

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



Fifteenth meeting of the Conference of the Parties
Doha (Qatar), 13-25 March 2010

Interpretation and implementation of the Convention

Amendment of the Appendices

CRITERIA FOR THE INCLUSION OF SPECIES IN APPENDICES I AND II

1. This document has been prepared by the Secretariat.

Introduction

2. In Article XV of the Convention, the Secretariat is charged with providing to the Parties its findings and recommendations on proposals to amend Appendices I or II. At the 14th meeting of the Conference of the Parties (CoP14, The Hague, 2007), some Parties expressed concern about the differences between the Secretariat's recommendations and those made by the Food and Agriculture Organization of the United Nations (FAO) through its *Ad Hoc* Expert Advisory Panel for the Assessment of Proposals to Amend Appendices I and II of CITES Concerning Commercially-Exploited Aquatic Species in document CoP14 Doc. 68. Further background on this matter can be found in documents CoP14 Inf. 26, CoP14 Inf. 48 and CoP14 Inf. 64.
3. These differences arose from a difference of interpretation of the wording of a key part of Resolution Conf. 9.24 (Rev. CoP13) on *Criteria for amendment of Appendices I and II*. The Secretariat sought clarification on this matter at the 58th meeting of the Standing Committee (Geneva, July 2008) and the Committee:
 - a) agreed that the interpretation of the criteria should be referred to the 15th meeting of the Conference of the Parties (CoP15) and that, in the meantime, when providing advice to the Parties on proposals to amend Appendices I or II, the Secretariat and the Food and Agriculture Organization of the United Nations should clearly indicate which interpretation they were using;
 - b) noted that, in the past, Parties and organizations had had different interpretations as to whether a species met criterion B to Annex 2 a of Resolution Conf. 9.24 (Rev. CoP14), insofar as it related to commercially-exploited aquatic species;
 - c) asked the Conference of the Parties to give guidance at CoP15 as to a common interpretation of the criteria B given in Annex 2 a of Resolution Conf. 9.24 (Rev. CoP14), paying particular attention to the flexibility contained in the Resolution and situations where only few data were available for the species concerned;
 - d) asked Parties, as they prepared for the upcoming CoP15, to clearly define in their listing proposals how they interpreted and applied Resolution Conf. 9.24 (Rev. CoP14) using sound and relevant scientific information, and recognizing flexibility and data-poor cases; and
 - e) highly appreciated the work of the FAO ad hoc Expert Panel on proposals submitted to CoPs and looked forward to the continuing cooperation with FAO as outlined in the FAO-CITES Memorandum of Understanding.

Difference of interpretation

- Annex 2 a of Resolution Conf. 9.24 (Rev. CoP14) contains the criteria for the inclusion of species in Appendix II in accordance with Article II, paragraph 2 (a), of the Convention and reads as follows:

The following criteria must be read in conjunction with the definitions, explanations and guidelines listed in Annex 5, including the footnote with respect to application of the definition of 'decline' for commercially exploited aquatic species.

*A species should be included in Appendix II when, on the basis of available trade data and information on the status and trends of the wild population(s), **at least one** of the following criteria is met:*

- It is known, or can be inferred or projected, that the regulation of trade in the species is necessary to avoid it becoming eligible for inclusion in Appendix I in the near future; or*
 - It is known, or can be inferred or projected, that regulation of trade in the species is required to ensure that the harvest of specimens from the wild is not reducing the wild population to a level at which its survival might be threatened by continued harvesting or other influences.*
- Differences in the interpretation of paragraph B of Annex 2 a are at the root of the divergence between the recommendations of the Secretariat and those of FAO regarding amendment proposals considered at CoP14.
 - The view of FAO is presented in paragraph 13 of their report in Annex 3 of document CoP14 Doc. 68 and is further explained in document CoP14 Inf. 64. According to FAO, the word 'reducing' in Annex 2 a, paragraph B, can be assimilated to a 'decline' and this paragraph should therefore be read in conjunction with and interpreted according to Annex 5, where the word 'decline' is defined.
 - In the view of the Secretariat, the definition of the term 'decline' given in Annex 5 of Resolution Conf. 9.24 (Rev. CoP14) is not relevant in the consideration of whether a species meets the criterion, as that term is not expressly used in Annex 2 a, paragraph B of that Resolution.

Background

- At its ninth meeting (CoP9, Fort Lauderdale, 1994), the Conference of the Parties adopted Resolution Conf. 9.24 on *Criteria for amendment of Appendices I and II*, detailing the criteria to be used to assess proposals to amend Appendices I and II. This Resolution contained a recommendation that its text and annexes be fully reviewed before the 12th meeting of the Conference of the Parties with regard to the scientific validity of the criteria, definitions, notes and guidelines, and their applicability to different groups of organisms.
- In 1992, at the start of the process which led to this Resolution, IUCN was commissioned to produce a report and proposal for the Standing Committee. IUCN's proposal, contained in document SC29.2/Rev. 1, included the following phrase in relation to the criteria for inclusion in Appendix II:

The species is known or suspected to be in continuing decline (typically up to a 50% total decline in numbers over the past 5 years, or two generations, whichever is the longer).

However, at a Joint Meeting of the Standing, Animals and Plants Committees on the Criteria to Amend the CITES Appendices (Brussels, August-September 1993) and at subsequent meetings of the Standing Committee, there was extensive discussion of the use of the word 'decline' and the effect of using this term in different parts of the draft resolution. Subsequently, the working group that met to discuss the criteria during CoP9 retained a definition of the word 'decline' with a numerical guideline in Annex 5 but removed the word 'decline' from the criteria for including species in Appendix II in Annex 2 of the Resolution [compare document CoP9 Doc. 9.41 with document CoP9 Com. 17 (Rev.)].

10. The text of the Resolution adopted at CoP9 did however include the word 'reducing' and read as follows:

The following criteria must be read in conjunction with the definitions, notes and guidelines listed in Annex 5.

A species should be included in Appendix II when either of the following criteria is met.

- A. *It is known, inferred or projected that unless trade in the species is subject to strict regulation, it will meet at least one of the criteria listed in Annex 1 in the near future.*
- B. *It is known, inferred or projected that the harvesting of specimens from the wild for international trade has, or may have, a detrimental impact on the species by either:*
 - i) *exceeding, over an extended period, the level that can be continued in perpetuity; or*
 - ii) *reducing it to a population level at which its survival would be threatened by other influences.*

11. Between the 10th meeting of the Conference of the Parties (CoP10, Harare, June 1997), when Resolution Conf. 9.24 was first applied, and the 13th meeting of the Conference of the Parties (CoP13, Bangkok, 2004), when the criteria were last used before being revised, 76 proposals to include taxa in Appendix II were presented to the Conference. These proposals were submitted by 24 Parties: Argentina, Australia, Botswana, China, Fiji, Germany, Guatemala, India, Indonesia, Ireland, Italy, Kenya, Madagascar, the Netherlands, New Zealand, Nicaragua, Namibia, the Philippines, Slovenia, Sri Lanka, the Russian Federation, South Africa, the United Kingdom of Great Britain and Northern Ireland and the United States of America. None of the supporting statements for the proposals presented by these Parties sought to justify the inclusion of a species in Appendix II by citing the decline criterion in Annex 5 of the Resolution.

12. In the proceedings of the meetings of the Conference of the Parties concerned, there is no evidence of the above proposals to amend the Appendices being criticized because the species concerned had not undergone a decline as defined in Annex 5.

13. As shown in paragraphs 11 and 12 above, during the period between CoP10 and CoP13 inclusive, there does not seem to be any evidence that Parties believed that the word 'reducing' should be assimilated to the word 'decline' and interpreted according to the definition of the latter in Annex 5.

14. Between the 11th meeting of the Conference of the Parties (CoP11, Gigiri, April 2000) and CoP13, the full review the criteria noted in paragraph 8 above was undertaken. At CoP11 the Conference of the Parties adopted Decision 11.2 which established the terms of reference for the review and these were further refined at CoP12 (Santiago, 2002) in Decision 12.97 – a minor change to the Resolution was also agreed at CoP12. The review was led by the Animals and Plants Committees, with the assistance, between August 2000 and November 2001, of a Criteria Working Group whose membership was determined by the Conference of the Parties through Decision 11.2.

15. The Criteria Working Group considered Annex 2 a of the Resolution in detail and in their report (document Inf. ACPC.1.2 submitted at the Joint meeting of the Animals and Plants Committees, Shepherdstown, December 2000), they agreed:

that there was a need to develop more substantive criteria for the inclusion of 'species' in Appendix II... Some participants expressed the view that clearly-defined biological criteria, as used for Appendix-I listings, should also be developed for Appendix-II. Others believed, however, that this would not be workable and difficult to implement by many of the range States concerned, and that the criteria should be flexible. The Criteria Working Group... largely supported a descriptive approach

This approach was summarized in the document by the Secretariat in terms of identifying a population level at which a more or less optimal harvest is possible and then determining the need for an Appendix-II listing for species whose population was near to, but above or below this level. The Criteria Working Group also proposed some changes to the definition of the word 'decline' in Annex 5.

16. The Chairs of the Animals and Plants Committee reported on the work of the Criteria Working Group and their own efforts, at the 46th meeting of the Standing Committee (SC46, Geneva, March 2002). After the Criteria Working Group had completed its work, the Chairs added a footnote to the definition of 'decline' in Annex 5 of the Resolution to expand on the definition of the word when applied to commercially exploited

aquatic species in marine and large freshwater bodies. This was because, as they explained in their report (document SC46 Doc. 14 Annex 3), they had “taken into account the comments received from FAO, and decided to include, as a footnote, the text provided by FAO as an example of a possible scenario for specific cases”.

17. A draft revised Resolution was subsequently presented at CoP12, but the CoP decided that further work was necessary.
18. During the period from August to December 2003, the Animals and Plants Committees evaluated the draft new criteria, including the footnote in Annex 5, against a selection of 45 taxa. The text of these evaluations for [fauna](#) and [flora](#) was posted on the CITES website for comment on 5 December 2003, where they may still be consulted in the language in which they were written. In no case do these evaluations make reference to the definition of decline in Annex 5 when testing the criterion in Annex 2 a, paragraph B of the draft Resolution.
19. The Animals and Plants Committees’ final proposal for an amendment to Resolution Conf. 9.24 (Rev. CoP12) was presented at CoP13 in document CoP13 Doc. 57. The Conference of the Parties adopted the revised criteria in Annex 3 of that document, with minor amendments suggested by the Secretariat.
20. With this, the Conference agreed changes in the wording in Annex 2 a, paragraph B, and to the definition of the word ‘decline’ in Annex 5. The amended version of Annex 2 a, paragraph B is shown below with changes in strikethrough (deletions) or underline (additions):

The following criteria must be read in conjunction with the definitions, explanations and guidelines listed in Annex 5, including the footnote with respect to application of the definition of ‘decline’ for commercially exploited aquatic species.

A species should be included in Appendix II when, on the basis of available trade data and information on the status and trends of the wild population(s), either **at least one** of the following criteria is met:

- A. It is known, or can be inferred or projected, that ~~unless trade in the species is subject to strict regulation, it will meet at least one of the criteria listed in Annex 1~~ the regulation of trade in the species is necessary to avoid it becoming eligible for inclusion in Appendix I in the near future; or
- B. It is known, or can be inferred or projected, that regulation of trade in the species is required to ensure that the harvesting of specimens from the wild ~~for international trade has, or may have, a detrimental impact on the species by either exceeding, over an extended period, the level that can be continued in perpetuity or is not reducing it to a the wild population to a level at which its survival would might be threatened by continued harvesting or other influences.~~

21. It can be noted that the word ‘decline’ was still not used in Annex 2 a, paragraph B, but the word ‘reducing’ continued to be. There was no material change in the use of the definitions, explanations and guidelines contained in Annex 5 in the relation to this Annex, and they continued to apply as they did in previous versions of the Resolution.
22. FAO played an active and helpful role in the review of the Resolution Conf. 9.24 criteria. As the United Nations Organization with a mandate for fisheries and aquaculture, FAO’s expertise on commercially-exploited aquatic species is fully recognized by CITES. The Organization undertook a thorough review of the Resolution Conf. 9.24 criteria as they applied to commercially-exploited aquatic species and formulated recommendations for improvements to them for consideration by CITES. This process was carried out in full cooperation with CITES. FAO served on the CITES Criteria Working Group that was initially charged with undertaking the CITES review and participated fully throughout the extensive and rigorous review up to and including CoP13. FAO’s formal recommendations were sent to the CITES Secretariat in 2002 and, overall, the Organization contributed significantly to the substance of the Resolution Conf. 9.4 (Rev. CoP14) criteria including, but by no means limited to, Annex 5.
23. These revised criteria, contained in Resolution Conf. 9.24 (Rev. CoP13) were first applied to proposals presented at CoP14. At CoP14, 14 proposals were made to include species in Appendix II or delete them from that Appendix. None of the supporting statements for these proposals sought to justify their proposal by using the word ‘decline’ and its definition in Annex 5, although some (e.g. proposal CoP14 Prop. 18) refer to this, but as “FAO’s recommended criteria for CITES listing”.

24. The footnote to Annex 5 was written in isolation from the rest of the text of the Resolution and its introduction has led FAO (document CoP14 Doc. 68 Annex 3) to conclude that:

these decline guidelines [in the definition of 'decline' in Annex 5] encompass the intentions of both Annex 2 a A and 2 a B.

In the view of the Secretariat, however, paragraph A refers to species already close to meeting the criteria for Appendix I; either through having a small wild population size, a restricted area of distribution or exhibiting a marked decline in the population size, all characterized additionally by the aggravating factors listed in Annex I of the Resolution. Paragraph B in contrast, concerns species whose survival might be threatened in the longer term unless regulation of trade is undertaken. Additionally, it can be noted that the footnote is placed against the fourth paragraph of the definition of decline and not against the definition of decline as a whole.

25. 'To decline' and 'to reduce' require different grammatical constructions. However, the Secretariat believes that the main difference between them is one of emphasis and connotation. The phrase used in paragraph B of Annex 2 a in Resolution Conf. 9.24 (Rev. CoP14):

....to ensure that the harvest of specimens from the wild is not reducing the wild population to a level at which its survival might be threatened by continued.....

lays the emphasis on what is causing the reduction, whereas, if the verb "to decline" were used in this phrase, it would read:

....to ensure that the wild population is not declining because of the harvest of specimens....

where the emphasis is on the status of the wild population. The verb "to reduce" is a neutral term which can be used positively (e.g. to reduce the impact of trade on wild populations) or negatively, whereas "to decline" systematically carries a negative connotation. A decline is a type or subset of "a reduction" and this is clearly indicated by the definition of decline in Annex 5, which starts: "**Decline:** A 'decline' is a reduction in the abundance, or area of distribution, or area of habitat of a species". In other words, a reduction of the type described. The two words cannot therefore be used interchangeably.

26. This issue is not merely a linguistic one but a matter of legal interpretation linked to the objectives of the Convention. The Secretariat draws attention to the first RESOLVES of Resolution Conf. 9.24 (Rev. CoP14) which states that:

when considering proposals to amend Appendix I or II, the Parties shall, by virtue of the precautionary approach and in case of uncertainty either as regards the status of a species or the impact of trade on the conservation of a species, act in the best interest of the conservation of the species concerned and adopt measures that are proportionate to the anticipated risks to the species

It should also be noted that the phrase 'inferred or projected' is used in paragraph B in Annex 2 a of the Resolution and is defined in Annex 5 as follows:

This refers to estimations using indirect or direct methods. Inferences may be made on the basis either of direct measurements, or from indirect evidence. Projection involves extrapolation to infer likely future values.

These set out the parameters to be used in relation to paragraph B for determining whether a species should be included in Appendix II. Rather than fixed thresholds or percentages or strict biological standards, the application of paragraph B relies on direct or indirect evidence, or inference through projection models, that wild harvest is reducing a wild population and that its inclusion in Appendix II is needed to ensure that continued harvest (for international trade) is regulated and does not cause the wild population to become threatened with extinction. The Secretariat considers that this demonstrates that the intention of the Parties was to take pre-emptive action, such as inclusion in Appendix II, in order to avoid a species becoming threatened with extinction through international trade, i.e. before reduction engenders a decline. In contrast, the word 'decline' as applied in the criteria for Appendix I, indicates that the species has already suffered a significant impact from international trade and that serious measures are now required to address this impact.

Current interpretation of Annex 2 a, paragraph B, of Resolution Conf. 9.24 (Rev. CoP14)

27. When the criteria were first agreed at CoP9, the word 'decline' (and thus the detailed definition associated with it) was specifically excluded from paragraph B of Annex 2 a and the word 'reducing' used instead. When the criteria were reviewed between CoP11 and CoP13, the Parties did not change this wording and there is no evidence that during the revision process, any different approach was intended. In the view of the Secretariat, there is no evidence from the supporting statements for amendment proposals presented by Parties to the Conference of the Parties that any other approach was used. The Parties chose not to use detailed scientific criteria when deciding if species were to be included in Appendix II.
28. The Secretariat concludes from paragraph 8 to 26 above, that from the first version of Resolution Conf. 9.24 adopted at CoP9 in 1994, there is no indication that the Parties intended to assimilate the word 'reducing' with the word 'decline' in Annex 2 a, paragraph B, and interpret it according to the definition of 'decline' in Annex 5. The Parties have found it necessary to define many words, either in the treaty or in Resolutions such as 'trade', 'bred in captivity' and 'readily recognizable', but if other words were 'assimilated' with these terms as well, the definitions would become pointless and unworkable.
29. The Secretariat believes that the criteria for including in Appendix II a commercially exploited aquatic species are found in Annex 2 a of Resolution Conf. 9.24 (Rev. CoP14) and not the footnote to the definition of "decline" in Annex 5. FAO *Ad Hoc* Expert Advisory Panels may continue to use the biological standards found in the footnote, but these cannot be the whole basis for, or supplant, Annex 2 a.

The way forward

30. The Secretary-General shared a draft of the present document with Mr Nomura, FAO Assistant Director-General, Fisheries and Aquaculture Department, and invited him and his staff to a meeting in Geneva on 18 September 2009 to discuss it. The meeting was friendly and constructive. Although it was not possible for the two Secretariats to agree on the interpretation of paragraph B of Annex 2 a of Resolution Conf. 9.24 (Rev. CoP13) and the footnote to Annex 5, they were united in their view that the CITES Parties needed to agree on a common interpretation of these provisions in order to facilitate the application of the criteria. The CITES Secretariat again stressed its appreciation to FAO for organizing the *Ad Hoc* Expert Advisory Panel meetings which, in its view, contributed greatly to the Parties' understanding of the trade in and biology of species subject to amendment proposals.
31. In order to improve the understanding of the application of criteria for amending the Appendices found in Resolution Conf. 9.24 (Rev. CoP14) and in particular paragraph B in Annex 2 a of that Resolution, the Secretariat believes that an intersessional process will be necessary.

Recommendations

32. The Conference is requested to adopt the draft decisions concerning an intersessional process, proposed by the Secretariat in the Annex to the present document, and to provide guidance on the interpretation of the criteria to be followed in the interim.
33. Activity 9 in the Costed programme of work for the CITES Secretariat for 2009-2011 covers the staff costs for the actions envisaged in the draft decisions, but the non-staff costs currently allocated (USD 10,000) will not be sufficient to undertake them. The Secretariat recommends that an additional USD 40,000 be included in the External funds column of Activity 9 of the Costed programme of work for the CITES Secretariat for 2009-2011.

DRAFT DECISIONS OF THE CONFERENCE OF THE PARTIES

Criteria for the amendment of Appendices I and II

Directed to the Secretariat

- 15.xx Subject to external funding, and in consultation with the FAO Secretariat, the Secretariat shall commission a report which should:
- a) identify the scientific or other evidence which might be used to satisfy the Appendix-II listing criteria found in Annex 2 a B of Resolution Conf. 9.24 and;
 - b) examine how Annex 5 guides the interpretation and application of Annex 2 a B of Resolution Conf. 9.24 (Rev. CoP14); and
 - c) using the results of the above identification and examination process, determine how selected fauna and flora species might be analysed against the listing criterion found in Annex 2 a B of Resolution Conf. 9.24 (Rev. CoP14).

The Secretariat shall submit this report to the Animals and Plants Committees, together with its comments upon it.

Directed to the Animals and Plants Committees

- 15.xx The Animals and Plants Committees shall jointly:
- a) consider the report referred to in Decision 15.xx;
 - b) consider whether the criteria in Resolution Conf. 9.24 (Rev. CoP14) are clear and can be applied equally to all taxa, paying particular attention to the flexibility contained in the Resolution and situations where only few data are available for the species concerned; and
 - c) submit recommendations at the 62nd meeting of the Standing Committee.

Directed to the Standing Committee

- 15.xx At its 62nd meeting, the Standing Committee shall:
- a) consider the recommendations from the Animals and Plants Committees referred to in paragraph c) of Decision 15.xx;
 - b) determine whether and how Resolution Conf. 9.24 (Rev. CoP14) should be amended to improve the efficiency and effectiveness of its implementation; and
 - c) propose any necessary draft amendments to Resolution Conf. 9.24 (Rev. CoP14) at the 16th meeting of the Conference of the Parties (CoP16).

Directed to Parties, intergovernmental bodies having a function in relation to marine species and to the Secretariat

- 15.xx Parties, when making proposals to amend Appendices I and II at CoP16, intergovernmental bodies having a function in relation to marine species, when providing their views on such proposals, and the Secretariat, when making its findings and recommendations to the Parties in accordance with Article XV, should clearly define how they interpreted and applied Resolution Conf. 9.24 (Rev. CoP14).