

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

Amendment of the Appendices

USE OF ANNOTATIONS FOR PLANTS IN APPENDIX II AND ANIMALS AND PLANTS IN APPENDIX III

1. This document has been submitted by the United States of America at the request of the Animals and Plants Committees.

Background

2. At the 15th meeting of the Plants Committee (PC15, Geneva, May 2005), the United States submitted a document in which it provided examples demonstrating significant variation and inconsistencies in interpretations of the provisions of the Convention pertaining to the listings of Appendix-II and -III plants that lack an annotation (see document PC15 Doc. 18.1). In particular, the document noted that the Parties and the Secretariat had on some occasions interpreted such listings as including all readily recognizable parts and derivatives, whereas on other occasions they had interpreted them as including only whole live or dead specimens. Similar inconsistencies in the interpretation of listing proposals lacking annotations had been a source of confusion at meetings of the Conference of the Parties, especially in decisions over whether the amendment of such proposals would represent an expansion of scope and therefore should not be allowed. The United States suggested that the Plants Committee discuss this issue and determine whether it might be appropriate to develop any formal proposals for submission at the 14th meeting of the Conference of the Parties (CoP14) to prevent such inconsistencies in the future.
3. These inconsistencies are also relevant to animal species included in Appendix III, since it is the only Appendix in which readily recognizable parts and derivatives to be included in a listing of an animal species must be specified.
4. Since the early days of the Convention, the Conference of the Parties had agreed in Resolutions (now repealed) to interpret listings in Appendix III without an annotation as including all readily recognizable parts and derivatives. However, the agreement to interpret listings in such a manner is currently not captured in any Resolution or other document. Therefore, the listings of animals and plants in Appendix III without an annotation may be interpreted as not including any readily recognizable parts or derivatives (i.e. such listings may be interpreted as including only whole live or dead specimens).
5. Given that many listings in Appendix III have been in effect for many years, it is likely that they had been intended to include all readily recognizable parts and derivatives, and had been interpreted in such a manner because of the early agreement of the Conference of the Parties to do so.
6. A working group was established at PC15, chaired by the regional representative of North America, to discuss this issue and make a recommendation to the Plants Committee on a course of action. The working group deliberated and concluded that, consistent with long-standing interpretations by the Conference of the Parties embodied in old Resolutions (now repealed), listings without an

annotation should be interpreted as including all readily recognizable parts and derivatives. It would follow then, that proposals submitted at a meeting of the Conference of the Parties to list plant species in Appendix II should be similarly interpreted.

7. To solve this problem for Appendix-II plants, the working group recommended that Resolution Conf. 11.21 (Rev. CoP13) (Use of annotations in Appendices I and II) be amended. For Appendix-III plants and animals, it recommended that Resolution Conf. 9.25 (Rev.) (Inclusion of species in Appendix III) be amended. The Plants Committee agreed with the recommendations of the working group and requested that the group continue its work intersessionally and provide draft amendments to these Resolutions.
8. The working group completed its work and, because the draft amendments to Resolution Conf. 9.25 (Rev.) also pertained to animals included in Appendix III, submitted a document on the proposed amendments to both Resolutions for consideration during a joint session of the 16th meeting of the Plants Committee and 22nd meeting of the Animals Committee (Lima, July 2006). After making minor editorial changes, the Committees agreed on the proposed changes.
9. Annexes 1 and 2 to this document contain the proposed revisions to Resolution Conf. 11.21 (Rev. CoP13) and Resolution Conf. 9.25 (Rev.), respectively, as agreed by the Animals and Plants Committees.
10. If the proposed amendments are adopted by the Conference of the Parties, the Committees further agreed that, for Resolution Conf. 11.21 (Rev. CoP13), the new text "AGREES further that, for plant species included in Appendix II, the absence of an annotation relating to that species shall indicate that all readily recognizable parts and derivatives are included", and for Resolution Conf. 9.25 (Rev.) "AGREES further that, for species included in Appendix III, the absence of an annotation relating to that species shall indicate that all readily recognizable parts and derivatives are included", should be reflected in the Interpretation of the Appendices. If the amendments are adopted, therefore, the Conference of the Parties should direct the Secretariat to make the appropriate changes to the Interpretation of the Appendices.

COMMENTS FROM THE SECRETARIAT

- A. The Secretariat believes that the issue addressed by the present document is already dealt with to some extent by Resolution Conf. 9.6 (Rev.), on Trade in readily recognizable parts and derivatives, which records that the Conference of the Parties:

AGREES that the term 'readily recognizable part or derivative', as used in the Convention, shall be interpreted to include any specimen which appears from an accompanying document, the packaging or a mark or label, or from any other circumstances, to be a part or derivative of an animal or plant of a species included in the Appendices, unless such part or derivative is specifically exempted from the provisions of the Convention.

- B. The Secretariat already expressed its view at the 13th meeting of the Conference of the Parties (see document CoP13 Doc. 60) that as a result of this Resolution, if a proposal is adopted to include a species in the Appendices with no indication that specific parts and derivatives are to be listed, this means that all parts and derivatives are considered to be included. The Secretariat agrees with the United States of America that, as indicated in paragraph 10 of this document, it would be preferable to reflect this in the 'Interpretation' section of the Appendices. It therefore proposes the insertion of the following words at the beginning of paragraph 7 of this section:

"When a species is included in one of the Appendices, all parts and derivatives of the species are also included in the same Appendix unless the species is annotated to indicate that only specific parts and derivatives are included."

C. The Secretariat does not believe that it is necessary to state this also in a Resolution but is aware that concerns were expressed in the joint meeting of the Animals and Plants Committees that the Secretariat has the possibility to amend the 'Interpretation' section of the Appendices. The specification as to who has authority to amend the annotations in the Appendices is contained in Resolution Conf. 11.21 (Rev. CoP13), as follows:

AGREES that:

- c) reference annotations may be introduced, amended or deleted by the Conference of the Parties, or by the Secretariat, as required, to facilitate the understanding of the Appendices;*
- d) substantive annotations relating to species in Appendix I or II may be introduced, amended or deleted only by the Conference of the Parties in accordance with Article XV of the Convention.*

The Secretariat therefore suggests the inclusion of the words "all other annotations, including" at the beginning of paragraph d) in order to alleviate the concerns.

DRAFT RESOLUTION OF THE CONFERENCE OF THE PARTIES

Proposed amendments to Resolution Conf. 11.21 (Rev. CoP13)

Use of annotations in Appendices I and II

NB: Text to be deleted is ~~crossed out~~. Proposed new text is underlined.

RECOGNIZING that annotations are increasingly used in the Appendices for a number of purposes;

AWARE that certain types of annotations are for reference only, whereas others are substantive and are intended to define the scope of the inclusion of a species;

CONSIDERING that the Parties have developed specific procedures for transfer, reporting and review for certain special cases of amendment of the Appendices, such as those relating to ranching, quotas, certain parts and derivatives, and trade regimes;

AWARE also that certain types of annotations are an integral part of a species listing, and that any proposal to introduce, amend or delete such an annotation must follow the provisions of Resolution Conf. 9.24 (Rev. CoP13), adopted by the Parties at its ninth meeting (Fort Lauderdale, 1994) and amended at its 12th and 13th meetings (Santiago, 2002; Bangkok, 2004);

RECALLING that the Conference of the Parties had agreed at its second and fourth meetings that listings of plant species in Appendix II without an annotation should be interpreted as including all readily recognizable parts and derivatives, and that this view has not been changed by any subsequent decision of the Conference of the Parties;

CONSCIOUS that criteria for the submission of proposals to amend the Appendices that include annotations, and procedures for reviewing the implementation of such annotations, need to be clearly defined to avoid implementation and enforcement problems;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

AGREES that:

- a) the following are reference annotations and are for information purposes only:
 - i) annotations to indicate that one or more geographically separate populations, subspecies or species of the annotated taxon are in another Appendix;
 - ii) the annotations 'possibly extinct'; and
 - iii) annotations relating to nomenclature;
- b) the following are substantive annotations, and are integral parts of species listings:
 - i) annotations that specify the inclusion or exclusion of designated geographically separate populations, subspecies, species, groups of species, or higher taxa, which may include export quotas; and
 - ii) annotations that specify the types of specimens or export quotas;
- c) reference annotations may be introduced, amended or deleted by the Conference of the Parties, or by the Secretariat, as required, to facilitate the understanding of the Appendices;
- d) substantive annotations relating to species in Appendix I or II may be introduced, amended or deleted only by the Conference of the Parties in accordance with Article XV of the Convention;

- e) substantive annotations relating to geographically separate populations in Appendix I or II should be in compliance with the split-listing provisions contained in Resolution Conf. 9.24 (Rev. CoP13) Annex 3; and
- f) substantive annotations used in the context of transferring a species from Appendix I to Appendix II should be in compliance with the precautionary measures contained in Resolution Conf. 9.24 (Rev. CoP13) Annex 4;

AGREES that no proposal for transfer of a species from Appendix I to Appendix II subject to an annotation relating to specified types of specimens shall be considered from a Party that has entered a reservation for the species in question, unless that Party has agreed to remove the reservation within 90 days of the adoption of the amendment;

AGREES that a proposal to include a plant species in Appendix II, or to transfer a plant species from Appendix I to Appendix II, shall be interpreted to include all readily recognizable parts and derivatives if the proposal does not include an annotation specifying the types of specimens to be included;

AGREES further that, for plant species included in Appendix II, the absence of an annotation relating to that species shall indicate that all readily recognizable parts and derivatives are included;

RECOMMENDS that:

- a) Parties submitting proposals that contain substantive annotations ensure that the text is clear and unambiguous;
- b) two main principles be followed as standard guidance when drafting future annotations for medicinal plants:
 - i) controls should concentrate on those commodities that first appear in international trade as exports from range States; these may range from crude to processed material; and
 - ii) controls should include only those commodities that dominate the trade and the demand for the wild resource;
- c) if a proposed annotation relates to specified types of specimens, the applicable provisions of the Convention for import, export and re-export of each type of specimen should be specified;
- d) as a general rule, Parties avoid making proposals to adopt annotations that include live animals or trophies; and
- e) annotations that specify the types of specimens included in the Appendices should be used sparingly, as their implementation is particularly challenging, especially where there are identification problems or where the purpose of trade has been specified;

DIRECTS:

- a) the Secretariat to report to the Standing Committee, for at least four years following the adoption of a proposal to transfer species from Appendix I to Appendix II subject to a substantive annotation, any credible information it receives indicating a significant increase in the illegal trade in or poaching of such species; and
- b) the Standing Committee to investigate any such reports of illegal trade and to take appropriate action to remedy the situation, which may include calling on the Parties to suspend commercial trade in the affected species, or inviting the Depository Government to submit a proposal to amend the annotation or to retransfer the species to Appendix I; and

AGREES that, for species transferred from Appendix I to II subject to an annotation that specifies the types of specimen included in the Appendix, specimens that are not specifically included in the annotation shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly.

Proposed amendments to Resolution Conf. 9.25 (Rev.)

Inclusion of species in Appendix III

NB: Text to be deleted is ~~crossed out~~. Proposed new text is underlined.

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

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

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

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

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

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

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

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

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

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

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

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

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

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

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

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

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

DIRECTS the Secretariat:

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

AGREES that the inclusion of a species in Appendix III without an annotation shall indicate that all readily recognizable parts and derivatives are included in the Appendix;

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

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

REPEALS the Resolutions, or parts thereof, listed hereunder:

- a) Resolution Conf. 1.5 (Bern, 1976) – Recommendations Concerning the Interpretation and Implementation of Certain Provisions of the Convention – paragraphs 3, 4 and 5;
- b) Resolution Conf. 5.22 (Buenos Aires, 1985) – Criteria for the Inclusion of Species in Appendix III – paragraphs a) and b) under 'RECOMMENDS' and the paragraph under 'REQUESTS';
- c) Resolution Conf. 7.15 (Lausanne, 1989) – Amendments to Appendix III; and
- d) Resolution Conf. 8.23 (Kyoto, 1992) – Review of Appendix III.