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

Fourteenth meeting of the Conference of the Parties
The Hague (Netherlands), 3-15 June 2007

Interpretation and implementation of the Convention

Trade control and marking issues

INTRODUCTION FROM THE SEA

1. This document has been prepared by the Secretariat at the request of the Standing Committee.

2. The Conference of the Parties adopted two decisions at its 13th meeting (Bangkok, 2004) regarding introduction from the sea. In Decision 13.18 it directed the Standing Committee to:

   a) contingent on the availability of external funding obtained in accordance with Decision 13.19, convene a workshop on introduction from the sea to consider implementation and technical issues, taking into account the two Expert Consultations of the Food and Agriculture Organization of the United Nations (FAO) on implementation and legal issues[1], and documents and discussions that occurred at the 11th and 13th meetings of the Conference of the Parties on these issues;

   b) invite the following participants to the workshop: three representatives from each CITES region to represent a Management Authority, a Scientific Authority, and a fisheries expert; two representatives from FAO; a representative from WCO; and two representatives of NGOs or IGOs with CITES and fisheries expertise;

   c) through its clearing-house mechanism, decide on the appropriate way to handle the logistics, agenda and reporting for the workshop and set timelines for the work to be done;

   d) ask the Secretariat to provide the report and recommendations from the workshop to the Parties through a notification and to FAO for consideration and comment; and

   e) consider the comments received on the workshop report from the Parties and FAO, and ask the Secretariat to prepare a discussion paper and draft resolution for consideration by the Standing Committee before submitting the draft resolution for consideration at the 14th meeting of the Conference of the Parties.

3. In Decision 13.19, it directed the Secretariat to:

   a) as a matter of high priority, assist in obtaining funds from interested Parties, intergovernmental and non-governmental organizations, and other funding sources to support a workshop on introduction from the sea under the terms of reference set out in Decision 13.18;

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[1] *FAO Fisheries Report No. 741: Report of the expert consultation on implementation issues associated with listing commercially-exploited aquatic species on CITES Appendices, and FAO Fisheries Report No. 746: Report of the expert consultation on legal issues related to CITES and commercially-exploited aquatic species.*

b) assist the Standing Committee in preparing for the workshop; and

c) welcome the consultations convened by FAO and approach the FAO Secretariat concerning further collaboration on introduction from the sea.

4. At its 53rd meeting (SC53, Geneva, June-July 2005), the Standing Committee was advised that the United States of America and the European Union had pledged funds to support the organization of a workshop on introduction from the sea. The Committee agreed that the workshop should be chaired by the Chairman of the Standing Committee and specified the Parties and organizations that should be invited to participate. On the basis of guidance provided by its clearing house, the Committee also agreed on the logistics, agenda, reporting and timeline for the workshop (see documents SC53 Doc. 15 and SC53 Inf. 6, and the SC53 Summary Record).

5. The CITES Workshop on Introduction from the Sea issues (IFS workshop) was held in Geneva from 30 November to 2 December 2005 and the final workshop report was circulated for consideration and comment with Notification to the Parties No. 2006/023 of 6 April 2006. The report was also provided to FAO for consideration and comment. Background documents for the workshop (in English only) are available on the CITES website under Programmes/Other issues/Introduction from the sea.

6. At its 54th meeting (SC54, Geneva, October 2006), the Standing Committee reviewed the workshop report, the comments that had been received on the report and the draft resolution and draft decision that had been prepared by the Secretariat. The Committee agreed to make certain revisions and requested the Secretariat to submit the documents, at the present meeting. It also agreed that a working group, including participants from the IFS workshop, would work electronically to refine the definition of 'marine environment not under the jurisdiction of any State', based on issues raised during SC54 and comments made on the workshop report (see documents SC54 Doc. 19 and SC54 Com. 1 and the SC54 Summary Record).

7. In February 2007 the working group established at SC54 provided to the Secretariat an alternative definition of the 'marine environment not under the jurisdiction of any State', which represented the majority view of working group members but which had not been unanimously agreed. The Secretariat was asked to include the alternative definition in the present document.

8. The alternative definition is included in the draft resolution contained in Annex 1, and a summary of the working group's efforts is contained in Annex 3. The summary shows that Mexico proposed a third definition, which the Secretariat understands was not discussed by the working group. Specifically, Mexico proposed that: "The 'marine environment not under the jurisdiction of any State' means the marine environment of the high seas and the area, as defined in the United Nations Convention on the Law of the Sea (UNCLOS)."

9. The report of the CITES Workshop on Introduction from the Sea Issues is contained in Annex 4. The comments made on the workshop report, including a correction which was requested by Argentina at SC54, are contained in Annex 5.

Recommendations

10. The Standing Committee recommends that the Conference of the Parties reach agreement on the bracketed text in the draft resolution contained in Annex 1 and adopt the resulting resolution in order to provide a definition of the 'marine environment not under the jurisdiction of any State'. It further recommends that the Conference adopt the draft decision contained in Annex 2.

COMMENTS FROM THE SECRETARIAT

A. The Secretariat supports the adoption of a resolution defining 'the marine environment not under the jurisdiction of any State' and believes that the alternative definition included in Annex 1 should assist Parties in reaching agreement on the wording of such a resolution.

B. The Secretariat supports the adoption of the draft decision contained in Annex 2 but suggests that a more precise time-frame be set. In this connection, the words "at its 57th meeting (SC57)" could be

added at the beginning of paragraph a). The words "between SC57 and SC58" could be added at the end of paragraph c) and the words ‘at its 58th meeting’ could be added after ‘Standing Committee’ in paragraph d). The text in paragraph b) could be revised to read ‘with expertise in CITES and fisheries’.

C. The cost implications of Secretariat support to the Standing Committee have been included in the costed programme of work. The draft resolution on financing contained in Annex 8 of document CoP14 Doc. 7.3 (Rev. 1) states that the Trust Fund should not be used to cover the travel costs or *per diem* of representatives from developed countries. If the draft resolution is adopted, it should help to keep meeting costs low. Nevertheless, approximately USD 25,000 would be needed to convene a meeting of the working group.

DRAFT RESOLUTION OF THE CONFERENCE OF THE PARTIES

Introduction from the sea

[The text in brackets was not agreed by the Standing Committee]

TAKING INTO ACCOUNT the CITES Workshop on Introduction from the Sea Issues (Geneva, 30 November – 2 December 2005) held pursuant to Decision 13.18 of the Conference of the Parties;

RECALLING that 'introduction from the sea' is defined in Article I, paragraph e), of the Convention as "transportation into a State of specimens of any species which were taken in the marine environment not under the jurisdiction of any State";

[RECALLING ALSO that Article XIV, paragraph 6, of the Convention provides that "Nothing in the present Convention shall prejudice the codification and development of the law of the sea by the United Nations Conference on the Law of the Sea";]

RECALLING FURTHER that Article III, paragraph 5, and Article IV, paragraphs 6 and 7, of the Convention provide a framework to regulate the introduction from the sea of specimens of species included in Appendices I and II, respectively;

RECOGNIZING the need for a common understanding of the provisions of the Convention relating to introduction from the sea in order to facilitate the standard implementation of trade controls for specimens introduced from the sea and improve the accuracy of CITES trade data;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

[AGREES that 'the marine environment not under the jurisdiction of any State' means those areas beyond the waters and the continental shelf, comprising the seabed and subsoil, subject to the sovereign rights or sovereignty of any State consistent with international law, as reflected in the United Nations Convention on the Law of the Sea.]

Alternative definition proposed by a majority of the SC54 working group:

AGREES that 'the marine environment not under the jurisdiction of any State means those marine areas beyond the areas subject to the sovereignty or sovereign rights of a State consistent with international law, as reflected in the United Nations Convention on the Law of the Sea.

DRAFT DECISION OF THE CONFERENCE OF THE PARTIES

Directed to the Standing Committee

14.XX The Standing Committee shall:

a) establish a working group on Introduction from the Sea, which would work primarily through electronic means, to consider a definition for 'transportation into a State', clarification of the term 'State of introduction' and the process for issuing an introduction from the sea certificate as well as other issues identified for further consideration in the final report of the CITES Workshop on Introduction from the Sea Issues (Geneva, 30 November – 2 December 2005);

b) include in the working group representatives of CITES authorities and fishery authorities from each of the six CITES regions and request the participation of the United Nations Division on Ocean Affairs and the Law of the Sea, the Food and Agriculture Organization of the United Nations, two regional fishery bodies, the fishing industry, and intergovernmental organizations and non-governmental organizations with CITES and fishery expertise;

c) contingent on the availability of external funding, convene a meeting of the working group; and

d) ask the working group to prepare a discussion paper and draft revised resolution for consideration by the Standing Committee and for consideration at the 15th meeting of the Conference of the Parties.

12 February 2007

SUMMARY OF EFFORTS BY THE WORKING GROUP ESTABLISHED AT SC54 ON INTRODUCTION FROM THE SEA TO REFINE THE DEFINITION OF THE 'MARINE ENVIRONMENT NOT UNDER THE JURISDICTION OF ANY STATE'

The working group consisted of all those who had commented on this issue at SC54: Argentina, Australia, Canada, Chile, China, Germany, Iceland, Mexico, Norway, Turkey, the United States of America, the European Union, the Food and Agriculture Organization (FAO), the International Environmental Law Project (IELP) and the IWMC World Conservation Trust (IWMC)

Comments were provided by: Argentina, Australia, Canada, Mexico, Norway, the United States of America, the European Union, FAO, IELP and IWMC.

The working group puts forward the following definition:

"The 'marine environment not under the jurisdiction of any State' means those marine areas beyond the areas subject to the sovereignty or sovereign rights of a State consistent with international law, as reflected in the United Nations Convention on the Law of the Sea."

This definition was not agreed to unanimously, but represents the majority view. Argentina and Australia stated a preference for the 2005 workshop definition and Mexico provided a new definition. The European Union, FAO, Norway, and the United States stated a preference for the "marine areas beyond the areas" text over the "those areas beyond the waters and continental shelf, comprising the seabed and subsoil" language in the 2005 workshop definition. Mexico agreed that shorthand definitions of complex concepts should be avoided and provided its own definition. Others who commented did not express a preference, although IELP indicated that the new text was "clearer."

Except for Mexico (which provided a new definition), all who commented preferred, or were willing to accept, the "subject to" text over the "may exercise" text. Likewise, except for Mexico, all who commented preferred or were willing to accept "consistent with international law" over "consistent with customary international law."

Summary of comments:

Argentina – Prefers the definition agreed at the 2005 workshop.

Australia – Would "strongly encourage" a return to the 2005 workshop definition and requests an explanation for removal of reference to 'the water column and continental shelf'. Believes it is important to specifically list the marine environments over which a coastal State has jurisdiction. Only referring to the 'marine environments' may cause some to think that coastal States only exercise sovereign rights over one part of the marine environment (e.g. the water column) and disregard that coastal States have sovereign rights over other areas (the continental shelf, including the extended continental shelf). Notes that a coastal State has sovereign rights whether it chooses to exercise them or not, and therefore they cannot support the "may exercise" text. Endorsed the "subject to" bracketed text and removal of the bracketed word "customary". UNCLOS incorporated some customary international law (e.g. EEZs) but also created new international law (e.g. the formula for defining the continental shelf). Inserting "customary" implies that it is only the customary international law reflected in UNCLOS that we take into account. Best to refer to international law as reflected in UNCLOS and not limit it to "customary" international law.

Canada – Indicated it had no preference on whether to use the "may exercise" text or the "subject to" text but requested that sovereignty be listed first (before sovereign rights). It had no preference regarding the insertion of "customary."

Mexico – Agrees that UNCLOS contains elaborate definitions and that it is best to avoid shorthand definitions of complex concepts. Believes it is important to distinguish between the terms "sovereignty" referring to the territorial sea, and "sovereign rights" referring to EEZs. These issues could be resolved if UNCLOS is specifically referred to as follows: "The 'marine environment not under the jurisdiction of any State' means the marine environment of the high seas and the area, as defined in the United Nations Convention of the Law of the Sea (UNCLOS)." The term "area" is used as defined in Article 1 of UNCLOS. This definition would also allow room, for example, for potential changes in the delineation of an extended continental shelf as a result of submissions presented by several countries in the Commission on the Limits of the Continental Shelf.

Norway – Prefers the phrase "marine areas beyond the areas" over listing the areas described under UNCLOS. Cannot accept the "may exercise" text as it would exclude from the definition areas that are not under the jurisdiction of any State at present, but that potentially can be. Would, therefore, like to retain the "subject to" text. Prefers deletion of the word "customary" for reasons given by IELP and FAO.

United States of America– Prefers "marine areas beyond the areas" over "areas beyond the waters and the continental shelf…" for the reasons stated in their response to the 2005 workshop report and notes as did the EU, that by referring to international law, as reflected in UNCLOS, the definition incorporates continental shelf and the waters of the territorial sea and the EEZ. Can accept "subject to" and the removal of the word "customary."

The European Union – Workshop text was acceptable, but sees merit in simplifying and clarifying certain aspects of the definition. Supports "beyond the areas…" as a replacement for "beyond the waters and the continental shelf…" in the 2005 workshop definition. The reference to UNCLOS will ensure that both the water column and the continental shelf are covered. Notes that while the intended meaning of the original phrase is the same, it could be open to interpretation (it could be understood to mean only those areas that are beyond both the waters and the continental shelf, i.e. where the continental shelf extends beyond 200 miles, the water column beyond the 200-mile limit would not be covered by the definition). They cannot accept the "may exercise" text and wish to retain the "subject to" language. Some States (in particular in the Mediterranean) have not declared an EEZ even though they may do so in the future. Under the "may exercise" text those areas would not be covered by the definition even though they are currently considered "high seas". Prefers the original reference to international law, i.e. without the word "customary" for the reasons put forward by Australia.

FAO – Sees the suggested definition as an improvement over previous versions. Believes "marine areas beyond the areas" is an all-encompassing term and is preferable to listing all areas described under UNCLOS. Prefers the "subject to" bracketed text because "may exercise" implies a choice, which is not totally correct. "Subject to" emphasizes "sovereignty" as an inherent characteristic or a given for coastal States over certain areas. Prefers dropping the reference to "customary" international law as it would exclude certain marine areas referred to in UNCLOS and widely accepted but not considered "customary international law". Notes that 'international law' includes 'customary international law.'

IELP – With regard to the omission of specific UNCLOS terms identifying marine areas, no preference, but notes that the new definition is clearer and that if the UNCLOS terms are re-inserted, "seabed and subsoil" can be excluded because they are simultaneously redundant and incomplete. Prefers "subject to" over "may exercise" because a country is not required to exercise sovereign rights to the maximum extent allowed by UNCLOS. If a State chooses to extend its EEZ only to 150 miles, the remaining 50 miles are not subject to sovereign rights or sovereignty. The "may exercise" text suggests that a coastal state retains sovereign rights or sovereignty in the areas where it has expressly chosen not to exercise those rights. Argues for deletion of the word "customary" as too limiting (similar to comments presented by Australia and FAO). Notes that international law includes customary international law, treaties, and general principles of law.

IWMC – Prefers "may exercise" but with the caveat that not being a lawyer it is difficult to decide which is most appropriate. Does not see a convincing reason to insert the word "customary" into the definition.

CITES Workshop on Introduction from the Sea issues
(Geneva, 30 November – 2 December 2005)

REPORT AND RECOMMENDATIONS

Participation

The workshop was organized in accordance with the agenda, participation and logistics agreed at the 53rd meeting of the CITES Standing Committee (Geneva, June 2005) and with the financial support of the European Union and the United States of America. It was chaired by the Chairman of the CITES Standing Committee and participants included: government experts from Argentina, Australia, Cameroon, Canada, Chile, China, Fiji, Germany, Iceland, Japan, Kenya, Malaysia, Mexico, Saint Vincent and the Grenadines, the United Kingdom of Great Britain and Northern Ireland and the United States representing CITES Management Authorities, CITES Scientific Authorities and fisheries departments in the six CITES regions; intergovernmental representatives from the Food and Agriculture Organization of the United Nations and the European Commission; and non-governmental representatives from IWMC-World Conservation Trust, the Species Survival Network and TRAFFIC. A complete list of participants is available on the CITES website under Programmes/Other issues/Introduction from the sea.

Invitations were sent to the United Nations Office of Legal Affairs – Division of Ocean Affairs and Law of the Sea, the World Customs Organization, the North East Atlantic Fishery Commission and South Africa, but they were unable to attend. At several points during the workshop, participants expressed their particular disappointment that no Regional Fishery Body (RFB) was present because their input would have been extremely useful in identifying practical ways to strengthen the synergy between CITES and RFBs.

General presentations and discussion

In opening the workshop, the Chairman addressed various organizational matters and mentioned that a drafting group might be created later. He moved quickly into the substance of the workshop, after the provisional agenda was adopted.

A short background presentation was provided by the CITES Secretariat, which described the definitions and documentary requirements for introduction from the sea (IFS) found in the Convention, gave a chronology of discussions held and decisions taken by the Parties on the subject, summarized the mandate of the workshop and identified key issues requiring conclusions and recommendations. FAO then gave a presentation on the discussions within and results of its Expert Consultation on Legal Issues related to CITES and Commercially-Exploited Aquatic Species, Rome, 22-25 June 2004[2] (FAO Expert Consultation on Legal Issues). In his presentation, the FAO representative recognized the authority for and role of resolutions in the Convention, particularly their practical value enabling the Convention to adapt to new circumstances.

The Chairman then invited general discussion on the two key issues before the workshop to enable various perspectives and concerns to be put on the table. The issues under discussion were derived from the Convention's definition of introduction from the sea and comprised clarification of the phrase 'marine environment not under the jurisdiction of any State' and clarification of the phrase 'transportation into a State'. During the discussion, the Chairman suggested that participants operate in accordance with Chatham House rules which would allow them to speak freely without subsequent formal attribution.

It was noted that, to date, 'introduction from the sea' had been interpreted and applied by individual States and that Parties were now seeking a common understanding of the term. A practical approach, which took into account existing international and national laws, was needed to achieve this common understanding.

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2 *FAO, FAO Fisheries Report No. 746, Rome, 22-25 June 2004*

At the outset, participants considered whether clarifying 'introduction from the sea' required an amendment of the Convention or an interpretive resolution. It was noted that an amendment was feasible but unlikely, in view of the substantive and procedural difficulties experienced in Parties' practice to date, and unnecessary. One earlier amendment had still not entered into force and future amendments would also require separate acceptance. It was thought sufficient to clarify rather than to change the Convention in order to align it with the evolution of international law since the Convention's adoption. CITES resolutions provided a useful means to reflect such new developments as well as to elaborate upon and link practical experience to relevant obligations under the Convention. Unlike an amendment to the Convention, they were also relatively easy to revise if necessary.

Marine environment not under the jurisdiction of any State

Initial discussion

With regard to clarification of the 'marine environment not under the jurisdiction of any State', the Chairman proposed that this should take into account State practice. Specifically, there should be an express but general reference to the continental shelf which would be flexible and should not prejudge the outcome of ongoing discussions under – or any possible evolution of – the United Nations Convention on the Law of the Sea (UNCLOS). It was explained that any extension of national jurisdiction over the continental shelf beyond the 200 mile limit required approval from the Commission on the Continental Shelf and would only cover living organisms found on or in the continental shelf.

A question was raised about the legal basis for recognizing 'exclusive fishing zones' or other maritime spaces beyond those recognized by UNCLOS. In response, it was pointed out that some States are not yet parties to UNCLOS and mention was made of customary international law, marine protected areas under the Convention on Biological Diversity, International Maritime Organization conventions, State practice (including an expression of interest in an area which does not generate any rights or impose obligations), jointly-agreed areas that pre-dated UNCLOS as well as various bilateral agreements and ongoing discussions regarding shared or disputed areas. Mention was also made of an apparent trend towards 'creeping jurisdiction' over or 'sovereignization' of the sea. It was then suggested that UNCLOS nevertheless provided the sole legal basis for determining jurisdiction over maritime spaces and that a broad reference to international law, implying the existence of other applicable legal instruments, was inappropriate. Any mention of UNCLOS, however, should avoid paraphrasing or rewording specific language within UNCLOS.

There was general agreement that a definition of 'marine environment not under the jurisdiction of any State' should be agreed and reflected in a resolution. Several participants said that they could share some text that represented their latest national drafting efforts and FAO suggested that the text recommended by the FAO Expert Consultation on Legal Issues might be considered in more detail.

Focused discussion

Following the initial discussion, four proposed definitions of the phrase 'marine environment not under the jurisdiction of any State' – provided by Australia, Canada, the United States and the FAO Expert Consultation on Legal Issues – were put before the participants and considered.

Support was generally expressed for the adoption of a brief definition with an introductory phrase which read: "The 'marine environment not under the jurisdiction of any State' means:"

To keep the definition as succinct as possible, it was proposed but ultimately not agreed that a preamble could precede the definition itself. This might draw on the language recommended by the FAO Expert Consultation on Legal Issues and could state that the definition was 'without prejudice to any other jurisdiction under bilateral agreements, etc.'

Attention was drawn to the distinctions among 'sovereignty' (referring to the territorial sea), 'sovereign rights' (referring to the Exclusive Economic Zone) and 'jurisdiction' and their use within UNCLOS. There was a reluctance to use such terms in any way that might be inconsistent with UNCLOS. 'Sovereign rights' were recognized to include not only the exploitation but also the exploration, conservation and management of marine living resources. With reference to the language used in some of the proposals, it was pointed out that the term 'maritime jurisdiction' was not used in the context of UNCLOS, though

'jurisdiction' was mentioned in both UNCLOS and CITES. 'Jurisdiction', as used in some of the proposals, could also be replaced by the term 'sovereignty'.

Noting that 'seabed and subsoil' were components of the 'continental shelf' and should not be listed separately, it was suggested that the relevant text could be revised to read: 'continental shelf, comprising the seabed and subsoil,'.

A question was raised as to whether 'marine environment' as used in CITES could mean something more than waters (i.e. airspace) and include seabirds, and there was an indication that this could be the case.

The Chairman offered to develop a synthesis definition which would capture the sense of the discussions.

Chairman's synthesis text

Participants found the Chairman's synthesis text to be an improvement on previous definitions they had considered, but nevertheless proposed a few changes.

There was a suggestion to replace 'jurisdiction' with 'sovereignty', to avoid any confusion with the jurisdiction that flag States exercise over vessels, and to replace 'and' with 'or' when making the connection to 'sovereign rights'. It was suggested that the reference to 'prevailing international law' be deleted as there was no indication that any legal text other than UNCLOS could establish jurisdiction over marine spaces. There was then a suggestion that language from the UN Fish Stocks Agreement[3], the FAO Compliance Agreement[4] and the FAO Code of Conduct for Responsible Fisheries (1995) could be used, so the text would read: 'international law, as reflected in UNCLOS'. Proposals to include the phrase 'customary maritime law' and 'other relevant international law' did not find broad support as UNCLOS was founded on such law and constituted the most precise statement about marine space boundaries and jurisdiction.

The Chairman's synthesis definition was revised to reflect these additional comments and the resulting final definition was agreed by consensus.

Final recommendation

Based on its discussions, the workshop **recommended** that a draft resolution be prepared for consideration at CoP14 which contains the following definition:

The 'marine environment not under the jurisdiction of any State' means those areas beyond the waters and the continental shelf, comprising the seabed and subsoil, subject to the sovereign rights or sovereignty of any State consistent with international law, as reflected in the United Nations Convention on the Law of the Sea.

Transportation into a State

Initial discussion

It was pointed out that a determination of legal acquisition is not a condition for issuance of an introduction from the sea certificate, though some countries have incorporated this kind of determination into the making of the non-detriment finding, which is a pre-condition for issuance of a certificate. For example, a determination of compliance with the conservation and management rules of applicable fisheries bodies may be an important factor for determining whether the introduction from the sea is detrimental to the survival of the species.

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[3] *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (1995)*

[4] *Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (1995)*

There was a suggestion that consideration might be given to the establishment or designation of an international management authority, similar to the international scientific authorities mentioned in Article IV, paragraph 7, of the Convention, however, little or no support for this proposal was forthcoming.

It was proposed that special criteria be developed for listing marine species in the Convention. The usefulness of this idea was questioned in light of the revised listing criteria that had recently been agreed [see Resolution Conf. 9.24 (Rev. CoP13)]. The Chairman explained that issues related to listing were beyond the agreed focus of the workshop.

Focused discussion

In addition to identifying a number of relevant issues, the discussion showed that it would be helpful if the workshop could agree on both a definition (i.e. what does 'transportation into a State' mean) and a process (i.e. who should issue the IFS certificate and make the non-detriment finding as well as how and when this should be done).

After the first period of focused discussion, the Chairman prepared a structured summary, which consisted of a general outline of the introduction process followed by a series of questions which required additional consideration. That document provoked another extensive exchange of views, during which participants refined earlier points and identified still more issues to consider.

It was suggested that a 'hermetically sealed process' which closed all potential loopholes would not be achieved during the workshop, so there was a need to try and identify the best option for the moment. Questions were raised regarding the policy objectives participants were seeking to achieve, whether it was premature to make any recommendations to the Conference of the Parties until more knowledge was acquired regarding the potential synergy between CITES and RFBs and whether various options should be presented at CoP14. There was a suggestion that certain criteria might be used to provide advice to the Conference of the Parties on this issue, including: the text of the Convention; consistency, compatibility and complementarity with documentation schemes being implemented under various regional fishery bodies; consistency with WTO practice; implications for non-detriment findings; and relevant practical considerations.

Concern was expressed that CITES was becoming a fisheries management organization. In response, it was explained that it is not the aim of the Convention to manage fisheries but, in some circumstances, action under CITES could play an important complementary role with respect to the activities of traditional fisheries management organizations.

a) Definition of 'transportation into a State' and who should issue an IFS certificate

It was suggested that the FAO Expert Consultation on Legal Issues offered a good starting point for an exchange of views. The Consultation had generally agreed that introduction took place upon transportation into the port State but also found that the use of flag State competence could be useful from a practical point of view in some cases. In document CoP13 Doc. 41, submitted by the United States, it was suggested that the introduction from the sea certificate might be issued by a flag State if a prior agreement to that effect had been concluded with the port State.

A number of participants agreed with the idea that introduction only occurs upon transportation into the port State. This approach recognized that the port State should consult with the relevant RFB (a list of potentially relevant RFBs would need to be identified using information maintained by FAO) and might consult with the flag State before issuing an IFS certificate. Such an interpretation seemed consistent with: the text of the Convention; what constitutes 'trade' under WTO; the need for comprehensive tracking of resources that are harvested from the sea; the need for Customs clearance; and the notion that a vessel, though under the jurisdiction of a State, is not equivalent to a State. It was also consistent with the trend towards investing port States rather than flag States with ultimate responsibility for management, control and enforcement. There was a presumption that flag States would continue to keep track of their catch but it seemed unnecessarily complicated for a flag State to issue an IFS certificate and then an export permit when the vessel arrived at a port of another State. Concern was expressed not only about flags of convenience but also about the risk of CITES certificates being used by a flag State to launder illegal, unreported and unregulated (IUU) fishing catches. It was suggested that regulating

introductions from the sea would be both burdensome (i.e. potentially involving the issuance of multiple introduction from the sea certificates and export permits) and complex (i.e. potentially involving multiple transhipments) if it occurred upon transportation into a flag State.

On the other hand, other participants believed that the Convention could be interpreted to provide that introduction might occur upon transportation into a flag State via its vessel. This seemed consistent with the provisions of UNCLOS related to flag State responsibility and the issuance of catch and trade documents under both national law and various regional fishery bodies. The landing of catch in a foreign port State is usually considered an export and the addition of CITES documents should not complicate this process. It was pointed out that flag States should be encouraged to engage in responsible fishing and should be held accountable for their actions. Moreover, flag States operating under the auspices of a RFB carried a presumption of credibility. Greater emphasis on port State responsibility within FAO did not mean that emphasis on flag State responsibility was correspondingly reduced. Rather, both sets of responsibilities were important for responsible fisheries. Supporters of this approach noted that there was growing concern about 'IUU ports' which are complicit in IUU fishing. They stressed that there is no 'one-size-fits-all' solution to this matter because of the variety of situations that regularly arise in fishing activities. They thought that the flag State option should be left open as it was both consistent with fisheries practice and would provide more implementation flexibility. This approach would also prevent CITES from being unwieldy or inconsistent with actual State practice.

In addition to the IUU fishing problems and lack of cooperation associated with certain port States and flag States, participants acknowledged that there had been good cooperative experience with both kinds of States as well. It was recognized that the 'flag of convenience' issue remained a sensitive one which would not be resolved by this workshop. Mention was made of a recent International Maritime Organization *ad hoc* consultation which demonstrated that it was still difficult to settle the issue of whether a 'genuine link' refers to the link between the flag State and a vessel which should be established to effect registration or to the issue of effective control by the flag State. FAO takes a practical approach to identifying the existence of a 'genuine link' which focuses on ensuring that the flag State can exercise effective control over the fishing vessel. It was suggested that it could be useful to consider both scenarios in a sample situation and identify the pros and cons of each approach.

A third option, that had been put forward at CoP13 acknowledged that introduction into the port State was the 'default position' but a flag State could issue the IFS certificate under a prior agreement with the port State.

Mention was made of a fourth option under which introduction of Appendix-I specimens would occur in the port State but introduction of Appendix-II specimens could occur in either the port State or the flag State. A fifth option was described under which the port State and flag State would each be responsible for one or more steps in an overall process. Finally, a sixth option was proposed under which a RFB might be designated as the Management Authority by one or more States with the concomitant power to issue IFS certificates on their behalf. This option – which is allowed under Article IX of the Convention – would need to take into account those RFBs with weak secretariats, the fact that some RFBs only meet once or twice a year and the possibility of more than one RFB having responsibility for the same species. It should also not detract from the primary responsibility of a State to issue the IFS certificate.

b) Who should make the non-detriment finding

It was explained that the making of a NDF is not substantially different in a marine context. It has parallels with the making of NDFs for migratory species though the marine environment is generally less well-known and certain aspects could pose special challenges (e.g. the making of a NDF for by-catch). There was a suggestion that not all Parties may have a shared understanding as to what was needed for a NDF (e.g. stock assessment, other statistics, RFB input, enforcement capacity, etc.) and that the information required could vary from species to species and situation to situation (e.g. a look-alike species).

Some participants agreed that under certain circumstances both the port State and the flag State may have a potential role in the making of a non-detriment finding and that a 'robust NDF' required cooperation between the two, as well as input from other potential sources of relevant information. Many considered, however, that NDFs were the ultimate responsibility of the port State – though it might

consult with the flag State. Others considered that the ultimate responsibility for making a NDF could also rest with the flag State. There was general agreement that any NDF should be based on the best possible scientific information and there may be many sources from which such information could be obtained.

It was suggested by one participant that there might be a need also for some overarching structure (e.g. an international scientific authority) which could bring all of these sources together and provide such information. As the advice for making a NDF is likely to come from a variety of sources, the principle of joint assessment appeared to be worth considering by some participants. It was noted that the possibility of consulting with international scientific authorities – found in Article IV, paragraph 7, of the Convention – is quite unique and the Convention's experience with the management of sturgeons has shown the importance of having joint NDFs and quota setting for shared stocks.

It was pointed out that a port State might lack sufficient knowledge on which to make a NDF, particularly for specimens that came from outside its global region. Under those circumstances, it may need to obtain additional information from the flag State and/or a relevant RFB. There was recognition that RFBs do not cover all areas of the sea, vary greatly in their structure and capacity and may not be relevant for a particular NDF. Some of them, for example, do not have integrated scientific bodies. It was nevertheless suggested that the collective knowledge of a RFB about the sustainability and legality of a particular harvest (perhaps based on a trade documentation and/or certification scheme) was critical to the making of any NDF. Information about relevant management measures for specific species would also be useful. The point was made that in addition to encouraging a State to seek relevant information from a RFB, the RFB should also be encouraged to provide such information. The RFB's mandate and resources would need to be considered in this regard. Mention was made of the overarching need for synergy between CITES and RFBs, as well as FAO, and the challenge of making credible NDFs in the absence of an RFB.

The potential, under the Convention, for issuing an IFS certificate for up to a year seemed attractive. Mention was made, however, that States might need to proceed on a case-by-case basis in making NDFs and issuing IFS certificates. It was noted that the Review of Significant Trade could be helpful in addressing potential collusion problems involving those who made the NDF finding and those who issued the IFS certificate.

c) When a certificate should be issued

It was thought that introduction upon transportation into a port State would occur after Customs clearance (though one country said that this could occur before Customs clearance under its national legislation).

Introduction upon transportation into a flag State was thought to occur as a specimen 'flopped on the deck'. In cases where a vessel spent several weeks or months at sea, it was unclear whether this meant an IFS certificate would have to be issued after each CITES-listed specimen (or set of CITES-listed specimens) was landed on the vessel. It was mentioned as well, however, that transportation into a flag State could also occur after a vessel entered a port and cleared Customs.

The Convention states that introduction shall require the 'prior grant' of a certificate and this could imply that an IFS certificate may be issued before any specimen is harvested. This raised a concern about whether such an IFS certificate would be equivalent to a 'blank check'.

At this stage, given the complexity of the issues and the areas of disagreement with respect to whether the port State or flag State had responsibility for issuing IFS documentation, the Chairman proposed – and it was agreed – that a smaller working group be established. The working group comprised participants from Australia, Canada, Iceland, Japan, the United Kingdom, the United States, FAO, EC, IWMC, SSN, TRAFFIC and the CITES Secretariat. The working group was asked to compile the main operational issues involved with IFS, by attempting to identify areas of agreement and disagreement, and to then present its findings to the entire workshop.

Working group

At the request of the working group, the discussion was chaired by the Secretariat. A participant from Australia served as an informal rapporteur. The group operated in an open-ended manner and other

workshop participants participated in the discussions at various points as well. Before the working group convened, Australia developed a draft text which addressed both the definition of and process for 'transportation into a State'. The working group agreed to use this text as a guide for its discussions and addressed specific points made within the document.

Overall, the working group found that the implementation of any 'scheme', while having certain core elements, will need sufficient flexibility to take into account a variety of circumstances. For example, whether the taking of straddling stock [which move between the Exclusive Economic Zone (EEZ) and the high seas] or a mixed catch (which includes some specimens taken from the EEZ and others from the high seas), would be treated in totality as introduction from the sea or catch from the EEZ. Such situations, together with transhipments, also present traceability issues. It was suggested that issues and questions like these could be added to the list contained in the Chairman's summary and the original Chairman's list could be incorporated into the document being prepared by the working group. The group recognized that it should consider a process for ensuring such questions were answered.

It was suggested that even if there might not be a 'one-size-fits-all' approach to introduction from the sea, working group members should be able to identify core elements on which they could agree. In this connection, the group should at least give direction if not solutions.

It was suggested that the legal harvesting of marine specimens (i.e. in accordance with an RFB management regime) could be presumed non-detrimental. Some participants thought that the Convention required the same State of introduction to make the NDF and issue the IFS certificate. Others thought that there could be as many as four different options in this regard (i.e. port State, flag State, port State-flag State, flag State-port State).

There was a suggestion that there may be similarities and synergy between the document issuance process used within the EEZ and that used on the high seas. It was pointed out that specimens harvested from the territorial sea (and EEZ, if applicable) did not require CITES documents if they remained within the territory of the State concerned.

Doubt was expressed as to whether, under international law, a vessel could be viewed as the State itself. It was explained that, under European Commission law, fish taken on the high seas and then landed at a port were treated as originating from the flag State. The point was made that introduction from the sea was not the same as export or import but that CITES practice should be consistent with – even if it was different from – that of WTO. In the past, the Convention had been adjusted through the Resolution process to better align itself with timber practices.

It was mentioned that introduction was a process rather than a single or simple act. Moreover, there were no apparent limits on who might be designated to function as a Management Authority or Scientific Authority on behalf of a State. The concept of 'designation', however, was thought by some to ensure that the designating State retained ultimate responsibility for the actions taken on its behalf. By contrast, others thought the delegation of authority to undertake a particular function could be interpreted as shifting the ultimate responsibility for that function.

There was recognition that synergy with RFBs was important and their contribution to determining legal acquisition, although not required under introduction from the sea, could be useful. This fit with the notion that an NDF was not just a data finding. Mention also was made of the cooperating non-parties and non-cooperating non-parties that exist in connection with several RFBs.

The working group's discussions resulted in a revised text with brackets around that language on which agreement had not been reached.

Final discussion

When the workshop reconvened, the bracketed text prepared by the working group was further discussed and corrected or clarified in places. A final version of that bracketed text, incorporating those changes, is attached as an Annex. During the discussion, a number of additional substantive points were made and it was agreed that these would be reflected in this report. It was requested that the report indicate that it reflects different views that were expressed in relation to 'transportation into a State' and not any agreement on specific points.

There was a proposal to delete the bracketed language found at the bottom of page 4 of the working group's text (see Annex) as those tasks were seen as more appropriate to the Management Authority than the Scientific Authority.

It was suggested that the list of questions contained on pages 5 and 6 of the working group's text may not only be considered in issuing IFS certificates but also in proposing species for listing in CITES. Some additional questions were also presented for consideration, specifically: (a) whether consultations between a port State and flag State or between a State and an RFB should be held on a case-by-case basis; (b) how to treat look-alike species; and (c) whether targeted and by-catch species should be treated similarly or differently. It was noted that the list of questions had not been specifically discussed in the working group and that there might be other questions which should be included. Such questions might be added when workshop participants provided comments on the draft report.

There was an exchange of views on what a Vessel Monitoring System (VMS) could or could not do (i.e. in terms of what was caught and where and when) and whether the workshop report should explain this in more detail. It was explained that VMS is only one tool and some other sources of information on a vessel's activities (e.g. log books and other records) were mentioned.

With respect to the who, how and when of making NDFs and issuing IFS certificates, it was suggested that these might not be the same for port States and flag States. It was pointed out that the working group's text did not mention the consultation process that might occur between a port State and a flag State. There was a suggestion that 'transportation into a State' means clearance by Customs and not shipment into a port. Concern was expressed about the unlikelihood that a flag State would ever admit that its harvesting was detrimental, which meant that involving the flag State in the NDF could begin to undermine the credibility of the finding.

There was a suggestion to add the words 'within the relevant FAO fishing area' at the end of the definition of NDF on page 3 of the working group's text. In response it was suggested that highly migratory and straddling stocks could not have an NDF limited to a particular area. It was also mentioned that the Convention provided for introduction from the sea and not a particular part of the sea. As the definition of 'species' under the Convention included populations or stocks, this instead could help to determine the ambit of an NDF.

It was proposed to add some language to the text which read: 'whether there is a case for some kind of supra-national body to serve as scientific authority'.

As the Convention does not require the consideration of management or enforcement problems in the issuance of an IFS certificate (rather, only an NDF), it was suggested that it might be helpful to explain why some of the working group's text addressed those issues.

It was requested that the report reflect the need to determine whether it is possible to split the making of an NDF from the issuance of an IFS certificate (that is, whether the port State could do one and the flag State do the other).

There was a suggestion that more consideration be given to situations involving areas of the high seas where there are not yet any RFBs (e.g. Gulf of Guinea). It was explained, however, that flag States nevertheless have certain duties.

An offer was made to circulate a written text regarding one country's practical concerns about flag States and, in particular, vessels operating under flags of convenience. It was acknowledged that there are plenty of flag State problems but some participants also stressed that fisheries issues need to be approached from various angles and that it is not possible to eliminate flag States from taking responsibility in relation to their fisheries activities. It was pointed out that existing national legal requirements should not be ignored in the effort to establish an international regime related to introductions from the sea.

Final recommendation

Based on their discussions, workshop participants **recommended** that work within the Convention should continue on seeking an agreed definition of and process for 'transportation into a State' which builds on the progress made during the workshop in identifying key issues, perspectives and concerns.

Overall conclusions and recommendations

Participants recognized that good progress had been made during the workshop but more work remained to be done on the subject of 'introduction from the sea' and **recommended** that:

– the Secretariat circulate this report to all Parties and FAO, as directed in Decision 13.18;

– the Chairman contact the Standing Committee about the possibility of involving workshop participants via email when the Secretariat begins preparing a discussion paper and a draft resolution for consideration at SC54; and

– no additional workshops be held before SC54 but electronic communication be used to exchange more information on practical experiences and to attempt to answer questions raised during the workshop.

In closing the workshop, the Chairman noted that two good outcomes on a complicated subject had been achieved in a short period of time: the adoption of an agreed definition for 'marine environment not under the jurisdiction of any State' and the progression of and improved focus for work related to 'transportation into a State'. He thanked participants for their contributions to these honourable results.

ANNEX

CITES Workshop on Introduction from the Sea issues
(Geneva, 30 November – 2 December 2005)

'[Transportation into a State]/[Introduction from the Sea'][5] **– definition**

[Transportation into a State/'Introduction from the sea' refers to/means any shipment of a CITES listed marine species, taken from the marine environment not under the jurisdiction of any State, which has cleared Customs.]

or

[Transportation into a State/'Introduction from the sea' refers to/means any shipment of a CITES listed marine species, taken from the marine environment not under the jurisdiction of any State, which has either been landed on the fishing vessel or cleared Customs.]

'Introduction' – process

The Working Group discussed the question of who should issue the certificate of introduction and could come to no agreement. One view was that only the port State could issue the certificate and the other was to keep open the possibility that the flag State should be able to issue the certificate.

The responsibility for issuing of the certificate of introduction [only] lies with the [flag State] / [[port State] [, however it may designate one or more Management Authorities competent to grant certificates on its behalf]].

[Where it is to be the flag State the following conditions should be met:

- the flag State is a member of, or cooperating non-Party (e.g. they have not ratified the relevant convention) to, a RFB with conservation and management responsibilities for the listed marine species in question;
- the flag State takes fully into account advice from one or more of the following:
  - the Scientific advisory body/committee of the relevant RFB; and/or
  - a relevant regional fisheries scientific organization; and/or
  - any relevant international scientific organizations with a mandate/responsibility for collecting and analyzing relevant data such as the health, or otherwise of the stocks/populations of the listed species.]

The Management Authority should satisfy itself, prior to the issuing of the certificate, that the CITES listed marine species has been taken from the marine environment not under the jurisdiction of any State. In doing so, the Management Authority could draw on:

1. whether the vessel is operating in accordance with the conservation and management arrangements of any relevant Regional Fishery Body (RFB); or
2. if no RFB exists for the conservation and management of the particular CITES listed marine species, an examination of the VMS record, log book or other records of the vessel to verify from where the species was taken; or
3. if no continuous VMS or other record is available, a record of the FAO statistical areas from which the species was taken; or
4. whether the vessel is flagged to a State which is a member of, or a cooperating non-party to, a relevant RFB; or
5. whether the vessel is included on a 'black/white' register issued by a RFB if such a register exists; or

[6. any requirement for documentation by a flag State, such as an authorization or licence to fish].

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[5] *The definition of 'introduction from the sea' contained in Article I, paragraph (e), of the Convention contains two phrases on which the workshop focused. Participants agreed on a clarification of the first phrase – 'marine environment not under the jurisdiction of any State – and then turned their attention to clarification of a second phrase 'transportation into a State'. Some participants thought, however, that the definition should relate to the general term 'introduction from the sea' rather than only part of that term. Both options, therefore, are provided in brackets.*

Non-detriment – definition

Non-detriment means for the purposes of introduction from the sea that the introduction shall not be detrimental to the survival of the species involved.

Non-detriment – process

[The [port State]/[flag State]'s Scientific Authority is responsible for making the non-detriment finding. [Where the flag State is to make the finding, it is only in the situation where certain specific conditions, which have been identified and agreed upon by the Conference of the Parties, are met.]]

[If the flag State is to make the non-detriment finding it should meet the following conditions:

- it is a member of, or cooperating non-party (e.g. they have not ratified the relevant convention) to, a RFB with conservation and management responsibilities for the listed marine species in question;
- it takes fully into account advice from one or more of the following:
  - the Scientific advisory body/committee of the relevant RFB; and/or
  - a relevant regional fisheries scientific organization; and/or
  - any relevant international scientific organizations with a mandate/responsibility for collecting and analysing relevant data such as the health, or otherwise of the stocks/populations of the listed species.]

The Scientific Authority responsible for making the non-detriment finding should do so based on the best available scientific data and in the absence of such data, or incomplete data, it should take a precautionary approach.

Sources the Scientific Authority should avail itself of include:

1. the secretariat and/or scientific advisory body of any relevant RFB with responsibility for the management and conservation of the listed species;
2. relevant regional fisheries scientific organizations; and
3. relevant international scientific organizations and/or committees with a mandate/ responsibility for collecting and analyzing relevant data such as the population/stock status etc of the listed species.

In this regard, to assist Scientific Authorities, the CITES Secretariat should issue a Notification to the Parties detailing such sources, including contact details, prior to the entry into force of a listing of a marine species.

Other factors a Scientific Authority may take into account include:

1. [whether the vessel is flagged to a State which is a member of, or a cooperating non-party to, a relevant RFB;
2. whether the vessel is included on a 'black/white' register issued by an RFB if such a register exists;
3. any requirement for vessel documentation by an RFB such as authorized catch documentation papers;
4. any requirement for documentation by a flag State, such as an authorization or licence to fish;]
5. the most recent report by FAO on the State of the World's Fisheries and Aquaculture (SOFIA); and
6. the IUCN paper on non-detriment findings.

A number of issues were identified by the Working Group which require further consideration. In particular, whether the port State or the flag State should make the non-detriment finding and issue an introduction from the sea certificate may depend on consideration of various matters in need of clarification. These could include but should not be limited to the following:

- whether there is a role for both the flag State and the port State in the process and how those roles might be better identified;
- whether the port State or the flag State has better knowledge (e.g. population and distribution) on which a non-detriment finding would be based;
- whether consultation between a port State and a flag State or between a State and the relevant RFB would be informal or formal (i.e. a State may wish to designate an RFB as a Scientific Authority);

- whether there is a relevant RFB (and how these could be easily identified);
- the structure of the relevant RFB;
- how the process of consultation would be carried out when various RFBs deal with the same species;
- whether the port State or the flag State is a member of the relevant RFB;
- whether an RFB could be designated as a Management Authority;
- whether the specimens are a product of IUU fishing;
- whether the port State or the flag State has better control mechanisms (e.g. Customs clearance) for regulating introductions from the sea;
- what should be done about transshipment, 'genuine link' and export if a flag State has responsibility for making a non-detriment finding and issuing an introduction from the sea certificate;
- whether placing responsibility with the port State or the flag State will be unwieldy;
- whether Appendix-I listed specimens (port State) might be treated differently than Appendix-II listed specimens (flag State);
- how practical synergy among national CITES authorities, RFBs and FAO/COFI might best be achieved;
- which permits or certificates would be needed for various fishing operations;
- how Article XIV, paragraphs 4 and 5, should be interpreted and practically implemented;
- whether Article IV, paragraph 7, provides for the issuance of an IFS certificate for up to one year or the making of a NDF valid for one year; and
- how international cooperation could strengthen national capacity in developing countries, particularly the capacity of Scientific Authorities to make non-detriment findings, the capacity of Management Authorities to issue CITES documents and the capacity of Customs officers to check those documents and related shipments.

COMMENTS ON THE REPORT

[Provided in the languages in which they were originally received.]

Comments received from Argentina

In response to the Notification to the Parties N° 2006/023, the Republic of Argentina would like to make the following comments on the report and recommendations on CITES Workshop on Introduction from the sea issues (Geneva, 30 November – 2 December 2005). Argentina participated as regional representative of the Management Authority.

As a preliminary comment, we would like to express our gratitude for including Argentina's previous comments to the report. In addition, we would appreciate very much to have these reflected in the final report.

1. In section Transportation into a State, *a) Definition of "transportation into a State" and who should issue an IFS certificate*, when referring to the first option – transportation into the port State (page 6, paragraph 6) – Argentina would like to replace the phrase:

   "This approach recognized that the port State **should consult** with the relevant RFB..."

   by the wording:

   "This approach recognized that the port State **may consult** with the relevant RFB...", in order to take into account that not every Party to CITES is a members to a RFB.

2. In the same section (Transportation into a State), *b) Who should make the non detriment finding* (page 8), Argentina would like to introduce a new paragraph, after the fourth paragraph which deals with the possibility of obtaining additional information from relevant RFBs.

   The new fifth paragraph would read:

   "Another participant pointed out that the information that may be obtained from the RFBs scientific bodies is available for the Scientific Authority of their respective members. These international scientific authorities are specifically included among those to be consulted by the national Scientific Authority, when appropriate (paragraph 7 of article IV of CITES). It is worth noting that obligations arising from CITES fall on Party States to the Convention, and not to the RFBs to which they could be members. Finally, the participant noted that collaboration among Party States to the Convention seems not to have been sufficiently considered during the Workshop deliberations."

3. In the Annex, in section "Introduction – process", in the paragraph dealing with Management Authority (top of page 14), Argentina would prefer to have reflected the wording of paragraph 7 of article IV of CITES. Therefore, instead of the text "Sources the Scientific Authority should avail itself of include... (1.2.3.)", we would like it to read:

   "The **Scientific Authority of the State of introduction may provide advice in consultation with...** (1.2.3.)".

4. During the 54th meeting of the Standing Committee (Geneva, October 2006), Argentina made the following statement (text lifted from the SC54 Summary Record):

   Argentina has noticed a conceptual mistake in the section entitled 'Initial discussion' of the report of the CITES Workshop on Introduction from the Sea Issues, (Geneva, 30 November – 2 December 2005) annexed to document SC54 Doc. 19.

   This section includes the following comment: "It was explained that any extension of national jurisdiction over the continental shelf beyond the 200-mile limit required approval from the

Commission on the Continental Shelf and would only cover living organisms found on or in the continental shelf".

This statement does not concur with the provision of Article 76 of UNCLOS, which establishes the sovereign rights of the coastal State on the continental shelf beyond the 200-mile limit. It also contradicts the provision of Article 77 of the same Convention that states that States exercise sovereign rights over the continental shelf for the purpose of exploring it and exploiting its natural resources, defining those resources as the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species (paragraphs 1 and 4 of this article). Argentine requests that the mistake mentioned above be corrected.

Comments received from China

The CITES Management Authority of China has finished its consultation with the Bureau of Fisheries of China on the Introduction from the Sea Issues. Now we would like to give our comments on this issue as follows:

Firstly, the issues addressed at the Workshop on Introduction from the Sea Issues including the definition of the introduction from the sea and the procedure of issuing CITES certification for the introduction from the sea are substantial ones whose acceleration will continue to result in the transfer of focal points in CITES from endangered species to general commercially-harvested marine species.

Secondly, the present internationally universal manner for the issuance of Certificate of Fishing Vessels is based on the principle of jurisdiction of the flag State, therefore the issues in relation to fisheries in high seas should be proceeded in accordance with the principle.

Thirdly, in view of the current status of CITES, China has all along adhered to the stand that the aquatic economical species, particularly the marine fish species, should be managed by the FAO of the United Nations, in order to prevent from arising more fisheries disputes and problems.

In summary, China opposed to the process of introduction of the sea being impelled by CITES, and request the CITES Secretariat not to submit proposals related to the issue to the Standing Committee or the Conference of the Parties for discussion.

Comments received from Hong Kong (SAR), China

In the report enclosed to the said Notification, it is noted the term "Customs Clearance" was used. However, I understand that the import and export control of CITES species would be done by other enforcement agencies including the Management Authorities (such as HKSAR) in certain parties.

Therefore, I suggest to amend the definition in the Annex to the report on page 13 as follows:

'*[Transportation into a State]/[Introduction from the Sea']4 – definition*

[Transportation into a State/'Introduction from the sea' refers to/means any shipment of a CITES-listed marine species, taken from the marine environment not under the jurisdiction of any State, which has cleared by Customs, Management Authority or other enforcement agencies designated by the States.]

or

[Transportation into a State/'Introduction from the sea' refers to/means any shipment of a CITES listed marine species, taken from the marine environment not under the jurisdiction of any State, which has either been landed on the fishing vessel or cleared by Customs, Management Authority or other enforcement agencies designated by the States.]

Comments received from Mexico

COMENTARIOS DE MEXICO A LA NOTIFICACION N° 2006/023 SOBRE EL INFORME Y LAS RECOMENDACIONES DEL TALLER CITES SOBRE CUESTIONES RELACIONADAS CON LA INTRODUCCION PROCEDENTE DEL MAR (GINEBRA, 30 DE NOVIEMBRE — 2 DE DICIEMBRE DE 2005)

El Gobierno de México toma debida nota de los resultados del Taller y comparte su interés por continuar trabajando el tema, en virtud de que su tratamiento requiere de una discusión profunda por parte de expertos jurídicos en derecho del mar y autoridades pesqueras, además de las autoridades científicas y administrativas.

Lo anterior debido a que contiene propuestas interpretativas de algunas disposiciones de la Convención CITES, que afectan directamente la actividad pesquera y la emisión de certificados CITES[6] y cuya adopción podría tener consecuencias importantes en la aplicación de la Convención.

Debe tenerse en cuenta la practica de las Partes en la CITES para apoyarse en resoluciones que permiten un margen considerable de flexibilidad en su aplicación. Este margen de maniobra en la gestión, ha supuesto que en el seno de la CITES se estén adoptando una serie de medidas para mejorar su aplicación, incluidos los criterios para la inclusión de especies, el examen de los apéndices actuales, debates para formalizar la cooperación con diversas organizaciones, entre otras.

En la pagina 3 de la Notificación Nº 2006/023 se menciona que los participantes en el Taller: "pensaban que era suficiente aclarar el texto de la Convención en vez de cambiarlo, a fin de alinearse con la evolución del derecho internacional desde la adopción de la Convención". Este asunto debe ser discutido con mayor detenimiento estudiando con mayor amplitud sus implicaciones. El termino fuera de la jurisdicción de cualquier Estado» debe acotarse lo más posible, ya que representa grandes obligaciones y responsabilidades para los Estados, e interpretarse a la luz del derecho internacional vigente en el momento en que se adoptó la CITES[7] y al ser integrada en términos de exclusión, no refleja de forma clara las áreas internacionales que se establecen en la Convención de las Naciones Unidas sobre el Derecho del Mar (CONVEMAR), no vislumbra los casos cuando los Estados son Parte o no de la CONVEMAR, y dicha interpretación puede ser distinta con la práctica a nivel nacional, especialmente la manera en la que se lleva a cabo la ordenación pesquera can arreglo a la Convención de 1982, en virtud de la cual la jurisdicción respecto a la pesca se ejerce generalmente sobre las especies acuáticas explotadas comercialmente en la zona económica exclusiva o zonas equivalentes de jurisdicción nacional. Por ello, se considera que una definición que hiciera mención expresa de Alta Mar y de los Fondos Marinos Internacionales, conocidos como "la Zona", sería más adecuada.

En la pagina 6, respecto de la definición de "Traslado de un Estado / Introducción procedente del Mar", se considera que ninguna de las opciones previstas es adecuada, pues dejan fuera la necesaria definición sobre que Estado debe dar la autorización conforme a la CITES.

El Gobierno de México también expresa su inquietud sobre el riesgo de que los certificados CITES sean utilizados por un Estado del Pabellón para blanquear capturas de pesca ilegal, no declarada y no reglamentada (INDRN). Como se indica, la reglamentación de introducción procedente del mar sería compleja, exigiendo en algunos casos la emisión de múltiples certificados y permisos de exportación y requiriendo tal vez varios transbordos, si tuviese lugar tras el traslado a un Estado del Pabellón, aún cuando cabe señalar, no se descarta la persistencia de las responsabilidades del Estado de Pabellón y el Estado Puerto en todos los casos, independientemente de sus actividades pesqueras.

Adicionalmente, se debe analizar cuidadosamente las implicaciones e incluir el principio precautorio como una posible esfera de atención, sobre todo ante la posibilidad contemplada en la CITES de que las Partes

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[6] *La facultad de emitir un certificado pertenece exclusivamente a las autoridades del Estado de introducción y que el hecho de delegar dicha facultad al Estado de Pabellón, tendría como consecuencia la perdida del control sobre la expedición de los certificados, no obstante la existencia de un acuerdo previo entre los Estados. Si bien esta situación no puede asimilarse a un acto de extraterritorialidad, podría tener consecuencias importantes sobre el régimen de responsabilidad derivado de la aplicación de la Convención y podría menoscabar el ejercicio de autoridad del Estado de introducción.*

[7] *Puesto que la CITES (1973) es anterior a la mayor parte de estos acuerdos, la aplicacion de un tratado en relacion con otro precedente aplicable al mismo tema es de especial importancia. Los Estados pueden siempre convenir la suspension de estas reglas para resolver problemas derivados de la aplicación de tratados sucesivos sobre el mismo tema.*

apliquen medidas nacionales más estrictas y, en especial, en los casos en los que esas medidas nacionales sean incompatibles con los dictámenes de otras Partes en la CITES en las que no se presenten efectos perjudiciales. En tal sentido, el Gobierno de México considera que también es necesario consolidar la caracterización de patrimonio común de la humanidad de los recursos vivos de la Zona.

Comments received from the United States of America

The United States would like to commend workshop participants on progress made toward a definition of the "marine environment not under the jurisdiction of any State" and in identifying some difficult issues and varied perspectives related to the introduction from the sea provision under CITES. We appreciate the efforts of everyone involved and thank the Secretariat and the Chairman of the Standing Committee for their work in hosting the workshop and preparing the report.

Definition of the "marine environment not under the jurisdiction of any State":

While we endorse the substance of the definition of the "marine environment not under the jurisdiction of any State" agreed at the workshop and believe it represents an important step forward, we would like to suggest some technical changes that make the definition more accurate. With these changes, the definition would be as follows:

The 'marine environment not under the jurisdiction of any State' means those marine areas beyond the areas in which a State may exercise sovereign rights or sovereignty consistent with international law, as reflected in the United Nations Convention on the Law of the Sea.

These minimal changes are technical and do not alter the substance of the definition. The purpose is to make the definition consistent with the relevant provisions of the LOS Convention. An explanation for these changes is provided below.

1. By including the words "continental shelf" and the qualifier "subject to the sovereign rights..." there is an implication that there might be continental shelf where a State does not have the right to exercise its sovereign rights. This is not the case.

2. The phrase "seabed and subsoil" in conjunction with "continental shelf" appears to be a partial definition of continental shelf. Article 76 of the LOS Convention contains an elaborate definition of continental shelf. We believe it is best to avoid a shorthand definition of this complex concept.

3. The definition, by referring to "waters" and "continental shelf" and then "sovereign rights" and "sovereignty" might be read to imply that a State may exercise "sovereignty" over the continental shelf and EEZ, when the State may only exercise "sovereign rights" in those areas.

4. Rather than specifically refer to "waters and the continental shelf," we prefer a reference to "areas". By referring to international law, as reflected in the UN Convention on the Law of the Sea, the definition necessarily incorporates continental shelf and the waters of the territorial sea and the EEZ.

Continental shelf:

We would like to point out an inaccuracy found on page 3 of the workshop report. The first paragraph under "Initial discussion" includes the statement, "It was explained that any extension of national jurisdiction over the continental shelf beyond the 200 mile limit required approval from the Commission on the Continental Shelf and would only cover living organisms found on or in the continental shelf". We disagree with this statement and note that a State may be entitled to continental shelf beyond 200 nautical miles it if establishes that its continental shelf meets the definition set forth in Article 76 of the UN Convention on the Law of the Sea. According to the LOS Convention, a State exercises sovereign rights over the continental shelf for the purposes of exploring it and exploiting its natural resources, which consist of the mineral and other non-living resources of the seabed and subsoil, together with living organisms belonging to sedentary species.

State of introduction:

The U.S. proposal at CoP13 (document CoP13 Doc. 41) relied upon the flexibility contained in Articles III and IV of the Treaty, which speak only to the requirement that a certificate must be issued by and the findings made by the "State of introduction." The Treaty does not define "State of introduction," and there is ample flexibility provided under the definition of "introduction from the sea" and in Articles III and IV to allow a State other than the port State to make the required findings and issue the certificate, under appropriate circumstances. We would argue that the "State of introduction" can be either the port State where specimens are first landed or, in certain circumstances, the flag State of the vessel that introduces the specimens, and that both of these options are equally supported by the text of the Treaty. We believe that looking to the phrase "transportation into a State" as a basis for progress has confused the issue and suggest that it will be more productive to focus on the "State of introduction" which has the responsibility to make the findings and issue certificates under Articles III and IV.

Discussions at the workshop moved from which State should issue the certificate, make the findings, etc. (i.e. which State may qualify as the "State of introduction") to a discussion of the meaning of "transportation into a State." Two basic positions are described: (1) the port State must always issue the certificate (which is characterized as those participants who agreed that "introduction only occurs upon transportation into the port State") and (2) there is flexibility in issuing the certificate and making the findings (characterized as "introduction might occur upon transportation into a flag State via its vessel"). Although the U.S. supports the idea that the certificate may be issued and findings made by a flag State in certain circumstances, we do not agree that landing specimens on the deck of a vessel can ever be considered "transportation into a State". A vessel is not a sovereign governmental body. The "State of introduction" may be either the port State where the specimens are first introduced or the flag State of the vessel that introduces the specimens, but not the vessel itself.

Transportation into a State:

The U.S. cannot support either definition at the beginning of the annex. "Transportation into a State" is not the point at which the specimens have been taken on board a vessel and it is not necessarily the point at which specimens have cleared Customs. If landing specimens on board a vessel qualified as "transportation into a State", off-loading the specimens at the port of a different State would be an export. Such a scenario would be cumbersome and illogical. We agree that introduction from the sea only occurs upon transportation of specimens into a port State but recognize that the point at which the line is crossed, from an area not under the jurisdiction of any State to an area under the jurisdiction of a State in which that State has the right to enforce applicable laws with respect to the CITES specimens being transported, may be different for different countries. We note again that the country that makes the findings and issues the certificates, i.e. the "State of introduction", may be either the port State where the specimens are first introduced or, in certain circumstances, the flag State of the vessel that introduces the specimens.

Next steps:

Due to the lack of consensus achieved at the workshop regarding many aspects of introduction from the sea, and our commitment to reaching agreement on these difficult and important issues, the United States would support the convening of another workshop or an electronic working group to make further progress. We note that the proposal submitted by the U.S. at CoP13 remains the best statement of the U.S. position on introduction from the sea. We look forward to continuing discussions to achieve common understanding of the practical application of the introduction from the sea provision under CITES.

Comments received from the European Commission and the Member States of the European Union

General comments

The report and recommendations of the CITES Workshop on Introduction from the Sea (IFS) that took place in November-December 2005 provides a very good and useful basis for discussion, particularly as it outlines many of the different issues at stake and considers the pros and cons of each option.

We generally welcome the definition proposed by the Workshop as regards "marine environment not under the jurisdiction of any State" and in particular the fact that any interpretation must be consistent with "International law, as reflected in the United Nations Convention on the Law of the Sea".

The comments provided focus on the issue of "transportation into a State" and the related procedural issues linked to the non-detriment finding and issuance of a certificate. They are aimed at providing additional input to this important discussion and therefore many of them are formulated as questions which can supplement the list of issues at the end of the Annex to the report.

These comments also take into account the proposal submitted by the US at CoP13 (in document CoP13 Doc. 41).

Legal issues

The widespread understanding of the provisions of the Convention relating to IFS [Article I(e), III(5), IV(6)&(7) and XIV(4)] appears to be that "transportation into a State" means landing into a port. Furthermore, a number of Parties seem to consider that the State of introduction would therefore be the Port State (PS).

Indeed, it would seem far reaching and indeed incorrect to interpret "transportation into a State" as landing a catch on the deck of a fishing vessel, and the procedural implications of such an interpretation would only make matters more complicated (with the need for further export permits to be issued in addition to the IFS certificate in order to land a shipment in a port).

However, it would seem appropriate to interpret "Introduction from the Sea" as referring to the process whereby a specimen is harvested in the high seas and landed in a port based on the definition in Article I(e) of the Convention.

Whilst such an interpretation would make it clear that only an IFS certificate would be needed to cover this process and thus no additional export permit would be required, the text of the Convention is not entirely clear as to the **identity of the "State of Introduction"** and thus which State would be responsible for the issuance of such a certificate. Moreover, it is not even clear as to whether the same conclusion can be drawn for Appendix I and Appendix II, as the term is not defined.

It seems that for **Appendix I** the intention of the text [Article III(5)] is that the PS should issue a certificate in line with the general concept of having importing countries issue a permit for specimens that do not originate in the High Seas.

However for **Appendix II** the text is not so clear [Article IV(6)]. For introduction from the sea, the language seems to mirror the general language for Appendix-II situations, where the "harvesting" States (the State of Export) must make the non-detriment finding (NDF) and issue a certificate; the most analogous concept for introduction from the sea would seem to be the Flag State (FS).

For Appendix II, nothing is foreseen for the "receiving" State (the State of Import), and by the same logic the PS would have no role for the introduction from the sea. In addition, while its scope is not directly relevant, Article XIV(4) implies that, for Appendix II, FS do have obligations under the provisions of the Convention (apparently those relating to the issuance of IFS certificates), since it states that they may be relieved of these obligations under certain conditions ("A State party to the present Convention ... shall be relieved of the obligations imposed on it under the provisions of the present Convention with respect to trade in specimens of species included in Appendix II that are taken by ships registered in that State...").

It therefore seems that the text of the Convention leaves some room for diverging interpretation between the two different situations and could be interpreted in such a way that the "State of introduction" for Appendix-II specimens is in fact the FS. This interpretation would create an odd split between the two Appendices and merits further reflection as these provisions are largely unexplored at this stage.

→ Is the "State of introduction" the State where the specimens are landed (i.e. the PS) or is it the State that introduces the specimen into a State (i.e. the FS)?

Procedural issues

Regardless of the intention or legal interpretation of the Convention, it is appropriate to consider what is the most effective approach in terms of the conservation of marine species in the high seas and the most pragmatic approach procedurally.

For this it is relevant to consider three factors: fisheries management practices, Customs procedures and making non-detriment findings.

Fisheries management practices: Under UNCLOS, the FS has exclusive jurisdiction over ships flying its flag and has responsibility for the conservation and management of living resources. The FS has to provide a permit for its vessel to fish under a Regional Fisheries Management Organisation (RFMO). The permit may have to be submitted for control by the fisheries authorities upon landing. Recent developments in fisheries management are to put more responsibility on the PS, in order to combat illegal, unregulated and unreported (IUU) fishing. However this does not mean that the responsibility of FS should be weakened.

→ FS responsibility under CITES would seem to be in line with current fisheries management practices.

Customs procedures: Customs need all relevant documents when shipments are landed in a port. Therefore if a marine species is listed in CITES a certificate would need to be provided upon landing before the goods could be cleared by Customs.

This would argue for certificates to be issued before landing. The US CoP13 proposal of having the FS provide pre-issued certificates to fishing vessels could be an interesting avenue to meet this concern.

However, having mixed responsibility between PS and FS for the issuance of a IFS certificate, depending on whether an agreement (as suggested in the US CoP13 proposal) has been reached or not could be confusing for Customs. This could lead to situations where some shipments of the same species being landed at a port are covered by an IFS certificate issued by an FS, whilst others require a certificate to be issued by the PS.

Furthermore, in the European Community, products of sea fishing by Community fishing vessels harvested in the High Seas obtain Community status. Goods for which Community status is proven are not subject to further Customs controls. Customs is therefore not well placed to ensure that enforcement requirements under CITES provisions will be carried out in these cases.

→ Could the possibility of having mixed responsibility between PS and FS for issuing certificates create a possible loophole for controls upon landing?

→ Could pre-issued certificates address this concern by ensuring that all shipments arriving in a port are already covered by a certificate?

→ Could pre-issued certificates create a possible loophole for control upon landing?

→ Are Customs best placed to ensure control upon landing? Would it be more effective for checks upon landing to be carried out by Fisheries Inspections rather than Customs?

Making a non-detriment finding (NDF): Given that a FS has full responsibility over vessels flying its flag and that under RFMOs an authorization for fishing must be given to the vessel by the FS, it would appear that FS that are members of an RFMO may be best placed to make a NDF for CITES listed species. However it is clear that this is not the case for all FSs, particularly not for flags of convenience. On the other hand a PS would generally not have sufficient information in order to make an NDF and may not have the capacity to do so. Since many such fisheries activities take place in areas beyond national jurisdiction it may be difficult to use the normal CITES process for NDF and consideration could be given to alternative processes and procedures, e.g. using RFMOs or creating "Scientific Authorities" for such purposes.

→ Would a system whereby FS have responsibility for issuing certificates only if they are member of an RFMO or if they have reached an agreement with the PS address the problem of IUU fishing?

→ Would lack of information on the location of the harvest hamper the ability of the PS to make a NDF?

→ Could a system whereby an overarching 'Scientific Authority' makes NDFs enable both the FS and PS to issue an IFS certificate?

Additional considerations concerning FS responsibility:

If we consider that "introduction from the sea" is indeed a process whereby 'a specimen is harvested in the high seas and landed in a port', then a certificate issued by the FS would in practice authorize a ship to fish a certain number of specimens and land them in a port to be cleared by Customs. Responsibility for checking that the shipment is covered by a certificate and complies with CITES would lie with the PS. The FS would have primary responsibility for authorising the specimens to be harvested whilst the PS would have responsibility for controlling that the shipment complies with this.

Transhipment at sea without change of ownership would not appear to present difficulties as the certificate would remain with the shipment. However problems could arise in the case of change of ownership of the shipment at sea (Klondyking). In this case the FS would no longer be responsible for the shipment.

→ Could a system in which the FS issues the certificate and the PS controls upon landing function?

→ In the case of a certificate issued by the FS, how would change of ownership of the shipment at sea (Klondyking) be addressed? Could this be considered as a form of transit?

Further considerations

Is the CITES export/import country (or FS/PS) logic effective in the case of marine species harvested in the high seas? Would an overarching international mechanism for monitoring the harvesting of CITES-listed species in the high seas (based on RFMOs) and making NDFs be desirable? How would such a mechanism function?

Overview of questions for consideration:

→ Is the "State of introduction" the State where the specimens are landed (i.e. the PS) or is it the State that introduces the specimen into a State (i.e. the FS)?

→ Could the possibility of having mixed responsibility between PS and FS for issuing certificates create a possible loophole for controls upon landing?

→ Could pre-issued certificates address this concern by ensuring that all shipments arriving in a port are already covered by a certificate?

→ Could pre-issued certificates create a possible loophole for control upon landing?

→ Are Customs best placed to ensure control upon landing? Would it be more effective for checks upon landing to be carried out by Fisheries Inspections rather than Customs?

→ Would a system whereby FS have responsibility for issuing certificates only if they are member of an RFMO or if they have reached an agreement with the PS address the problem of IUU fishing?

→ Would lack of information on the location of the harvest hamper the ability of the PS to make a NDF?

→ Could a system whereby an overarching 'Scientific Authority' makes NDFs enable both the FS and PS to issue an IFS certificate?

→ Could a system in which the FS issues the certificate and the PS controls upon landing function?

→ In the case of a certificate issued by the FS, how would change of ownership of the shipment at sea (Klondyking) be addressed? Could this be considered as a form of transit?

→ Is the CITES export/import country (or FS/PS) logic effective in the case of marine species harvested in the high seas? Would an overarching international mechanism for monitoring the harvesting of CITES listed species in the high seas (based on RFMOs) and making NDFs be desirable? How would such a mechanism function?

Comments from the Species Survival Network

As an initial, procedural matter, the Species Survival Network (SSN) supports clarifying 'introduction from the sea' via a resolution rather than by an amendment to the Convention. In addition to the arguments presented in the Notification, we note that adopting an amendment to the Convention requires an extraordinary meeting of the Conference of the Parties, and could therefore involve the Parties and the Secretariat in additional, unnecessary time and expense.

Marine environment not under the jurisdiction of any State

Defining the phrase 'in the marine environment not under the jurisdiction of any State' is important for the proper implementation of CITES for marine species, because establishing the boundaries of jurisdiction determines whether an export permit, an introduction from the sea certificate, or nothing at all is required under CITES.

SSN agrees it is prudent for UNCLOS to provide the primary legal basis for determining jurisdiction over maritime spaces, that a broad reference to international law is inappropriate, and that terminology from UNCLOS should not be paraphrased.

SSN therefore supports the Final Recommendation of the working group on the definition of this phrase, and would welcome its inclusion in a draft resolution for CoP14.

We note the discussion over the use of the term 'jurisdiction' in the definition and agree that use of this term would be confusing. UNCLOS grants sovereign rights to exploit resources, and jurisdiction to regulate artificial islands. Jurisdiction is not otherwise used to describe the rights of coastal States with respect to demarcating boundaries of a territorial sea, exclusive economic zone, or continental shelf. Thus, the inclusion of jurisdiction in defining the term 'not under the jurisdiction of any State' is unnecessary.

Transportation into a State

This definition is important because it determines which CITES Party will issue the introduction from the sea certificate and make the non-detriment finding required prior to the issuance of the certificate.

SSN concurs with the view that, as a matter of law, 'transportation into a State" clearly refers to the State into which specimens are brought and then cleared through Customs. Under that construction, the port State should issue an introduction from the sea certificate.

SSN opposes allowing flag States to issue IFS certificates for reasons of simplicity, and to avoid the risks associated with 'flags of convenience'.

Non-detriment findings

SSN supports the view that port States, not flag States, should be responsible for the issuance of NDFs, but that port States should of course consult with flag States and that they should certainly consult with relevant regional fisheries bodies (RFBs). SSN shares the view expressed by participants at the workshop that the knowledge of an RFB about the sustainability and legality of a particular harvest (perhaps based on a trade documentation or a certification scheme) would be critical to the making of any NDF.

We note that some Parties expressed concern that a port State may have insufficient information to be able to make a valid NDF. SSN suggests that if a port State is unable to gather sufficient scientific information to make a non-detriment determination for any particular import, and an RFB or flag State cannot provide relevant or sufficient information, then the Scientific Authority of the port State must make a finding that the introduction will be detrimental or acknowledge that insufficient information

exists to make an NDF. As a consequence, the Management Authority of port State may not issue an introduction from the sea certificate.

SSN would urge against the assumption that the legal harvesting of marine specimens (for example in accordance with an RFB) could always be presumed non-detrimental. It will very much depend on the species and RFB in question. There are many commercial marine species that are legally harvested at rates that are not ecologically sustainable but nonetheless done in accordance with RFB arrangements. In fact, it may be because an RFB has failed to adequately manage a species that a CITES listing is proposed. Therefore, we recommend that Parties remain ultimately responsible for reaching *independent* assessments of non-detriment, taking into consideration any advice from the relevant RFB. However, the Parties can make a decision on listing a specific marine species to cooperate formally with a relevant RFB, and stipulate the process for that through an annotation or related resolution.

SSN notes that agreement on a definition for 'transportation into a State' was not reached at the workshop.

We consider the problem of making non-detriment findings for marine species subject to Introduction from the Sea to be crucial to the success of the Convention in preventing overexploitation of these species. We therefore strongly recommend that a formal process to deal with this issue be established at the next CoP. This could take the form either of an intersessional working group, a series of workshops, or a cooperative process with FAO, relevant RFBs and appropriate experts, with the aim of providing assistance to Parties in the making of these NDFs. We also recommend that the Review of Significant Trade process should be modified as necessary so that it can be made applicable to species taken beyond the boundaries of any State, allowing recommendations to be made to relevant port States.