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

5.1 An analysis of the CITES Listing Criteria as applied to commercially-exploited aquatic species

15. The Secretariat introduced this agenda item, referring to documents COFI:FT/VIII/2002/3 and to the Addendum: the report of the FAO Second Technical Consultation on the Suitability of the CITES Criteria for Listing Commercially-exploited Aquatic Species, held in Windhoek, Namibia (November 2001). Attention was drawn to some of the major recommendations on the criteria made at that Consultation, with particular reference to Appendix F of the Windhoek report. The importance of using the best scientific information available in considering any proposal for listing, de-listing or transfer in the CITES Appendices (I and II) was emphasized, as was the need to strengthen the current process in CITES for scientific evaluation of proposals. The Secretariat reminded delegates that FAO was only an observer at CITES and that decisions at CITES were based on the votes of Parties to CITES. It was therefore essential for national delegations at CITES meetings to be properly briefed and to take into account the views of the fisheries authorities if fishery matters were to be promoted.

16. The report from the FAO Second Technical Consultation was endorsed by the Sub-Committee on behalf of COFI and it was agreed that it should be conveyed to the CITES Secretariat as the formal FAO input to the CITES review process. It was agreed that the recommendations from the FAO Technical Consultation must be seen as a package, including the proposals on changes to the criteria, the emphasis on using the best scientific information available and the need for a strengthened scientific evaluation process and evaluating proposals on a case by case basis. A letter to this effect should be prepared by the FAO Secretariat. The letter should also refer to the higher social and economic value of fisheries compared to many of the taxonomic groups normally considered by CITES. This higher value justified the substantial interest of national fisheries authorities in ensuring that the listing criteria are appropriate for exploited aquatic species and that they minimize the number of false alarms and misses in decisions on listing. Some delegations also referred to the need for a responsible approach to proposals for listing given the potential social implications of listing an exploited aquatic species in many developing countries.

17. A number of countries drew attention to problems in the de-listing process and the great difficulty in de-listing a species even when there was good scientific support for such a decision. This is particularly problematic in aquatic species which frequently show considerable variability in abundance. There was a call for CITES to provide adequate and appropriate mechanisms for timely decisions on both listing and de-listing exploited aquatic species. It was noted that the Second FAO Technical Consultation addressed natural variability and managed reductions in aquatic stocks that may be proposed for listing in either Appendix I or II. The recommendations to CITES said that such fluctuations should be generally disregarded in the revised CITES listing criteria.

18. Several countries reiterated their reservations about the role of CITES in relation to resources exploited by fisheries. The Sub-Committee held the view that FAO and the mandated regional fisheries management organizations (RFMOs) were the appropriate international bodies on fisheries and fisheries management. The Sub-Committee also underlined the importance of CITES Article 14 regarding the relationship between CITES and UNCLOS and its implementation agreement. The view was expressed that CITES should be seen as a complementary instrument in the protection of such resources, e.g. in cases where management regimes are not in place, and that a CITES listing should be limited to exceptional cases only and when all relevant bodies associated with the management of the

species in question agreed that a listing would be advantageous. Some countries expressed support for the role of CITES in fisheries management, stating that it could not replace traditional fisheries management.

19. The observer from the CITES Secretariat expressed appreciation for the contribution of FAO to the re-evaluation of the CITES listing criteria and for the fresh perspectives that the involvement of FAO had brought to the process. He emphasized that the CITES Secretariat welcomed cooperation with FAO and that CITES would like to see on-going and closer cooperation with the Organization. He reiterated that it was essential for countries to resolve internally any differing views amongst their relevant agencies and departments on the role of CITES and the listing criteria if effective progress was to be made.

5.2 Developing a workplan for exploring CITES issues with respect to international fish trade

20. The Secretariat introduced document COFI:FT/VIII/2002/4. This included two main issues: the development of a workplan to investigate CITES issues related to international fish trade and possible mechanisms for strengthening the existing CITES process for scientific evaluation of listing proposals.

21. There was general agreement that many of the implications of a CITES listing had not been explored in detail and that there was a need for FAO to initiate such investigations in relation to exploited aquatic species. All the issues listed in COFI:FT/VIII/2002/4 were considered important:

- Article II, Paragraph 2b, the “look-alike” clause;
- Annex 3 which deals with split-listing;
- the administrative and monitoring implications of listing and down-listing, including the implications of Annex 4 for this;
- the applications of the phrase “introduction from the sea” in the definition of trade in Article I;
- analysis of the legal implications of the existing CITES listing criteria in relation to the UN Convention of the Law of the Sea (UNCLOS) and related international law covering fisheries, and of any changes in those implications resulting from adoption of the proposals included in Appendix F to the Report of the Second Technical Consultation;
- aquaculture.

22. Discussion of this agenda item was spirited and though delegations differed on several points, the Sub-Committee is in a position to forward agreed recommendations to COFI and to CITES as appropriate. Recommendations form two broad categories; those concerning future FAO-CITES cooperation and coordination, and those relating to the development of an FAO workplan on CITES and commercially-exploited aquatic species. Several countries stressed that these difficult issues should be addressed carefully and cautiously, without undue haste. Some delegations considered that FAO should play the leading role in evaluation of proposals to CITES dealing with commercially exploited aquatic species while others asserted that FAO and CITES should work collaboratively on the scientific evaluation of listing proposals. The detailed recommendations on a proposed workplan and process for scientific evaluation of relevant CITES listing proposals are reproduced in Appendix F.

APPENDIX F

Recommendations on Developing a Workplan for Exploring CITES Issues with respect to International Fish Trade and a process for Scientific Evaluation of Relevant CITES Listing Proposals

FAO-CITES Cooperation

60. The Sub-Committee requests the Secretariats of FAO and CITES to coordinate in the drafting of a Memorandum of Understanding (MOU) to facilitate dialogue and exchange of information. The Secretariats are urged to begin drafting this MOU as soon as possible but certainly so that it can be considered and possibly approved at the 2003 meetings of COFI and the CITES Standing Committee. The Sub-Committee further recommends that the next meetings of COFI and the CITES Standing Committee include an agenda item titled “Completing an MOU between FAO and CITES on cooperation with respect to commercially-exploited aquatic species¹.”

61. All delegations recognized that given the timetables of the two organizations, completion of the MOU prior to the next CITES Conference of the Parties (COP 12), scheduled for November 2002 in Santiago, Chile would not be possible. With this in mind the Sub-Committee requested that the FAO Secretariat consider ways in which it can facilitate the provision of fisheries expertise to CITES Parties for COP12, suggesting that the FAO Secretariat may be able to receive information from the CITES Secretariat on relevant listing proposals and forward the information to fisheries contacts in FAO member States and relevant RFMOs.

62. After thorough discussion in both plenary and a breakout group on this issue, the Sub-Committee agreed that the MOU between FAO and CITES should include provisions elaborating future FAO involvement in the scientific evaluation of proposals for listing and down-listing exploited aquatic species. The Sub-Committee recommends that the MOU contain the following elements describing the process by which FAO and CITES will coordinate scientific and technical advice on proposals to list commercially-exploited aquatic species in accordance with the provisions of Article XV, paragraphs 1 and 2(b) of the Convention.

- Listing Proposal – The CITES Secretariat receives a proposal to list a commercially-exploited aquatic species.
- Transmittal to FAO – The CITES Secretariat transmits the listing proposal to FAO.
- Consultation with Relevant Parties – FAO transmits the listing proposal to appropriate contacts in relevant regional fisheries management organizations with competence over the proposed species, range States, and the flag States of those vessels involved in the fishery through the normal channels of communication.
- Response to FAO – States and consulted RFMOs must respond to FAO with definitive advice on the need for the convening of an advisory panel, and if one is required, provide initial indications on the preference for a roundtable meeting or an e-mail conference. States and RFMOs considering the need for a panel nominate possible experts to participate.
- Formation of Panel– If an advisory panel is called for, FAO Secretariat determines the type of panel to be convened (roundtable or email based on level of difficulty of proposal and availability of resources), and invites participants from range and flag States, relevant RFMOs, scientific bodies, and independent experts. Panel participants produce, at the time of their meeting, an agreed report of the proceedings, which includes to the greatest extent possible, a balanced synthesis of views and compilation of biological and management data for that species.

¹ Commercially -exploited Aquatic Species is defined here as it was in the report of the first FAO Technical Consultation on the Suitability of CITES Listing Criteria for Commercially-Exploited Aquatic Species held in Rome in June 2000.

- Transmittal of Report of Panel to CITES – The panel then provides its advisory report to CITES concluding the FAO/CITES process for scientific evaluation for this species.

63. In negotiating the MOU, the Secretariats are requested to adopt a timeline for completing the above steps that will, to the greatest extent possible, result in the completion of the process in enough time for the resulting output to inform the deliberations of the CITES Secretariat in their provision of advice to the parties on the listing proposal in question. The CITES Secretariat is asked to incorporate, to the greatest extent possible, the results of the FAO-convened panel of experts in its recommendation to the CITES parties. To further facilitate the success of the above consultative process, the Sub-Committee recommends that CITES pass a resolution calling for listing proposals for commercially-exploited aquatic species to be submitted 330 days prior to the COP rather than the standard 150 days currently in effect. It was noted that convening each roundtable panel would incur substantial costs. FAO members will need to consider extra-budgetary funding for this work.

FAO Workplan on CITES and Exploited Aquatic Species

64. The suggestion of an Expert Consultation to examine the substantive issues described in paragraph 21 [PARA NUMBER TO BE CHECKED] in this report received unanimous support among the delegations. Initially, it was the opinion of most delegations that the Expert Consultation should take place prior to COP12, though several delegations urged a more careful and cautious approach. However, after further debate, the Sub-Committee endorsed an expert process that should consist of multiple meetings and papers to provide input to FAO and CITES members on all of the issues in paragraph 21 that will take place as resources and time permit. The Sub-Committee recommends the following guidelines for an experts' process be followed by the FAO Secretariat. Expert Consultations should be convened to address the following issues.

- CITES Article II, Paragraph 2b, the “look-alike” clause; Annex 3 of Res. Conf. 9.24, which deals with split-listing; and aquaculture issues as a group, noting the inter-relationships in these topics.
- Administrative and monitoring implications of listing and down-listing, including the implications of Annex 4 of Res. Conf. 9.24 for this. It was agreed that this should also include an analysis of the socio-economic impact of listing on sturgeon, queen conch and a number of hypothetical listing proposals. It was suggested that participants to this consultation include those with direct experience in implementation of CITES regulations for such cases.
- Applications of the phrase “introduction from the sea” in the definition of trade in Article I, including consideration of the administrative costs associated with the various interpretations of this term.
- A background paper should be produced that provides an analysis of the legal implications of the existing CITES listing criteria and the CITES Convention itself in relation to the UN Convention on the Law of the Sea (UNCLOS) and related international law covering fisheries, and of any changes in those implications resulting from adoption of the proposals included in Appendix F to the Report of the FAO Second Technical Consultation.

65. Delegates considered all the issue areas highly important and all areas should be examined thoroughly. The FAO Secretariat made it clear that it would not be possible to complete the approved experts process prior to COP 12. The Sub-Committee agreed that the FAO Secretariat should consult with the CITES Secretariat on how to proceed in the most effective way. In this respect, it was noted that as it would not be possible for FAO members to review formally and approve the findings of the parts of the above experts process completed prior to COP12, the report from any completed work should be distributed to FAO members for use, at their discretion, at COP12. It was suggested that CITES include on the agenda for COP12 an agenda item that would

allow for the discussion of these issues, even if that discussion only urged further collaboration between CITES and FAO in these areas.

66. The Sub-Committee recommends that COFI include in its next agenda an item entitled “Adopting a Workplan on CITES and trade in commercially-exploited aquatic species” and that it include sub-items for each of the four parts of the experts process outlined above. For items in the experts' process which have been completed prior to COFI, the Sub-Committee recommends that COFI consider the report of that process and approve it if possible. The Sub-Committee also invites COFI to provide direction on future work, if appropriate, under each item in the experts' process. It was also suggested that for those reports from the experts' process approved by COFI, it would be useful to submit them as formal discussion papers to the CITES process as one means to inform CITES parties on these issues as they relate to commercially-exploited aquatic species. The Secretariat noted that progress on the above experts' process would depend on the availability of resources and that for a longer term commitment, as is required to complete the workplan, COFI may need to consider allocating regular budgetary funds for this purpose.