

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

Twelfth meeting of the Conference of the Parties
Santiago (Chile), 3-15 November 2002

Interpretation and implementation of the Convention

Other themes and issues

ESTABLISHMENT OF A WORKING GROUP TO ANALYSE RELEVANT ASPECTS OF
THE APPLICATION OF CITES TO MARINE SPECIES

1. This document has been submitted by Chile.

Introduction

2. For some time, discussion on the inclusion, deletion or transfer of several aquatic species in the CITES Appendices, notably marine species, has intensified, especially during recent meetings of the Conferences of the Parties. These discussions have led to heated debate and proposals by the signatory States of CITES, and when agreement has not been reached this has led to the use of secret ballots in order to ensure unfettered voting by the Parties.
3. This has produced clear signs that tend to show:
 - a) the great current concern around the world for exploitation of and trade in marine fauna;
 - b) the existence of incorrect, incomplete or inadequately interpreted information making it difficult to find areas of agreement among the Parties;
 - c) the social impact of the adoption of strict CITES measures on coastal populations for which marine species form an important part of their culture and subsistence;
 - d) the circumstance that many marine species are protected beyond the Exclusive Economic Zones of coastal States;
 - e) that the current criteria established by CITES for the listing of species in the Appendices do not adequately meet the needs of marine species or are inapplicable to them;
 - f) there is inadequate interaction with intergovernmental, regional and worldwide organizations working to protect and conserve marine species; and
 - g) the nature of marine species makes it difficult to understand adequately the real status of their populations and their basic conditions of growth, sexual maturity, fecundity and natural mortality.
4. Given this situation, it is clear that the treatment and discussion of possible inclusion, deletion or transfer of marine species with regard to the CITES Appendices requires a review that, if not unanimously agreed on, at least will minimize separate interpretations produced during discussion of this topic.

5. CITES has already begun discussions on this topic, and the FAO Committee on Fisheries (COFI) has been asked to review the criteria currently used by the Convention to include marine species in the Appendices. This review of the criteria has led FAO to carry out several technical consultations among its member States. However, the large number and diversity of aspects that affect the behaviour, evolution and status of populations and subpopulations have made it difficult for FAO to make a final recommendation.
6. The above only reinforces the position that evaluation of the status of marine populations should be carried out using an approach and criteria different from those currently used by CITES, therefore all marine fauna should be studied and reviewed under the Convention on the basis, above all, of indicators and factors that best represent the dynamics of these populations, their behaviour and habitat.

The international regulation of marine species

7. Exploitation of the most important populations of marine species in the world has reached its maximum level. This has led several fishing countries to deal with the challenge of making exploitation of marine resources sustainable and to sign several international agreements on responsible fishing, fishing regulations and regulation of fisheries through local, national and regional legislation. This is the case of the FAO Code of Conduct for Responsible Fisheries, the International Whaling Commission (IWC), the Inter-American Tropical Tuna Commission (IATTC CIAT) and the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), among others, that have contributed to decreasing illicit, unregulated and unreported fishing in the world.
8. In general terms and without ignoring the existence of illicit capture in several fishing areas, the measures adopted by various countries have led to relative stability, if one considers that the total world capture in open-sea areas has remained steady at around 85 million tons during the period 1994-1999 (FAO, 2001).
9. This is of special relevance to CITES because it shows the existence of national, regional and worldwide agencies that have taken on the task of protecting and conserving marine species and that, as a result, they can make an important contribution to the making of decisions by the Conference of the Parties to CITES. Notwithstanding, it is estimated that there should be greater interaction between CITES and those agencies in order to strengthen and facilitate action by the Convention.

The Convention and marine species

10. The Convention is applicable to all species of wild fauna and flora, including all marine fauna.
11. In addition, many marine species that are currently subject to fishing and that are traded internationally are regulated by national legislation of coastal States and, in many cases, by international agreements. However, it seems convenient to strengthen the relationship between CITES and intergovernmental organizations, which would make it possible to improve and expand the exchange and processing of information on marine species in order to help contribute to their responsible use.
12. Likewise, and conscious of the difficulty of applying current CITES criteria for listing marine species and recognizing that the opinion of FAO would be an important contribution for establishing criteria that take into account factors for classification of marine species, CITES should establish an internal activity covering the task of reviewing that recommendation and, if necessary, revise it to fit the needs of the Convention.
13. Revision and clarification of the criteria for marine species is not the only topic pending full implementation by CITES. The lack of an agreement between the Parties to the Convention on the conditions to be met in order to regulate trade in specimens that have been introduced from the sea should be pointed out. Although Article IV of the Convention provides for a status of trade in specimens taken from the marine environment not under the jurisdiction of any State, which has been called

'introduction from the sea', there is no agreement among countries with regard to the conditions that must be met in order to regulate this trade. As will be recalled, at the 11th meeting of the Conference of the Parties, Australia submitted a draft resolution (document Doc. 11.18) on interpretation and implementation of CITES in relation to introduction from the sea. However, it was not adopted by the Parties because there was still disagreement on how to apply the Convention when specimens come from the high sea. Given the interest of several States to list several marine species in the CITES Appendices, it is extremely convenient now to establish an agreement on uniform interpretation and an internationally recognized treatment for specimens coming from the high sea.

14. So, taking into account that most marine species can be exploited both within and outside areas of jurisdiction of States; that the nature of these marine populations is incompatible with patterns of terrestrial populations; and keeping in mind the principles of international cooperation, sovereignty, use and complementarity that govern the activities of CITES, it is considered highly convenient that the issues associated with marine species be taken up by a special working group within CITES.
15. In this context, a draft decision for the creation of a working group is proposed, which is provided in the Annex.

Ramifications of the draft decision

16. The draft decision seeks to prepare a practical basis for application of the provisions of the Convention to marine species, especially with regard to:
 - a) provision of recommendations to the Convention for effective interaction with international organizations involved in the protection and conservation of marine resources and that regulate the extractive activities of marine species;
 - b) review and proposal of an interpretation for full application of the concept of 'introduction from the sea';
 - c) review and recommendation of possible changes to technical proposals submitted by regional or worldwide organizations with regard to specific and quantitative criteria for inclusion of marine species in the Appendices of the Convention;
 - d) provision of technical background information and recommendations for promoting full application of CITES with regard to marine species; and
 - e) help to the Secretariat for the exchange and evaluation of information on marine species with intergovernmental organizations that study, manage or regulate extractive activities regarding marine species.

COMMENTS FROM THE SECRETARIAT

- A. The Secretariat agrees with the principle of establishing a working group to consider marine species.
- B. The Secretariat believes however that this working group should not be established under the Animals Committee, since the issues largely relate to implementation or require legal interpretation. Also, marine species include species of flora and it would be inappropriate to have these taxa discussed in a Committee with a restricted mandate to consider fauna species only.
- C. The issue of the establishment of an Implementation Committee will be discussed under Agenda item 13 on the Establishment of Committees, and it is the view of the Secretariat that this implementation function would be best handled by a working group of the Standing Committee.

- D. The functions described in paragraph b) of the draft decision should not be included in the terms of reference of the working group, since this function has already been considered in the review of the criteria and is reported on in document CoP12 Doc. 58. Also, this function is currently included in the ongoing review carried out by the technical committees.
- E. The Secretariat advises that a marine species working group should not be established unless the funds required for it to function are provided in the Trust Fund.
- F. If a group is established, the Secretariat suggests that:
 - a) its terms of reference should be clear in the decision adopted and should extend to all marine species subject to commercial trade;
 - b) the text of the attached draft decision should be reformulated to clarify the roles of the chairman, the Standing Committee and the reporting requirements of the working group; and
 - c) the Conference should decide on the size and composition of the working group.

DRAFT DECISION OF THE CONFERENCE OF THE PARTIES

Establishment of a working group to analyse relevant aspects of
the application of CITES to marine species

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

REQUESTS that the Animals Committee create a Working Group for Marine Species (WGMS) in order to:

- a) propose an appropriate definition of the term 'introduction from the sea', in agreement with pertinent norms of international law as reflected in the 1982 United Nations Convention on the Law of the Sea and other applicable international instruments;
- b) study, discuss and submit possible changes to technical proposals made by the FAO Committee on Fisheries with regard to the criteria for inclusion of marine species in the Appendices of the Convention;
- c) recommend an adequate procedure of consultation, cooperation and coordination with international organizations responsible for the conservation, management and protection of marine species in the spirit of Article XV, paragraph 2 (b); and
- d) provide technical background information and recommendations in order to promote effective application of CITES with regard to marine species; and

URGES the Parties, especially those that have a direct interest in marine species, to cooperate actively with the Working Group for Marine Species (WGMS).