

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

Thirteenth meeting of the Conference of the Parties
Bangkok (Thailand), 2-14 October 2004

Interpretation and implementation of the Convention

Amendment of the Appendices

INCLUSION OF SPECIES IN APPENDIX III

1. This document has been prepared by the Secretariat and submitted by Switzerland.
2. At the request of the Standing Committee, the Depositary Government is submitting a proposal to amend Appendices I and II of the Convention by including an annotation that exempts certain types of specimens from the provisions of the Convention (see proposal CoP13 Prop. 2).
3. If this proposal (or an amended version of it) is adopted by the Conference of the Parties, it will apply to species included in Appendices I and II. The general exemptions applying to species in these Appendices should apply also to species in Appendix III. The Conference of the Parties does not have the possibility to amend Appendix III, but it can make recommendations regarding the interpretation of the Convention and regarding requests to include species in Appendix III.
4. Switzerland and the Secretariat recommend that, if proposal CoP13 Prop. 2 is adopted, Resolution Conf. 9.25 (Rev.) on Inclusion of species in Appendix III be revised to indicate that the types of specimens that are exempted from the provisions of the Convention for species in Appendices I and II are also interpreted as being exempted for species in Appendix III unless otherwise indicated by the Party that has listed the species.
5. If Resolution Conf. 9.25 (Rev.) is to be revised, this would also be the opportunity to update it so that it no longer refers to Resolutions that were deleted long ago.
6. In addition, it would make it possible to deal with another text that relates to Appendix III, namely the remaining text in the operative part of Resolution Conf. 1.5 (Rev. CoP12) on Interpretation and implementation of certain provisions of the Convention, which currently reads as follows:

RECOMMENDS that, if a country makes a reservation on any species listed in Appendix I or II, that country should not propose that this species be listed in Appendix III.
7. Since no species (as defined in Article I (a) of the Convention) may be included in more than one Appendix, which is stated in Resolution Conf. 1.3, even if it is obvious from the text of the Convention, Resolution Conf. 1.5 (Rev. CoP12) serves no useful purpose and can be repealed.
8. Finally some minor changes are also suggested to improve the readability of the Resolution.
9. Annex 1 to the present document contains the text of Resolution Conf. 9.25 (Rev.) with the proposed amendments indicated above marked up. Annex 2 contains the clean version without these marks.
10. Switzerland and the Secretariat recommend that the Conference of the Parties adopt the draft resolution in Annex 2.

DRAFT RESOLUTION OF THE CONFERENCE OF THE PARTIES

To replace Resolution Conf. 9.25 (Rev.)

Inclusion of species in Appendix III

[marked version showing proposed amendments to Resolution Conf. 9.25 (Rev.)]

NB: Text to be deleted is in ~~strike through~~ and proposed new text is underlined.

RECALLING Resolution Conf. 9.25 (Rev.), on Inclusion of species in Appendix III, adopted by the Conference of the Parties at its ninth meeting (Fort Lauderdale, 1994) and amended at its 10th meeting (Harare, 1997);

RECALLING Resolution Conf. 1.5 (Rev. CoP12) on Interpretation and implementation of certain provisions of the Convention, adopted at the first meeting (Bern, 1976) and amended at the ninth and 12th meetings (Santiago, 2002);

RECOGNIZING that Article XVI, paragraph 1, provides Parties with the right to ~~list~~include species in Appendix III;

RECALLING that Article II, paragraph 3, provides for the inclusion of species in Appendix III by a Party only if it needs the cooperation of other Parties in the control of trade;

RECOGNIZING that, for a species with a natural distribution that goes beyond the territory of the Party requesting its inclusion in Appendix III and its immediate neighbours, such inclusion may not necessarily need to cover all range States;

~~NOTING that Resolution Conf. 1.5, adopted at the first meeting of the Conference of the Parties (Bern, 1976), recommends that all readily recognizable parts and derivatives of species included in Appendix III be covered;~~

~~NOTING that Resolution Conf. 5.22, adopted at the fifth meeting of the Conference of the Parties (Buenos Aires, 1985), recommends criteria for the inclusion of species in Appendix III;~~

~~NOTING that Resolution Conf. 7.15, adopted at the seventh meeting of the Conference of the Parties (Lausanne, 1989), encourages Parties to declare inclusion of species in Appendix III or withdrawals therefrom at meetings of the Conference of the Parties;~~

~~NOTING that Resolution Conf. 8.23, adopted at the eighth meeting of the Conference of the Parties (Kyoto, 1992), recommends *inter alia* that, before submitting a species for inclusion in Appendix III, Parties request the advice of the Animals Committee or the Plants Committee regarding the trade status and biological status of that species;~~

AWARE that, ~~at the moment,~~ Appendix III contains species that occur rarely or not at all in international trade and for which the Convention is therefore not effective;

OBSERVING that many Parties are unwilling to take on the administrative burden of implementing the provisions of the Convention with regard to Appendix III;

BELIEVING that this unsatisfactory implementation arises because the Parties are not fully convinced of the effectiveness of Appendix III;

RECOGNIZING that Article I, paragraph (b), of the Convention defines the term 'specimen' as including any readily recognizable part or derivative thereof specified in Appendix III in relation to the species;

RECALLING Resolution Conf. 9.6 (Rev.), adopted at the ninth meeting and amended at the 11th meeting (Gigiri, 2000) defines the term 'readily recognizable part or derivative';

~~RECOGNIZING that Resolution Conf. 1.5, paragraph 5, is deficient in not addressing the need for adequate implementation of domestic legislation;~~

~~RECALLING the wish of the Conference of the Parties, expressed at its eighth meeting (Kyoto, 1992), to reduce the number of its Resolutions;~~

CONSIDERING that for the effective implementation of the Convention with regard to Appendix III it is desirable to give clear guidelines for including species in Appendix III that reflect the aims of the Convention expressed in its Preamble;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

RECOMMENDS that, when considering the inclusion of a species in Appendix III, a Party:

- a) ensure that:
 - i) the species is native to its country;
 - ii) its national regulations are adequate to prevent or restrict exploitation and to control trade, for the conservation of the species, and include penalties for illegal taking, trade or possession and provisions for confiscation;
 - iii) its national enforcement measures are adequate to implement these regulations; and
 - iv) for species that are traded for their timber, consideration is given to including only that geographically separate population of the species for which the inclusion would best achieve the aims of the Convention and its effective implementation, particularly with regard to the conservation of the species in the country requesting its inclusion in Appendix III;
- b) determine that, notwithstanding these regulations and measures, there are indications that the cooperation of the Parties is needed to control illegal trade;
- c) inform the Management Authorities of other range States, the known major importing countries, the Secretariat and the Animals ~~Committee~~ or the Plants Committee that it is considering the inclusion of the species in Appendix III and seek their opinion on the potential effects of such inclusion; and
- d) after due consultation, and having satisfied itself that the biological status and trade status of the species justify the action, submit to the Secretariat the name of the species it wishes to include in Appendix III;

RECOMMENDS ~~further~~ FURTHER that, unless there is an urgent need for action-inclusion, a Party intending to include a species in or delete a species from Appendix III inform the Secretariat of its intention at least three months before a meeting of the Conference of the Parties, in order ~~that the Parties are informed of the amendment in time~~ to ensure that ~~it~~ the amendment enters into force on the same date as amendments to Appendices I and II adopted at the meeting;

DIRECTS the Secretariat:

- a) to publish the changed Appendices I, II and III together after each meeting of the Conference of the Parties, or at other times when warranted; and
- b) before communicating to Parties the inclusion of a species in Appendix III, to ensure that copies of all relevant national laws and regulations have been received from the Party concerned in accordance with Article XVI, paragraph 4, of Article XV the Convention;

RECOMMENDS that the following items derived from species included in Appendix III be interpreted as being exempt from CITES control, taking into account the provisions of Article I, paragraphs (b) (ii) and (iii), of the Convention, and agreeing to a derogation from Resolution Conf. 9.6 (Rev.) for this purpose:

- a) *in vitro* cultivated DNA that does not contain any part of the original;
- b) urine and faeces;
- c) synthetically produced medicines and other pharmaceutical products such as vaccines that do not contain any part of the original genetic material from which they are derived; and
- d) fossils;

NB the above text should be the same as the list adopted by the Conference in relation to Appendices I and II

REQUESTS the Animals ~~Committee~~ and the Plants Committees to assist Parties if necessary in reviewing the status of species in Appendix III, subject to available funding;

URGES Parties having included species in Appendix III to ~~periodically~~ review the status of these species periodically and, taking into account these guidelines and any recommendations of the Animals and Plants Committees, to consider the necessity to maintain them in that Appendix; and

REPEALS the Resolutions, ~~or parts thereof,~~ listed hereunder:

- a) ~~Resolution Conf. 1.5 (Bern, 1976) – Recommendations Concerning the Interpretation and Implementation of Certain Provisions of the Convention – paragraphs 3, 4 and 5;~~
- b) ~~Resolution Conf. 5.22 (Buenos Aires, 1985) – Criteria for the Inclusion of Species in Appendix III – paragraphs a) and b) under ‘RECOMMENDS’ and the paragraph under ‘REQUESTS’;~~
- e) ~~Resolution Conf. 7.15 (Lausanne, 1989) – Amendments to Appendix III; and~~
- d) ~~Resolution Conf. 8.23 (Kyoto, 1992) – Review of Appendix III.~~
- a) Resolution Conf. 1.5 (Rev. CoP12) (Bern, 1976; as amended at Fort Lauderdale, 1994, and Santiago, 2002) – Interpretation and implementation of certain provisions of the Convention; and
- b) Resolution Conf. 9.25 (Rev.) (Fort Lauderdale, 1994; as amended at Harare, 1997) – Inclusion of species in Appendix III.

DRAFT RESOLUTION OF THE CONFERENCE OF THE PARTIES

To replace Resolution Conf. 9.25 (Rev.)

Inclusion of species in Appendix III

[clean version]

RECALLING Resolution Conf. 9.25 (Rev.), on Inclusion of species in Appendix III, adopted by the Conference of the Parties at its ninth meeting (Fort Lauderdale, 1994) and amended at its 10th meeting (Harare, 1997);

RECALLING Resolution Conf. 1.5 (Rev. CoP12) on Interpretation and implementation of certain provisions of the Convention, adopted at the first meeting (Bern, 1976) and amended at the ninth and 12th meetings (Santiago, 2002);

RECOGNIZING that Article XVI, paragraph 1, provides Parties with the right to include species in Appendix III;

RECALLING that Article II, paragraph 3, provides for the inclusion of species in Appendix III by a Party only if it needs the cooperation of other Parties in the control of trade;

RECOGNIZING that, for a species with a natural distribution that goes beyond the territory of the Party requesting its inclusion in Appendix III and its immediate neighbours, such inclusion may not necessarily need to cover all range States;

AWARE that Appendix III contains species that occur rarely or not at all in international trade and for which the Convention is therefore not effective;

OBSERVING that many Parties are unwilling to take on the administrative burden of implementing the provisions of the Convention with regard to Appendix III;

BELIEVING that this unsatisfactory implementation arises because the Parties are not fully convinced of the effectiveness of Appendix III;

RECOGNIZING that Article I, paragraph (b), of the Convention defines the term 'specimen' as including any readily recognizable part or derivative thereof specified in Appendix III in relation to the species;

RECALLING Resolution Conf. 9.6 (Rev.), adopted at the ninth meeting and amended at the 11th meeting (Gigiri, 2000) defines the term 'readily recognizable part or derivative';

CONSIDERING that for the effective implementation of the Convention with regard to Appendix III it is desirable to give clear guidelines for including species in Appendix III that reflect the aims of the Convention expressed in its preamble;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

RECOMMENDS that, when considering the inclusion of a species in Appendix III, a Party:

- a) ensure that:
 - i) the species is native to its country;
 - ii) its national regulations are adequate to prevent or restrict exploitation and to control trade, for the conservation of the species, and include penalties for illegal taking, trade or possession and provisions for confiscation;

- iii) its national enforcement measures are adequate to implement these regulations; and
 - iv) for species that are traded for their timber, consideration is given to including only that geographically separate population of the species for which the inclusion would best achieve the aims of the Convention and its effective implementation, particularly with regard to the conservation of the species in the country requesting its inclusion in Appendix III;
- b) determine that, notwithstanding these regulations and measures, there are indications that the cooperation of the Parties is needed to control illegal trade;
 - c) inform the Management Authorities of other range States, the known major importing countries, the Secretariat and the Animals or Plants Committee that it is considering the inclusion of the species in Appendix III and seek their opinion on the potential effects of such inclusion; and
 - d) after due consultation, and having satisfied itself that the biological status and trade status of the species justify the action, submit to the Secretariat the name of the species it wishes to include in Appendix III;

RECOMMENDS FURTHER that, unless there is an urgent need for action, a Party intending to include a species in or delete a species from Appendix III inform the Secretariat of its intention at least three months before a meeting of the Conference of the Parties, in order to ensure that the amendment enters into force on the same date as amendments to Appendices I and II adopted at the meeting;

DIRECTS the Secretariat:

- a) to publish the changed Appendices I, II and III together after each meeting of the Conference of the Parties, or at other times when warranted; and
- b) before communicating to Parties the inclusion of a species in Appendix III, to ensure that copies of all relevant national laws and regulations have been received from the Party concerned in accordance with Article XVI, paragraph 4, of the Convention;

RECOMMENDS that the following items derived from species included in Appendix III be interpreted as being exempt from CITES control, taking into account the provisions of Article I, paragraphs (b) (ii) and (iii), of the Convention, and agreeing to a derogation from Resolution Conf. 9.6 (Rev.) for this purpose:

- a) *in vitro* cultivated DNA that does not contain any part of the original;
- b) urine and faeces;
- c) synthetically produced medicines and other pharmaceutical products such as vaccines that do not contain any part of the original genetic material from which they are derived; and
- d) fossils;

REQUESTS the Animals and Plants Committees to assist Parties if necessary in reviewing the status of species in Appendix III, subject to available funding;

URGES Parties having included species in Appendix III to review the status of these species periodically and, taking into account these guidelines and any recommendations of the Animals and Plants Committees, to consider the necessity to maintain them in that Appendix; and

REPEALS the Resolutions listed hereunder:

- a) Resolution Conf. 1.5 (Rev. CoP12) (Bern, 1976; as amended at Fort Lauderdale, 1994, and Santiago, 2002) – Interpretation and implementation of certain provisions of the Convention; and
- b) Resolution Conf. 9.25 (Rev.) (Fort Lauderdale, 1994; as amended at Harare, 1997) – Inclusion of species in Appendix III.