivory from South Africa, discovered in Europe and Asia. Little information is available about these shipments, so that the Panel can not say with certainty that no significant amounts of ivory traded illegally from other countries pass through South Africa.

78. The Panel feels obliged to comment, however, that if the purpose of question g) is to facilitate a judgement regarding the quality of control on international trade in South Africa, it has the impression that the control is not less strict than the control in most other countries. The Panel certainly sees no opportunity for the laundering of ivory illegal origin through South Africa. It would thus be quite clear, if the proposal were adopted, that any raw ivory arriving at a port of entry from South Africa without the appropriate permits, would have to be considered illegal and subject to seizure.

79. The Panel must also express some concern regarding the lack of legal control on worked ivory in transit in South Africa. However, it should be noted that the level of illegal trade in worked ivory appears to be rather low.

Are there adequate controls on trade in parts and derivatives from the African elephant other than ivory in the proponent State?

80. The only parts and derivatives other than ivory proposed to be traded under the provisions relating to Appendix-II species are hides and leather goods. The Panel is satisfied that the controls relating to such specimens are adequate, and will be improved with the passage of new legislation to implement CITES in South Africa.

Are there adequate controls on ivory trade in specified importing countries?

81. South Africa has not specified to the Panel or in its proposal the proposed importing country. The only country known to the Panel to have adequate controls, as agreed by the Conference of the Parties, is Japan. If South Africa proposes that exports of ivory be authorized to a country other than Japan, the Panel recommends that the controls in the country concerned be subject to review by the Secretariat and approval by the Standing Committee.

Would the acceptance of the proposal be likely to have a positive or negative impact on the conservation status of the elephant population and its environment in the affected range State?

82. The Panel is convinced that, if the proposal were accepted, and if the stocks of raw ivory and hides in South Africa were sold, the funds would be used in a way that would benefit the South African population of the African elephant.

TABLE

| Year | Case | Arrest | Tusks | Pieces | Blocks | Processed kg | Carcass | Total kg | Value ZAR |
|--------------|-------------------------|------------|--------------|-----------------------|---------------------------|------------------------|----------|-------------------|----------------------|
| 1989 | no statistics available | | | | | | | | |
| 1990 | 1 | 2 | 6 | 0 | 23 (2) | 0 | 0 | 44.000 | 26,400.00 |
| 1991 | 35 | 85 | 110 | 6 (2) | 3,782 (378) | 0 | 0 | 1,399.435 | 4,359,927.00 |
| 1992 | 89 | 165 | 295 | 34 (3) | 1,204 (120) | 0 | 0 | 4,550.883 | 4,189,676.00 |
| 1993 | 85 | 160 | 245 | 69 (8) | 23,047 (2,304) | 114.00 (12) | 0 | 2,527.921 | 3,425,384.00 |
| 1994 | 58 | 97 | 83 | 45 (6) | 2,580 (258) | 0 | 0 | 1,314.987 | 950,903.00 |
| 1995 | 64 | 79 | 110 | 24 (4) | 6 (1) | 0 | 0 | 1,116.660 | 670,000.00 |
| 1996 | 69 | 35 | 95 | 30 (11) | 297 (29) | 11.52 (3) | 0 | 920.000 | 644,000.00 |
| 1997 | 42 | 55 | 34 | 25 (9) | 224 (22) | 40.23 (5) | 0 | 337.140 | 264,000.00 |
| 1998 | 19 | 38 | 53 | 8 (6) | 0 | 0 | 1 | 295.481 | 497,421.61 |
| 1999 | 31 | 52 | 41 | 13 (3.5) | 0 | 0 | 0 | 495.440 | 441,658.28 |
| Total | 493 | 768 | 1,072 | 254 (52.5) | 31,163 (3,114) | 165.75 (20) | 1 | 13,001.947 | 15,469,369.89 |

ANNEX

List of people interviewed by the Panel in South Africa

Carlos Bastos, Supervisor: Game Processing Plant, Kruger National Park

Pieter Botha, Deputy Director, Biodiversity Utilization, Environmental Conservation Branch, Department of Environmental Affairs and Tourism

Leo Braack, Co-ordinator GAZA TFCA, Kruger National Park

Inspector S.E. Bruwer, Endangered Species Protection Unit, South African Police Service

Manie Coetzee, Manager: Security, Kruger National Park

Willem Gertenbach, General Manager: Nature Conservation, Kruger National Park

Superintendent Pieter Lategan, Endangered Species Protection Unit, South African Police Service

Frans Laubscher, Head: Project Development and Management, Kruger National Park

Deon Louwrens, Deputy Director, South African Revenue Service (Customs)

David Mabunda, Kruger National Park

Ken Maggs, Head: Environmental Crime Control Unit, Kruger National Park

Sonja Meintjes, Principal Environmental Officer, Biodiversity Utilization, Environmental Conservation Branch, Department of Environmental Affairs and Tourism

Jan Muller, General Manager: Wildlife Protection Service, Mpumalanga Parks Board

Inspector Neill, Endangered Species Protection Unit, South African Police Service

Khungeka Njobe, Kruger National Park

Phin Nobela, Head Ranger: North, Kruger National Park

Peter Novellie, South African National Parks

Collette Pretorius, Senior Auditor, Internal Audit, Kruger National Park

Ertjies Röhm, Manager: Special Investigation, Mpumalanga Parks Board

Blake Schraader, Acting General Manager: Technical Service, Kruger National Park

Julian Sturgeon, consultant to the Department of Environmental Affairs and Tourism

Blackie Swart, Manager: Permits, Professional and Scientific, Mpumalanga Parks Board

Ian Whyte, Senior Scientist, Kruger National Park

Deon von Weilligh, Head: CITES, Permit and Legislation Services, Northern Province Parks Board

Antoinet van Wyk, Head Ranger: South, Kruger National Park