

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

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NOTE FROM THE FAO EXPERT PANEL COORDINATOR ON
THE FIFTH FAO EXPERT ADVISORY PANEL FOR
THE ASSESSMENT OF PROPOSALS TO AMEND APPENDICES I AND II OF CITES
CONCERNING COMMERCIALY-EXPLOITED AQUATIC SPECIES

This document has been submitted by the Secretariat and prepared by the Food and Agriculture Organization (FAO), in relation to agenda item 88 on *Proposals to amend Appendices I and II*¹.

FAO coordinates and hosts the FAO Expert Advisory Panel for the Assessment of Proposals to Amend Appendices I and II of CITES Concerning Commercially-exploited Aquatic Species (Expert Panel). The fifth Expert Panel was convened prior to the seventeenth CITES Conference of Parties (CoP17) over five days at FAO Headquarters in Rome (6-10 June 2016). The role of the Expert Panel is to provide a fair and balanced expert scientific peer review of CITES proposals¹, which responds to the requirements outlined in the CITES Convention text², the FAO-CITES MoU³ (2006) and the Expert Panel Terms of Reference⁴.

The fifth Expert Panel's advice comprised input from 25 specialists on fisheries science, management and trade, plus specialists on individual species or species groupings. These participants were selected through a formal process required for UN expert meetings, which follow UN modalities requiring FAO to approach Member States for clearance prior to any invitations being sent out. Once country clearance had been granted, experts were formally invited to attend.

Experts of the fifth Expert Panel included six women and nineteen men, originating from over fourteen countries across five continents⁵. Where possible FAO tries to ensure a full range of fishery and conservation views are heard. For example, in 2016 a representative from TRAFFIC, the wildlife trade monitoring network and two observers from the CITES Secretariat participated, while both Co-chairs of the International Union for Conservation of Nature (IUCN) sharks specialist group were invited to attend as Expert Panel members.

FAO seeks to invite scientists and specialists with current and direct knowledge of the questions under consideration. In many cases the Panel deliberate over datasets where members had direct involvement in the original sourcing of raw data that was presented in Proposals, or had peer reviewed scientific manuscripts containing that information. Therefore there was a significant amount of first-hand knowledge of the material in

* *The geographical designations employed in this document do not imply the expression of any opinion whatsoever on the part of the CITES Secretariat (or the United Nations Environment Programme) concerning the legal status of any country, territory, or area, or concerning the delimitation of its frontiers or boundaries. The responsibility for the contents of the document rests exclusively with its author.*

¹ The objective of the Expert Panel is to:

1. assess each proposal from a scientific perspective in accordance with the CITES biological listing criteria;
2. comment, as appropriate, on technical aspects of the proposal in relation to biology, ecology, trade and management issues, as well as, to the extent possible, the likely effectiveness for conservation.

² Article XV, 2 (b)

³ See sections 4, 5 and 6. "The FAO will work together with CITES to ensure adequate consultations in the scientific and technical evaluation of proposals.....".

⁴ See Appendix A in Fifth Expert Panel report, found here: <http://www.fao.org/fishery/cites-fisheries/ExpertAdvisoryPanel/en>.

⁵ See Appendix C in Fifth Expert Panel report, found here: <http://www.fao.org/fishery/cites-fisheries/ExpertAdvisoryPanel/en>.

question. FAO does however ensure that Expert Panel participants had no direct affiliation with the writing of the Proposals being assessed.

The full report from the fifth FAO Expert Advisory Panel and short summaries (in five languages) is available on the web: <http://www.fao.org/fishery/cites-fisheries/ExpertAdvisoryPanel/en>.

The Expert Panel's advice on the seven Proposals for CoP17 was:

List of Proposals that **MEET** the criteria for listing in Appendix II:

- Proposal 44. Sicklefin devil ray and spinetail devil ray
- Proposal 46. Banggai cardinalfish
- Proposal 48. Family Nautilidae

List of Proposals that **DO NOT MEET** the criteria for listing in Appendix II:

- Proposal 42. Silky shark
- Proposal 43. Bigeye thresher
- Proposal 45. Raya
- Proposal 47. Clarion angelfish

These FAO Expert Panel determinations were largely analogous to the findings of the IUCN/TRAFFIC assessment process (<http://citesanalyses.iucn.org/>) and the CITES Secretariat's assessments (https://cites.org/sites/default/files/eng/cop/17/Proposals_for_amendment_of_Appendices_I_II.pdf). Of the seven Proposals reviewed by the Expert Panel, results complimented those of the IUCN/TRAFFIC assessment process and the Secretariat in all but one assessment, that of the silky shark. In that case there was close agreement on the available data, with both the IUCN/TRAFFIC assessment and the CITES Secretariat expressed some uncertainty about the silky shark meeting the criteria. However, whereas the Expert Panel determined silky shark did not meet the CITES listing criteria with reference to the spread of data being inconsistent with the proportionate risk to the species as a whole, both IUCN/TRAFFIC and the Secretariat instead decided to take more precautionary approach in their final summary, providing determinations that advise Parties to consider listing silky shark in Appendix II.

The determinations made by all assessment processes rely on the same CITES criteria⁶ that have been developed through numerous consultations of experts over years of negotiations. These criteria are intended to be applicable for all species, however there are specific guidelines "with respect to application of the definition of 'decline' for commercially exploited aquatic species." (see resolution 9.24 rev cop16 and other documents in web links provided).

In summary, three criteria determine whether any species should be listed in CITES Appendix I:

1. The **wild population is small**;
2. The **wild population has a restricted area of distribution**;
3. Marked **decline in population size in the wild**, either ongoing or past, or inferred or projected.

For listing on Appendix II, the criteria indicate that at least one of two following criteria must be met:

- A. Regulation of trade in the species is necessary to **avoid it becoming eligible for Appendix I in the near future**, or
- B. Regulation of trade in the species is required to ensure that harvest of wild specimens is **not reducing the wild population to a level at which its survival might be threatened** by continued harvesting or other influences. In addition, there are criteria when listing species, based on their resemblance to species already listed in Appendix II ("look-alike" species).

⁶ Included below are some key reading to further acquaint you with the CITES criteria in regards their application to commercially-exploited aquatic species:

<https://cites.org/eng/res/09/09-24R16.php>,

<http://www.fao.org/docrep/meeting/003/y1455E.htm>,

and here <http://www.fao.org/fishery/topic/18147/en>.

<https://cites.org/sites/default/files/eng/res/09/E-Res-09-24R16.pdf>,

<http://www.fao.org/publications/card/en/c/80c3e2d9-5db0-5456-a1a4-14e25702f86e/>

With respect to small population size, FAO has recommended that the current CITES guidelines for small absolute population size (5 000 individuals) are appropriate for only a few exploited marine species, such as some sessile or semi-sessile species, some species with extremely low productivity, and some small endemics. It was further noted that **decline** was a more appropriate criterion for exploited marine species.

With respect to restricted area of distribution, FAO has stated that the guideline then being discussed of 10 000 km² was inappropriate for most exploited fish species. Again, **decline** should be used in preference to this criterion.

With respect to **decline**, FAO has stated that decline could be expressed either as overall long-term extent of decline or recent rate of decline, and that these should be considered together. The time horizon for extent of decline should be as long as possible, while recent rate of decline is the rate of decline that would drive a population down within approximately a 10-year period from the current population level to the historical extent of decline guideline (taking into account the productivity of the species). As mentioned, the historical extent of decline guidelines vary depending on species productivity (to 5-10% of historical for high productivity species, 10-15% for medium productivity, and 15-20% for low productivity species).

For listing in Appendix II, the historical extent of decline and the recent rate of decline should be considered in conjunction with one another. The higher the historical extent of decline, and the lower the productivity of the species, the more important a given recent rate of decline is. It is also implicitly recognized, that there may be a need to regulate international trade in a species which, although not currently declining, are at a level close to that at which it would become eligible for inclusion in Appendix I (Annex 2a Paragraph A), or at which "survival might be threatened by continued harvesting or other influences" (Annex 2a Paragraph B). These two concerns are well addressed by the Resolution Conf. 9.24 (Rev CoP16), in the Annex 5 footnote for commercially-exploited aquatic species:

"Even if a population is not declining appreciably, it could be considered for listing in Appendix II if it is near the extent-of-decline guidelines recommended above for consideration for Appendix-I-listing. A range of between 5% and 10% above the relevant extent-of-decline might be considered as a definition of 'near', taking due account of the productivity of the species."

This creates a 'buffer' above the Appendix I thresholds of population status. A species may therefore be considered for listing on Appendix II if the status of the species, as measured by historical extent-of-decline, falls within this 'buffer' zone.

To ensure the Expert Panel had access to the best available information for its review of Proposals, participants were encouraged prior to the meeting to review the information presented in the Proposals and to start to collate and review all relevant data noting their progress in a standardised template provided by FAO. The critical biological, fishery and trade information that was examined includes information on i) productivity of the species, ii) known declines (historical extent of decline and recent rate of decline), plus iii) information on the importance of the species in international trade, its current management and the likelihood that a listing of the species in CITES Appendices would improve its outlook for conservation. Expert Panel participants were encouraged to source this information widely and share their findings with all participants⁷.

With respect to input from the Proposals' proponents, in addition to the provision of a Proposal that can be written at any time between the triennial Conference of Parties⁸, the proponents (or their external fisheries experts) were given an opportunity to give oral presentations directly to the Expert Panel, to provide them a real-time opportunity to offer further insights on the important points in their Proposals. This opportunity was offered to all proponents for the fifth Expert Panel for the 2016 meeting in Rome.

FAO in its role as convener of the Expert Panel ensures the Terms of Reference and CITES Criteria are made clear to participants when the meeting convenes, through both oral presentations and the provision of paper copies of key documentation. FAO also monitors adherence of the Expert Panels processes during the meeting,

⁷ FAO also shared what we had collated more widely, for example with the IUCN/TRAFFIC assessment process.

⁸ Proposals have to be submitted 150 days before a Conference of Parties, or 330 days if the proposal to amend Appendix I or II concerns a species or a population of a species that occurs partly or totally outside of the territory under its jurisdiction, and if it does not intend to consult the other range States before the submission of its proposal.

and invites CITES to act as Observers to assist in ensuring that CITES criteria are clear and there is access to further advice where needed.

Members of the fifth Expert Panel proved diligent in providing an independent review of all information found in the Proposals against the documented CITES criteria, as well as discovering new information not found in Proposals. It should be noted that proper peer review requires that each Expert Panel consider the body of evidence available afresh, including new insights into previous studies, and with the full expertise of those convened for each meeting. Therefore, it should not be surprising if the findings of previous Expert Panels are revisited and updated by subsequent participants with regard to the latest scientific information.

The Expert Panel process strives to be inclusive and impartial, and makes determinations on whether the species or species group information meets or doesn't meet the CITES criteria for listing in CITES Appendices. Importantly, the Expert Panel does not offer advice on whether to list the species or not, as that is a decision for CITES Parties. Notably, the fifth Expert Panel, members were able to take decisions by consensus on whether CITES CoP17 Proposals 44-47 met the CITES criteria for listing in Appendix II, and there was no requirement for the Expert Panel to note any minority dissent or discord in its report⁹.

The Expert Panel brings expert insight and deliberation to complex questions about the available scientific information and its implications for conservation and sustainable use of the species. This type of deliberation and the related determination has been much appreciated by CITES Parties and a range of fisheries managers, as recorded in feedback to FAO. Assessment of how Expert Panel determinations have been used by CITES Parties through time show that the FAO Expert Panel has recommended species qualify for CITES listing on more occasions that CITES Parties have chosen to list those species.

FAO has also received queries from two of the seven proponents on specific points following the publication of the fifth Expert Panel report. In order to further clarify information in regard to these points and to help readers understand key information about the way declines are reviewed, it may be useful to reiterate some key principles here. In particular, at the core of some of the proponents' queries was a suggestion that a decline of 70% from historical baseline would automatically mean a species had met the criteria for a CITES Appendix II listing.

Remembering that the decline guidelines depend on species productivity (high, medium and low productivity) and that for listing in Appendix II both the historical extent of decline and the recent rate of decline should be considered in conjunction (see Table 2 in the Windhoek guidance), the Expert Panel also considers a 'buffer' (set at 5% in the Windhoek guidance and 5-10% in Conf. 9.24 (Rev CoP16)), before determining if declines meet the CITES criteria. The Expert Panel applies the use of the 'buffer' (extra precautionary safeguard) in relation to case-specific biological and other factors that are likely to affect extinction risk. In other words, application of the 5 to 10% buffer depends on the biology, patterns of exploitation and area of distribution of the taxon, for which vulnerability factors (both intrinsic and extrinsic, see Conf. 9.24 (Rev CoP16)) can increase risk, and mitigating factors (e.g. large absolute numbers or refugia) can reduce risk.

This means that a decline of 70% from historical baseline would **not automatically** meet the criteria for a CITES Appendix II listing for a low productivity species, as 70% is the **minimum threshold** where declines could meet this criteria (20% plus the full 10% buffer). In making a determination the Expert Panel would primarily look at available information on the historical extent of decline and then look at the recent rate of decline, i.e. how rapidly current depletion could drive the population down, within approximately the next 10-year period. The Expert Panel would then also consider, amongst other things, i) if declines were recorded across part or all of the species range, and ii) if the species in question had any special vulnerability or mitigating factors. These would all be taken into account when making determinations, the latter point helping the Expert Panel decide on the extent of 'buffer' to adopt, i.e. as there are differing thresholds in response to species productivity, the 'buffer' is applied to varying extents depending on the species vulnerability or mitigating factors. For example, a more conservative buffer would be applied for a small endemic population with limited distribution, that was site-associated and easily targeted by fishers and currently negatively impacted by environmental change, compared to the one adopted for a larger population that was globally distributed, highly migratory and didn't have specialized niche requirements for diet or habitat.

Some proponents may have differing opinions on the Expert Panel's determinations, but the Expert Panel reconfirms the recommendations made in the fifth Expert Panel report, which were made with careful interpretation and application of the CITES criteria on the best available evidence. As the coordinator of the FAO

⁹ There is scope and precedence for recording of minority views of Expert Panel members.

Expert Panel process, Mr. Kim Friedman, a Senior Fisheries Resources Officer with FAO (Kim.Friedman@fao.org) is available to provide further feedback on any questions you may have.