

An Overview of the Fundamental Principles of CITES as a Mechanism for Regulating Trade in Listed Species

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Purpose

This presentation provides an abridged introduction to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in order to serve as an information input to the FAO Expert Consultation on 'Implementation Issues Associated with Listing Commercially-exploited Aquatic Species on CITES Appendices'.

Approach

Although the focus of this presentation is a description of the provisions of Article II to Article X of the Convention, many of these Articles are closely related to other Articles of the Convention. In order to consider these Articles in context, it will be necessary, *albeit* briefly, to examine other aspects of the Convention.

In order to understand clearly what is a complex international instrument, the following presentation provides a simplified overview introduction of the Articles that underpin implementation of the Convention and the mechanisms that are employed to amend the Appendices. For clarity, it is convenient to structure the presentation into discrete chapters dealing with the roles and responsibilities of the following two administrative and decision-making entities:

- the Conference of the Parties; and
- Party States.

Introduction and Background

The Convention on International Trade in Endangered Species of Wild Flora and Fauna, otherwise known as 'CITES' was concluded by a Plenipotentiary Conference convened in Washington DC in February 1973. The stimulus for the Convention occurred at the 1972 UNCED meeting in Stockholm, where concern was expressed at the rate at which many species of wild fauna and flora were becoming threatened with extinction as a result of unregulated international trade. The Convention entered into force on 1 July 1975 and now 165 States are Contracting Parties.

The 'principles' of CITES are embodied in the twenty-five Articles of the Convention (Attachment A) prescribe its scope and operational framework. The nature and extent of the operational framework is determined by the manner in which terms contained in the Articles are defined and how the intent of each Article is interpreted by the Conference of the Parties.

Before examining the roles and responsibilities of Contracting Parties, and the manner in which international trade is regulated according to the Articles of the Convention, it is important to note its limitations.

- a) The provisions of CITES only apply to specimens of species¹ of wild fauna and flora that are included in one of three appendices.

¹ The term 'species' is defined in Article I as meaning 'any species, subspecies or geographically separate population thereof'.

- b) For parts and derivatives to be subject to the provisions of CITES, they must be readily recognizable. However, in the case of animals listed in Appendix III and of plants listed in Appendices II and III, the listing must specify the readily recognizable parts or derivatives in relation to the listed species.
- c) The Convention does not apply to domestic use of wild fauna and flora even if the taxon is included in the Appendices².

As indicated above, a species may be included in one of three Appendices. International trade³ in Appendix-listed species is regulated according to a system of permits and certificates. The particular Appendix in which a taxon is included determines the level of regulation of international trade in specimens of that species and the manner in which such trade is conducted.

Conference of the Parties

Article XI provides for the Secretariat to convene regular meetings of the Conference of the Parties. The Conference of the Parties comprises representatives of States that are Contracting Parties and is the primary decision-making forum. Article XI, paragraph 7 enables the participation of governmental, inter-governmental and international non-governmental organizations (NGOs) that have informed the Secretariat of their desire to attend. National NGOs, approved by the State in which they are located, may also participate in meetings of the Conference of the Parties. Such NGOs must be technically qualified in the protection, conservation or management of wild fauna and flora, and are only admitted to meetings if at least one-third of the Parties present do not object.

Effective implementation of the Convention is enhanced through a series of Conference resolutions and decisions. Conference resolutions and decisions provide mechanisms for facilitating implementation of the Convention by establishing an agreed interpretation of the Articles of the Convention. Individual Party States, the Secretariat or one of the committees, established by the Conference, may submit draft resolutions and decisions to meetings of the Conference of the Parties. Although binding on the Secretariat, Conference resolutions and decisions, unless embodied into national enabling legislation, provide guidance only to Parties on a uniform implementation of the Convention. Many Parties implement specific resolutions through administrative procedures without necessarily adopting the procedure in legislation.

In addition to adopting resolutions and decisions to facilitate implementation of the Convention, the Conference of the Parties is the authorized entity for amending Appendices I and II of the Convention, and hence the scope of its application.

Listing Principles and Mechanisms

Article XV enables any Party to submit a proposal to amend Appendices I and II. Amendment proposals may be submitted to the Secretariat for consideration by a regular meeting of the Conference of the Parties or according to postal voting procedures. Amendment proposals considered by a meeting of the Conference of the Parties must be submitted to the Secretariat 150 days prior to the date of the scheduled meeting. Past meetings of the Conference of the Parties have adopted resolutions that prescribe additional requirements on Parties submitting certain types of amendment proposals.

² Although technically correct, some Parties hold the view that strict implementation of Article IV.2(a) and 3 requires total off-take from the wild population to be taken into account when making non-detriment findings and limiting exports of a species to a level that is consistent with its role in the ecosystem.

³ International trade, in the context of CITES, encompasses exports, imports, re-exports and introduction from the sea.

Resolution Conf 11.16 on Ranching and trade in ranched specimens of species transferred from Appendix I to Appendix II requires amendment proposals to 'ranch' an Appendix-I species to be submitted 330 days prior to a meeting of the Conference of the Parties. The additional time has been determined to enable the Secretariat to consult appropriate experts on the technical merits of the proposal. Resolution Conf 8.21 requires a proponent Party of an amendment proposal involving a widespread species to consult other range States. Consultation may either be undertaken by the proponent Party or the Secretariat. In cases where the Secretariat is required to consult other range States; a similar 330 days submission timeline is required.

In recent years an increasing number of amendment proposals involving economically important, and hence politically sensitive species have been generated by the activities of non-government organizations. These NGOs actively seek 'like-minded' Party States to sponsor the proposal. An amendment proposal requires a two-thirds majority of voting Parties in order for it to be adopted. Conversely, at least one-third of voting Parties is required to block an amendment proposal from being adopted. A Party may vote for or against a proposal, or abstain from casting a vote. Voting may be conducted by a show of hands or a role-call in alphabetic order. The 9th meeting of the Conference of the Parties (Fort Lauderdale, 1994) agreed to amend the Rules of Procedure by permitting any Party, with the support of at least ten other Parties, to request any issue to be decided on by a secret ballot. Amendments to Appendices I and II become effective ninety days after meetings of the Conference of the Parties.

ARTICLE II
Fundamental Principles

1. Appendix I shall include all species threatened with extinction which are or may be affected by trade. Trade in specimens of these species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances.
2. Appendix II shall include:
 - a) all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival;
 - b) other species which must be subject to regulation in order that trade in specimens of certain species referred to in subparagraph (a) of this paragraph may be brought under effective control.
3. Appendix III shall include all species which any Party identified as being subject to regulation within their jurisdiction for the purpose of preventing or restricting exploitation, and as needing the co-operation of other Parties in the control of trade.

Article II, paragraphs 1 to 3 prescribe the conditions that must be satisfied by a taxon in order for it to be considered for inclusion in Appendix-I, Appendix-II or Appendix-III. With the exception of Article II, paragraph 2(b), the implications of which will be examined separately, the inclusion of a taxon into one of these Appendices is based on an assessment of its conservation and trade status.

An important difference between Appendices I and II, and Appendix III relates to the manner in which Appendix III may be amended. Article XVI enables a Party to unilaterally amend Appendix III by proposing a taxon for inclusion in (or deletion from) this Appendix. An amendment to Appendix III does not require two-thirds majority of votes by the Conference of the Parties. However, the taxon being proposed for inclusion in Appendix III must be subject to legislation under the jurisdiction of the proponent Party. Some States, by including a wide

array of native wildlife in Appendix III, have attempted to use Appendix III as a means of complementing or reinforcing domestic national measures to prohibit export of these species. In order to avoid the use of Appendix III in this manner, Resolution Conf 9.25 (Rev.) provides Parties with further guidance on implementing Appendix III.

Early in the operational life of the Convention, Resolutions Conf 1.1 and 1.2 (Berne, 1976) were adopted to provide the first guidance to Parties for amending Appendices I and II. These resolutions, although remaining in force for nearly two decades, were general and largely descriptive in nature. Following several failed attempts by a coalition of southern African States to transfer their national populations of African elephant (*Loxodonta africana*) from Appendix I to Appendix II, the 8th meeting of the Conference of the Parties (Kyoto, 1992) agreed (Resolution Conf 8.20) to initiate a process to establish 'more scientific' criteria for amending Appendices I and II. This process concluded with the 9th meeting of the Conference of the Parties (Fort Lauderdale, 1994) adopting Resolution Conf 9.24 on Criteria for Amendment of Appendices I and II (see Attachment B). In addition to its principal operative paragraphs, Resolution Conf 9.24 contains the following six annexes, the first four of which prescribe parameters to address specific conditions that must be satisfied in relation to listing a species in either Appendix I or Appendix II of the Convention:

- Annex 1 Biological criteria for Appendix I;
- Annex 2a Criteria for the inclusion of species in Appendix II in accordance with Article II, paragraph 2 (a);
- Annex 2b Criteria for the inclusion of species in Appendix II in accordance with Article II, paragraph 2 (b);
- Annex 3 Special cases;
- Annex 4 Precautionary measures;
- Annex 5 Definitions, notes and guidelines; and
- Annex 6 Format for proposals to amend the Appendices.

The process established by Resolution Conf. 8.20 to develop criteria for amending Appendices I and II (Resolution Conf. 9.24) did not require any consultation with other international organizations with responsibilities for managing the harvests of natural resources from the wild. Nevertheless, through the intervention of certain Party States, the interests, in particular, of fishing nations were partially accommodated in the final text of Resolution Conf. 9.24. As a consequence, the preambular section of Resolution Conf. 9.24 acknowledges the competence of certain intergovernmental bodies in relation to the management of certain species, especially marine species and requires these bodies to be consulted on amendment proposals involving such species. It should be noted that, in the case of marine species, consultation of competent intergovernmental bodies by the CITES Secretariat is an obligation under Article XV of the Convention.

It should also be recognized that Resolution Conf 9.24 was developed by a committee and adopted by consensus. The text therefore represents a negotiated outcome that, in some instances, e.g. criterion D (see below), compromised the scientific integrity of such elements. As a consequence in part, Resolution Conf 9.24 contains the requirement for the text and the annexes to be fully reviewed before the 12th meeting of the Conference of the Parties - a deadline that was extended until the 13th meeting of the Conference of the Parties.

Annex 1 focuses specifically on biological criteria for determining whether or not a taxon satisfies the conditions for inclusion in Appendix I according to the provisions of Article II, paragraph 1. Although international trade *per se* is not specifically referenced in any of the Annex 1 criteria, the level or pattern of 'exploitation' (not necessarily for international trade) is included among the parameters of criterion C(ii) for inferring or projecting a decline in the number of individuals of a taxon in the wild. Conformity to criterion C(ii) was used by Australia at the 11th meeting of the Conference of the Parties (Gigiri, 2000) as justification for unsuccessfully arguing the inclusion of the Great White Shark (*Carcharodon carcharias*) initially in Appendix I and subsequently Appendix II.

In the case of marine species subject to large-scale fisheries management, as well as other species subject to prescribed management, the connection between harvest level and population decline as justification for including a species in Appendix II is somewhat diluted by the definition of the term 'decline' contained in Annex 5, which *inter alia* states:

"A decline that is the result of a harvesting programme that reduces the population to a planned level, not detrimental to the survival of the species, is not covered by the term decline."

Trade considerations are also embodied, albeit 'loosely', in criterion D (see below) in that such considerations can be employed to support the argument that unless a particular taxon receives the protection from international trade that an Appendix-I listing offers, it would satisfy one (or more) of the Annex 1 criteria within a period of five years.

D. The status of the species is such that if it is not included in Appendix I, it is likely to satisfy one or more of the above criteria [criteria A - C] within a period of five years.

The precautionary principle features prominently in the decision-making process of the Conference of the Parties. In addition to being acknowledged in the preambular section of the principal resolution, the precautionary principle is also well embodied in the requirements of Annex 4 for transferring a species from Appendix I to Appendix II, or the deletion from the Appendices. Some Parties are seriously concerned about criterion D as it has the potential to be applied as the basis for including in Appendix I economically important species that are subject to large-scale harvesting for commercial purposes.

On the basis of the review of Resolution Conf 9.24, an amendment to criterion D was recommended to improve its objectivity and incorporate it as a criterion for amending Appendix II in accordance with Article II, paragraph 2(a). This amendment failed to achieve the necessary support by the 12th meeting of the Conference of the Parties (Santiago, 2002). Regardless of improving the scientific integrity of the Annex 1 criteria, it is very clear, on the basis of the discussions that took place in Santiago, that any attempt to amend this criterion in the future is likely to be vigorously opposed by Parties and NGOs that advocate rigorous application of the precautionary principle.

There are two conditions under which a species may be eligible for inclusion in Appendix II. These are elaborated in Article II, paragraphs 2 (a) and (b). The criteria for satisfying these conditions are contained respectively in Annexes 2a and 2b of Resolution Conf 9.24.

Annex 2a presents two criteria, only one of which has to be satisfied in order for a species to be included in Appendix II in accordance with Article II, paragraph 2(a). Although these criteria are applicable to many terrestrial vertebrates, they have proved problematic when applied objectively to some plants - particularly some tree species that are subject to management for forestry and timber production.

The Annex 2a criteria were used by the United Kingdom and the Philippines at the 12th meeting of the Conference of the Parties to successfully argue for the inclusion in Appendix II of the Basking Shark (*Cetorhinus maximus*) and the Whale Shark (*Rhincodon typus*) respectively. Australia, at the same meeting, submitted a proposal to include the toothfish

genus *Dissostichus* spp in Appendix II, arguing, unsuccessfully⁴, that the Patagonian Toothfish (*Dissostichus eleginoides*) satisfied the Annex 2a criteria and that its close relative, the Antarctic Toothfish (*Dissostichus mawsonii*) warranted inclusion in Appendix II under the provisions of Article II, paragraph 2(b). As presently worded, certain Parties are concerned that both of the Annex 2a criteria, given the use of the term 'inferred', have the potential to be interpreted in a manner that could result in an economically important marine fisheries species to be included in Appendix II.

Annex 2b establishes two conditions under which a species may be included in Appendix II in accordance with Article II, paragraph 2(b). Both criteria provide a mechanism to list higher taxa in Appendix II, to facilitate implementation of regulatory controls for species included in Appendix I⁵ or Appendix II pursuant to Article II, paragraph 2(a) of the Convention.

Annex 2b

Criteria for the inclusion of species in Appendix II in accordance with Article II, paragraph 2b

- A. The specimens resemble specimens of a species included in Appendix II under the provisions of Article II, paragraph 2(a), or in Appendix I, such that a non-expert, with reasonable effort, is unlikely to be able to distinguish between them.
- B. The species is a member of a taxon of which most of the species are included in Appendix I under the provisions of Article II, paragraph 2(a) or in Appendix I, and the remaining species must be included to bring trade in specimens of the others under effective control.

As with Annex 2a, in order for a species to be considered eligible for inclusion in Appendix II, it only has to satisfy either one of these criteria. Criterion A addresses the 'look-alike' problem by providing a mechanism for including in Appendix II all species that closely resemble in appearance any species included in either Appendix I or Appendix II in accordance with the provisions of Article II, paragraph 2a. Although the potential exists, this criterion has not yet been used to propose the inclusion in Appendix II of a species that is not a member of a genus, or higher taxon, already represented by species either in Appendix I or Appendix II.

Criterion B addresses a slightly different situation and provides for additional species to be included in Appendix II if the majority of species in a particular genus are listed in either Appendix I or Appendix II. Although not specifically mentioned in the current wording of Annex 2b, Article II, paragraph 2(b) may also apply to list in Appendix II, species the control of trade in which may be considered necessary in order to effectively control trade in 'threatened' non-target species (e.g. marine turtles and cetaceans).

The 10th meeting of the Conference of the Parties (Harare, 1997) adopted a proposal submitted by Germany to include in Appendix II all Acipenseriformes spp (sturgeons and paddlefish), not already included in Appendix I or II, on the basis of Annex 2a and 2b criteria. Australia used Article II, paragraph 2(b) and criterion A of Annex 2b to justify its proposal to include the Antarctic Toothfish (*Dissostichus mawsonii*) in Appendix II (viz. in order to

⁴ Australia withdrew the proposal to include *Dissostichus* spp in Appendix II following a debate on the issue when it became apparent that many Parties were opposed to the proposal, arguing that CCAMLR (Commission for the Conservation of Antarctic Marine Living Resources) was the appropriate forum in which to discuss the sustainability of the toothfish fishery.

⁵ By extending their consideration to species included in Appendix I, the two criteria contained in Annex 2b of Resolution Conf 9.24 provide a mechanism for including taxa in Appendix II that goes beyond the provisions of Article II, paragraph 2(b) of the Convention.

effectively implement the Appendix-II listing of Patagonian Toothfish, it would be necessary to also include the closely-related Antarctic Toothfish in Appendix II).

The criteria in Annexes 2a and 2b acknowledge that the effectiveness of CITES is directly related to the efficacy of border controls at point of import. Although these criteria have only been formally available since the 9th meeting of the Conference of the Parties, the principles were used to list species in Appendix II at the 1973 Plenipotentiary Conference and have been employed on numerous occasions since that time. As a consequence, Appendix II presently contains a large number of higher taxonomic listings encompassing some extremely common and abundant species, trade in specimens of which is subject (by default) to the regulatory requirements of the Convention. Despite the view of some Parties that this mechanism has produced a 'cluttering' of species inappropriately included in Appendix II, the philosophy and practice are well entrenched in the decision-making process.

The ability of Customs officers to readily and accurately identify some imported commodities derived from species included in Appendix II, whether or not they are accompanied by appropriate export documents, often proves difficult. For some material, an ability to readily identify products derived from specimens of an Appendix II species raises the even more problematic matter: What constitutes a readily recognizable specimen? In order for the parts or derivatives of a plant or animal species included in Appendix I or Appendix II to be considered a 'specimen', Article I, paragraph (b) requires such parts and derivatives to be readily recognizable. In the case of species included in Appendix III and plant species included in Appendix II, the readily recognizable parts or derivatives must be specified. Unless a particular commodity subject to international trade satisfies the pre-requisites of Article I, paragraph (b), it does not qualify as a 'specimen' and, therefore, would not be subject to any of the provisions of the Convention.

There have been several attempts to address this matter as implementation of the Convention has evolved. Resolution Conf 9.6 (Rev.) provides the current interpretation of the term.

AGREES that the term 'readily recognizable part or derivative', as appears 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.

Since the adoption of Resolution Conf 9.6 (Rev.), Parties have sought to have international trade in specific commodities derived from CITES listed species exempt from regulation. Given the foregoing interpretation of 'readily recognizable parts and derivatives', it will be necessary for each case for exemption to be argued separately on its merits. For instance, non-human primate tissue samples (e.g. blood and DNA), used in biochemical research by commercial pharmaceutical companies, even though many times removed from their original source, remain subject to the Convention. If the scope of application of the Convention becomes broader with the inclusion of species that are traded widely as food species for human consumption under different trade names, implementation issues are likely to become more complex and the matter of 'readily recognizable parts and derivatives' will become more problematic, if not impossible to implement and enforce unless the Conference of the Parties seriously considers its approach to interpreting this term.

Annex 3 of Resolution Conf 9.24 deals with special cases and, *inter alia*, establishes the general parameters by which a species may be included in more than one Appendix.

Split-listing

Listing of a species in more than one Appendix should be avoided in general in view of the enforcement problems it creates. When split-listing does occur, this should generally be on the basis of national or continental populations, rather than subspecies. Split-listings that place some populations of a species in the Appendices, and the rest outside the Appendices, should normally not be permitted.

There are numerous examples of species that are 'split-listed' and are included in both Appendix I and Appendix II. Perhaps the best-known example of split-listing is that of the African elephant (*Loxodonta africana*), which is included in Appendix I except the national populations of four southern African States (South Africa, Namibia, Botswana, Zimbabwe), which are listed in Appendix II. Other instances of split-listings have occurred among the crocodylians when a particular national population of an Appendix-I species have been transferred to Appendix II in accordance with the ranching requirements of Resolution Conf 11.16.

Split-listing of *Loxodonta africana*, as with other Appendix-listed species, reflects the reality that different countries possess different management capabilities. Nevertheless, split-listing creates very real enforcement problems to ensure that material entering international trade is restricted to products derived legally from the Appendix-II population. Measures are required to ensure that permitting trade in specimens of an Appendix-II population of a species does not create an avenue for material derived from an Appendix-I population to become incorporated into international trade illegally. Mechanisms have been developed to clearly identify those Appendix-II specimens that are permitted to enter international trade. Crocodylian skins of all Appendix-II species that are subject to legal export, regardless of whether any species is split-listed with national/regional populations listed in Appendix I, must bear a non-reusable export tag. Each export tag must also display an ISO country code, year of production, species and unique number.

Split-listing does not reflect different management regimes for a species that is only included in Appendix II. For instance, all tridacnid clams (Tridacnidae spp) are included in Appendix II and trade in specimens derived from mariculture are treated no differently from specimens that are harvested directly from the wild. All exports of tridacnid clams are subject to the provisions of Article IV of the Convention. The principal difference lies in the manner in which the Scientific Authority of the exporting Party makes Article IV non-detriment findings. It is a relatively straightforward procedure for the Scientific Authority to conclude that export of mariculture specimens will not be detrimental to the wild population, whereas greater care is needed to ensure that the export of specimens harvested from the wild is sustainable and will not adversely affect the survival of the species in the wild.

Guidelines for transferring a species from Appendix I to Appendix II are presented in Annex 4 of Resolution Conf 9.24. In addition to the title of Annex 4 *viz.* Precautionary Measures (see Attachment A) and the introductory paragraph that specifically requires Parties to exercise caution in cases of uncertainty when considering amendment proposals transferring a species from Appendix I to Appendix II, the Precautionary Principle is well embodied among the parameters that have to be satisfied. For example, no species can be deleted from the Appendix I without first being transferred to Appendix II. Furthermore, even if a candidate taxon does not satisfy the Annex 1 criteria for inclusion in Appendix I, it should remain listed in that Appendix unless a suite of Annex 4 management 'safeguards' are satisfied. In practice, the requirements of Annex 4 have proven extremely difficult to satisfy with respect to Appendix I species (or national populations thereof) that are 'politically sensitive'. Indeed, historically the movement of species from Appendix I to Appendix II, relative to the numbers of taxa that have been included in Appendix I, has been disproportionately infrequent. The present interpretation of the 'Precautionary Principle' by the Parties, as illustrated by the

above example, is clearly oriented towards more restrictions and does not accommodate adaptive management.

The Convention contains another provision for trading in specimens of Appendix-I species and Parties to the Convention have established an additional procedure for transferring species from Appendix I to Appendix II for the purpose of commercial trade.

Article VII of the Convention establishes that the only provision for trading commercially in specimens of Appendix-I species is through captive breeding or artificial propagation. The chinchilla (*Chinchilla chinchilla*) provided the incentive for exempting captive-bred specimens of Appendix-I species from the restrictive provisions of Article III. The chinchilla is a species endangered in the wild and, in 1973, was regarded as a suitable candidate for inclusion in Appendix I. However, the species is widely bred in captivity for the fur trade and the vast majority of specimens in international trade are derived from this source. The rationale for this approach lies in the opinion, when the text of the Convention was negotiated in 1973, that trade in such specimens could be conducted without detriment to the wild population of the species. Indeed, if demand could be satisfied through the supply of captive-bred specimens, it may actually facilitate the recovery and conservation of endangered species by removing harvest pressure to supply the market.

Despite this clear intent to exempt captive-bred specimens of Appendix-I species from the regulatory controls of Article III, in the case of Appendix-I animal species, Parties have resolved to approach this issue with extreme caution. The 2nd meeting of the Conference of the Parties adopted a cautious approach to defining the term 'bred in captivity'. This definition has survived to the present time and is embodied in Resolution Conf. 10.16 (Rev.)⁶ on specimens of animal species bred in captivity. Operations involved in breeding Appendix-I animal species in captivity are required to be reviewed by the Parties before being registered with the Secretariat. This cautious approach has been reflected in a series of resolutions, culminating in Resolution Conf 12.10, that have systematically made registration requirements so onerous that very few captive-breeding operations are registered. Interestingly, the Parties have adopted a completely different approach to commercial trade in artificially propagated Appendix-I plants. Nurseries involved in propagating Appendix-I plants may become registered with the Secretariat on the basis of a unilateral nomination of the Management Authority.

Aquaculture and mariculture, as currently practised by some commercial fisheries (e.g. giant clams - Tridacnidae spp) would not comply with the present CITES definition of 'bred in captivity'. Although parental stock is maintained (and gametes are exchanged) in a controlled environment, very few, if any, current operations have demonstrated an ability to produce second-generation offspring. However, it is possible that some forms of aquaculture would conform to the definition of 'ranching' (footnote 7). Notwithstanding compliance, or otherwise, of aquaculture to captive breeding or ranching, specimens of CITES-listed species derived from such operations, in order to enter into international trade, would need appropriate CITES documentation.

The 2nd meeting of the Conference of the Parties (San José, 1979) determined that more flexibility was needed, other than the 'Berne Criteria (Resolution Conf 1.2), for transferring certain species from Appendix I to Appendix II. Accordingly, on the basis of deliberations of an inter-sessional working group, the 3rd meeting of the Conference of the Parties (New

⁶ Resolution Conf 10.16 (Rev.) defines the term 'bred in captivity' as "the parents mated or gametes were otherwise transferred in a controlled environment, if reproduction is sexual, or the parents were in a controlled environment when development of the offspring began, if reproduction is asexual". Furthermore, the parents must have been obtained legally, in a manner that is not detrimental to the species in the wild and maintained in captivity without any augmentation from the wild. Captive breeding operations are required to demonstrate the production of second-generation offspring.

Dehli, 1981) adopted Resolution Conf 3.15⁷ on trade in ranched specimens. The procedure allows for Appendix-I listed species to be transferred to Appendix II for the purpose of permitting trade in 'ranched' specimens. In the context of CITES, the term 'ranching', although defined loosely, implies a management regime based on harvesting from the wild age classes of a species that are subject to high natural mortalities and hence represent a natural annual surfeit that is theoretically available to be removed without detriment to the wild population. Most importantly, ranching operations based on Appendix-I species must demonstrate an overall conservation benefit.

In recent years a trend is developing with some Parties submitting, for consideration by the Conference of the Parties, discussion papers on the conservation and trade status (and associated problems) on a variety of taxa⁸ that are not listed in Appendices to the Convention. In each case, the issue has resulted in a resolution or decision that has called for one or more technical workshops to determine the nature and extent of the problem(s). In most instances, amendment proposals, based on the findings of inter-sessional workshops, have been prepared for consideration by the subsequent meeting of the Conference of the Parties and adopted.

Effective implementation of Article IV is viewed by many Parties as lying at the nucleus of the Convention and the only means of mitigating the continued movement of species onto Appendix I and the obvious disruption this would cause to legitimate international commerce. Resolution Conf 12.8 establishes the Review of Significant Trade in Appendix-II Species as a process to enhance implementation of Article IV, paragraphs 2(a) and 3 of the Convention. Based on reported trade statistics, candidate taxa are selected by the Animals and Plants Committees for review and identification of Article IV implementation problems. The process applies to all Appendix-II species, regardless of which provision of Article II the species was listed. Therefore, by definition, it is extremely likely that common and widespread, commercially exploited species will remain potential candidates for review and consequent action under this procedure.

Recommended actions, necessary to correct identified problems, are transmitted by the Secretariat to affected exporting Parties. Depending on the nature and urgency of the problem(s), the recipient Party has a specified period in which to satisfy the Secretariat, in consultation with the Chairman of the Animals Committee or Plants Committee, that it has addressed and corrected the problem(s). Failure to comply with the deadline may result in the Standing Committee recommending that Parties suspend trade in the species with the Party concerned until such time as that Party has corrected the identified problem to the satisfaction of the Standing Committee. In cases where the problem identified by the Animals Committee or the Plants Committee is systemic, it may be extended by the Standing Committee to all exports of Appendix II species from the Party concerned.

At first appearance, the Resolution Conf 12.8 (formerly Resolution Conf. 8.9) process may seem excessively harsh. Some Parties view the process negatively as an alternative 'back door' method of achieving, in practice, an Appendix-I listing for species subject to significant levels of international trade. However, the process embodies a very important principle. The process enables exporting Parties to retain sovereignty over which Appendix the species is included and the initiative for improving the capacity of the Scientific Authority to implement Article IV and make scientifically based non-detriment findings necessary for achieving

⁷ Resolution Conf 3.15 on Ranching has since been repealed and refined considerably to incorporate the practical elements of Resolution Conf 5.16 on Trade in ranched specimens (also since repealed). Resolution Conf 11.16 provides the current requirements for 'ranching' an Appendix I species. The term 'ranching' is defined as "the rearing in a controlled environment of specimens taken from the wild".

⁸ Resolution Conf 9.15 on edible-nest swiftlets in the genus *Collocalia*. - Resolution Conf 9.17 on the conservation and trade status of sharks. - Decisions 11.93 and 11.150 regarding conservation of and trade in freshwater turtles and tortoises in Asia and other regions. - Decisions 11.97 and 11.153 regarding seahorses and other members of the family Syngnathidae. - Decisions 12.60 and 12.61 on sea cucumbers in the families Holothuridae and Stichopodidae.

sustainable use of the resource. Occasionally, as in the decision to include in Appendix II all non-listed sturgeons and paddlefish (*Acipenseriformes* spp), the Conference of the Parties, expressed concern about the recorded level of trade in the resource and resolved to incorporate all Appendix-II *Acipenseriformes* spp into the significant trade review process of Resolution Conf 8.9 when the listing took effect. There have been instances where importing Parties have proposed, for transfer to Appendix I, an Appendix-II species that was subject to action under the significant trade review. In most cases, the amendment proposal has been rejected in favour of retaining the significant trade process to an outcome.

Article XXIII of the Convention contains a provision that enables any State, on lodging its instrument of ratification or accession to enter a specific reservation with regard to any species included in Appendix I, II, or III; or any parts or derivatives specified in relation to a species included in Appendix III. A similar provision exists through Article XV, paragraph 3 that enables any Party, within the ninety-day period for amendments to take effect, to lodge a reservation with respect to any amendment to Appendix I or Appendix II that was adopted by the Conference of the Parties. By lodging a reservation, a Party is announcing to all other Parties that it does not recognize the agreed Appendix listing for a particular species and reserves the right to continue trading in specimens of that species as though they were not listed (newly-listed species) or as an Appendix-II listed species (in the case of species transferred to Appendix I). Reservations lodged by a Party against Appendix-II species or newly listed species result in the reserving Party being considered as a non-Party State, with respect to trade in the species concerned. However, any such State wishing to exercise its right to conduct trade in specimens of a species against which it has lodged a reservation is subject to the provisions of Article X of the Convention, unless the trade is conducted with a non-Party State or a State that has entered the same reservation. Article X requires non-Party States wishing to trade with Party States to provide comparable export, import or re-export documents that substantially conform with the requirements of the Convention.

Although provided for by Articles XV, XVI and XXIII, Parties have agreed that reservations have the potential to undermine the overall effectiveness of the Convention. As a consequence, the Secretariat seeks, whenever possible, to negotiate with individual Parties in an effort to reduce the number of reservations. In some instances, these efforts have been further strengthened by unilateral threats of trade sanctions being issued on a Party that has entered reservations on specific Appendix-I listed species to induce removal of the reservation(s).

Contracting Party States

CITES, through its Articles, establishes a co-operative regulatory framework for international trade in listed species of wild fauna and flora. Contracting Parties are required to implement the Convention through national legislation that reflects the provisions of the Convention's Articles.

Article IX of the Convention requires each Party to designate at least one Management Authority and at least one Scientific Authority. When depositing its instrument of ratification or accession with the Depositary Government in accordance with Article XX, a State is required, *inter alia*; to inform the Depositary Government of the name and address of the Management Authority authorized to communicate with other Parties and the Secretariat.

Implementation Implications and Responsibilities

All commercial trade in species included in the Appendices to the Convention is conducted in accordance with the relevant Articles of the Convention. All consignments of material that comprise specimens of listed species, including their parts or derivatives, are required to be accompanied by relevant CITES documentation (*i.e.* depending on the type of transaction and the Appendix listing of the specimens; export/import permit, re-export certificate, certificate of origin, certificate of introduction from the sea *etc.*).

The roles and responsibilities of the Management Authority and Scientific Authority are specified in various Articles. In addition to various other administrative and enforcement activities associated with implementing the Convention at the national level, the Management Authority is responsible for issuing all permits and certificates in accordance with the provisions of Articles III, IV and V for trade in specimens of species included in Appendices I, II and III respectively. In fulfilling its responsibilities in relation to specimens of an Appendix-I species, the Management Authority of the importing State (or State of introduction from the sea) must be satisfied that the specimen is 'not to be used for primarily commercial purposes'. Resolution Conf 5.10 defines the term 'commercial purposes' in a very narrow manner.

One of the principal roles of the Scientific Authority is to ensure that exports, and introductions from the sea, of specimens of species included in Appendix I and Appendix II are sustainable and that such trade will not be detrimental to the survival of the species in the wild. Interestingly, there is no requirement in the provisions of Article V of the Convention for the Scientific Authority to provide any advice on the sustainability of exports of specimens of species included in Appendix III.

Exports, and introductions from the sea, of specimens of Appendix-I listed species are only permitted if the Scientific Authority of the importing Party (or State of introduction) has determined (and advised the Management Authority accordingly) that each import (or introduction from the sea) is for purposes that are not detrimental to the survival of the species in the wild. Special consideration is given to trade in live specimens of Appendix-I species. The Management Authority of the State of export or re-export must be satisfied that the specimen(s) are prepared and shipped in a manner that minimizes the risk of injury or cruel treatment (Article III, paragraphs 2(c) and 4(b) respectively). The Scientific Authority of the importing Party [Article III, paragraph 3(b)] must be satisfied that the recipient is suitably equipped to house and care for the specimen[s] in question. Surprisingly, in the case of specimen(s) of a marine species that has been introduced from the sea, this function is vested in the Management Authority of the State of introduction [Article III, paragraph 5(b)].

In order to ensure that trade in specimens of Appendix-II species is not detrimental to the survival of the species in the wild, Article IV, paragraph 3 requires the Scientific Authority to monitor export permits issued against actual exports and determine when such exports should be limited in order 'to maintain that species throughout its range at a level consistent with its role in the ecosystems in which it occurs and well above the level at which that species might become eligible for inclusion in Appendix I'. Whenever such determinations are made, the Scientific Authority of the exporting Party is required to advise the appropriate Management Authority of suitable measures to be taken to limit the issue of export permits for specimens of that species. In order to achieve these responsibilities, the decision-making process of the Scientific Authority must be independent of the Management Authority. As a means of assisting Parties to achieve a functional Scientific Authority, Resolution Conf 10.3 enunciates, in some detail, the roles and responsibilities of Scientific Authorities.

Article XIV, paragraph 1 enables Party States to adopt stricter domestic measures than the provisions of the Convention and many Parties have exercised this right. For instance, although the 10th meeting of the Conference of the Parties agreed to transfer to Appendix II the national populations of *Loxodonta africana* for Zimbabwe, Namibia and Botswana, Australia has elected, largely because of national NGO lobbying, to retain the species in Appendix I.

Another example of Parties applying stricter domestic measures, once again as a result of NGO lobbying, concerns the procedure of non-detriment findings in relation to Appendix-II species. The Convention requires the Scientific Authority of the exporting Party to make a non-detriment finding for an Appendix-II listed species to be exported. Some importing Parties do not permit commercial imports of Appendix-II species unless the Scientific

Authority of the importing Party makes a non-detriment finding. Furthermore, some importing countries, (e.g. the European Union) require the issue of import permits or certificates for specimens of Appendix-II listed species.

When a Party applies Article XVI and unilaterally nominates a species for inclusion in Appendix III of the Convention, there are regulatory implications for those Parties that trade in specimens of that species. Specimens of Appendix-III species that are exported from the Party that included the species in Appendix III must be accompanied by a CITES export permit. When a Party imports specimens of an Appendix-III species from a State other than the State that included the species in Appendix III, it must require the prior presentation of a certificate of origin from the exporting State.

Re-exports of specimens of Appendix-III species simply require a certificate, granted by the Management Authority of the State of re-export, stating that the specimen was processed in or re-exported from that State. Except for species that are endemic to the proponent State, effective regulation of trade in Appendix-III species is problematic. When a widespread and common species is nominated for inclusion in Appendix III (e.g. the Great White Shark (*Carcharodon carcharias*) by Australia), all other range States that trade in specimens of that species are required to apply the provisions of the Convention and issue certificates of origin in accordance with Article V, paragraph 3.

Conclusion

The foregoing presents a brief introductory overview of those Articles of the Convention that relate to the Appendices, the associated implementation responsibilities imposed on Party States by such listings and the mechanisms that have been agreed upon to amend the Appendices.

CITES represents a very complex instrument that, as it evolves and extends the scope of its application, will become more complicated and difficult to implement successfully by all Parties.

Convention on International Trade in Endangered Species of Wild Fauna and Flora

Articles

The following twenty-five Articles define key terms in the text of the Articles; enunciate the philosophical basis of the Convention; establish a Secretariat to service Contracting Parties; define the operational scope of the Convention and establish an operational framework and parameters for amending the Appendices and regulating international trade in specimens of species included in the Appendices.

Article	Subject	Provision
Article I	Definitions	Defines key terms used in text of Convention
Article II	Fundamental Principles	Characterizes species qualifying for Appendices I, II and III
Article III	Regulation of Trade in Specimens of Species included in Appendix I	Specifies pre-requisites for trade in Appendix I species
Article IV	Regulation of Trade in Specimens of Species included in Appendix II	Specifies pre-requisites for trade in Appendix II species
Article V	Regulation of Trade in Specimens of Species included in Appendix III	Specifies pre-requisites for trade in Appendix III species
Article VI	Permits and Certificates	Describes types of documents required and validity period
Article VII	Exemptions and Other Special Provisions Relating to Trade	Specifies types of transactions exempt from regulatory provisions of Articles III, IV and V
Article VIII	Measures to be Taken by Parties	Details obligatory administrative activities
Article IX	Management and Scientific Authorities	Prescribes the designation of Management and Scientific Authorities by each Contracting Party
Article X	Trade with States not Party to the Convention	Describes requirements for conducting trade in CITES species with non-Party States
Article XI	Conference of the Parties	Establishes the Conference of the Parties and its responsibilities
Article XII	The Secretariat	Establishes a Secretariat and its responsibilities
Article XIII	International Measures	Authorizes Secretariat to take appropriate measures in co-operation with Parties to improve implementation of the Convention
Article XIV	Effect on Domestic Legislation and International Conventions	Prescribes nature of relationship between CITES, domestic legislation and other Conventions, international agreements etc
Article XV	Amendments to Appendices I and II	Describes procedure for amending Appendices I and II
Article XVI	Appendix III and Amendments thereto	Describes procedure for adding species to and removing species from Appendix III
Article XVII	Amendment of the Convention	Describes procedure for amending the Convention
Article XVIII	Resolution of Disputes	Describes procedure for resolving disputes between Parties
Article XIX	Signature	Allows for Convention to signed until 30 April 1973
Article XX	Ratification, Acceptance, Approval	Provides mechanism for States to become Contracting Parties to the Convention
Article XXI	Accession	Provides an indefinite time period for States to become Contracting Parties to the Convention
Article XXII	Entry into Force	Prescribes CITES enters into force 90 days after deposit of 10 th instrument of ratification etc or accession
Article XXIII	Reservations	Establishes principle and procedure for Parties to lodge reservation against any Appendix listing
Article XXIV	Denunciation	Allows any Party to denounce the Convention
Article XXV	Depositary	Establishes role of Depositary Government to hold (and circulate) certified copies of Convention, and instruments of ratification, accession etc

Conf. 9.24 (Rev. CoP12)*

Criteria for amendment of Appendices I and II

RECALLING that the Conference of the Parties at its eighth meeting, held in Kyoto, Japan, in March 1992, was convinced that the criteria adopted at the first meeting of the Conference of the Parties (Bern, 1976) (Resolutions Conf. 1.1 and Conf. 1.2) did not provide an adequate basis for amending the Appendices, and directed the Standing Committee to undertake, with the assistance of the Secretariat, a revision of the criteria for amending the Appendices (Resolution Conf. 8.20);

NOTING that this review was carried out in consultation with the Parties and on the basis of initial technical work carried out by IUCN in collaboration with other experts;

NOTING further that all aspects of this review were addressed by a joint meeting of the Plants and Animals Committees, in association with the Standing Committee, held in Brussels in September 1993;

CONSIDERING the fundamental principles in paragraphs 1 and 2 of Article II of the Convention, which specify the species to be included in Appendices I and II;

RECOGNIZING that to qualify for inclusion in Appendix I a species must meet biological and trade criteria;

RECALLING that Article II, paragraph 2 (a), provides for the inclusion of species which may become threatened with extinction in Appendix II, in order to avoid utilization incompatible with their survival;

RECOGNIZING that for the proper implementation of this provision it is necessary to adopt appropriate criteria, considering both biological and trade factors;

RECALLING that paragraph 2 (b) of Article II provides only for the inclusion in Appendix II of species which must be subject to regulation in order that trade in specimens of certain species included in Appendix II in accordance with Article II, paragraph 2 (a), may be brought under effective control;

CONSIDERING, however, that this provision should also apply where there is a need to bring under effective control trade in specimens of species included in Appendix I;

RECOGNIZING that the range States of a species subject to an amendment proposal should be consulted following the procedures recommended by the Conference of the Parties, and that the intergovernmental bodies having a function in relation to that species should be consulted as well;

NOTING the competence of certain intergovernmental organizations in relation to the management of marine species;

RECALLING that the international trade in all wild fauna and flora is under the purview of the Convention;

EMPHASIZING the importance of Resolution Conf. 3.4, adopted at the third meeting of the Conference of the Parties (New Delhi, 1981), regarding the need to provide to developing countries technical assistance in matters relating to the Convention;

RECOGNIZING that by virtue of the precautionary principle, in cases of uncertainty, the Parties shall act in the best interest of the conservation of the species when considering proposals for amendment of Appendices I and II;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

ADOPTS the following Annexes as an integral part of this Resolution:

- Annex 1: Biological criteria for Appendix I;
- Annex 2 a: Criteria for the inclusion of species in Appendix II in accordance with Article II, paragraph 2 (a);
- Annex 2 b: Criteria for the inclusion of species in Appendix II in accordance with Article II, paragraph 2 (b);
- Annex 3: Special cases;
- Annex 4: Precautionary measures;
- Annex 5: Definitions, notes and guidelines; and
- Annex 6: Format for proposals to amend the Appendices;

RESOLVES that when considering any proposal to amend Appendix I or II the Parties shall apply the precautionary principle so that scientific uncertainty should not be used as a reason for failing to act in the best interest of the conservation of the species;

RESOLVES that, when considering proposals to amend Appendices I and II, the following applies:

- a) any species that is or may be affected by trade should be included in Appendix I if it meets at least one of the biological criteria listed in Annex 1;
- b) a species "is or may be affected by trade" if:
 - i) it is known to be in trade; or
 - ii) it is probably in trade, but conclusive evidence is lacking; or
 - iii) there is potential international demand for specimens; or
 - iv) it would probably enter trade were it not subject to Appendix-I controls;
- c) any species that meets the criteria for inclusion in Appendix II listed in Annex 2 a should be included in Appendix II in accordance with Article II, paragraph 2 (a);
- d) species should be included in Appendix II under the provisions of Article II, paragraph 2 (b), if they satisfy the criteria listed in Annex 2 b;
- e) species should be included in more than one Appendix at the same time, and higher taxa should be included in the Appendices, only if the species or higher taxa concerned satisfy the relevant criteria listed in Annex 3;
- f) species of which all specimens in trade have been bred in captivity or artificially propagated should not be included in the Appendices if there is no probability of trade taking place in specimens of wild origin;
- g) any species included in Appendix I for which sufficient data are available to demonstrate that it does not meet the criteria listed in Annex 1 should be transferred to Appendix II only in accordance with the relevant precautionary measures listed in Annex 4;
- h) any species included in Appendix II in accordance with Article II, paragraph 2 (a), that does not meet the criteria listed in Annex 2 a should be deleted only in accordance with the relevant precautionary measures listed in Annex 4; and species included in accordance with Article II, paragraph 2 (b), because they look like the species subject to the deletion, or for a related reason, should also be deleted only in accordance with the relevant precautionary measures; and
- i) the views, if any, of intergovernmental organizations with competence for the management of the species concerned should be taken into account;

RESOLVES that proposals to amend Appendices I and II should be based on the best information available and presented in the format in Annex 6, unless otherwise justified;

RESOLVES that entire geographically separate populations should not be included in the Appendices without prior consideration of negative consequences to conservation and management programmes for national populations or to sustainable development programmes involving such populations;

RESOLVES that, to monitor the effectiveness of protection offered by the Convention, the status of species included in Appendices I and II should be regularly reviewed by the range States and proponents, in collaboration with the Animals Committee or the Plants Committee, subject to the availability of funds;

URGES Parties and cooperating organizations to provide financial and technical assistance, when requested, in the preparation of proposals to amend the Appendices, the development of management programmes, and the review of the effectiveness of the inclusion of species in the Appendices. Parties

should be open to using other available international mechanisms and instruments for these purposes in the broader context of biodiversity; and

REPEALS the Resolutions listed hereunder:

- a) Resolution Conf. 1.1 (Bern, 1976) – Criteria for the Addition of Species and Other Taxa to Appendices I and II and for the Transfer of Species and Other Taxa from Appendix II to Appendix I;
- b) Resolution Conf. 1.2 (Bern, 1976) – Criteria for the Deletion of Species and Other Taxa from Appendices I and II;
- c) Resolution Conf. 2.17 (San José, 1979) – Format for Proposals to Amend Appendix I or II;
- d) Resolution Conf. 2.19 (San José, 1979) – Criteria for Addition of Extremely Rare Species to Appendix I;
- e) Resolution Conf. 2.20 (San José, 1979) – The Use of the Subspecies as a Taxonomic Unit in the Appendices;
- f) Resolution Conf. 2.21 (San José, 1979) – Species Thought to Be Extinct;
- g) Resolution Conf. 2.22 (San José, 1979) – Trade in Feral Species;
- h) Resolution Conf. 2.23 (San José, 1979) – Special Criteria for the Deletion of Species and Other Taxa Included in Appendix I or II without Application of the Bern Criteria for Addition;
- i) Resolution Conf. 3.20 (New Delhi, 1981) – Ten-year Review of the Appendices;
- j) Resolution Conf. 4.26 (Gaborone, 1983) – Ten-year Review of the Appendices;
- k) Resolution Conf. 7.14 (Lausanne, 1989) – Special Criteria for the Transfer of Taxa from Appendix I to Appendix II; and
- l) Resolution Conf. 8.20 (Kyoto, 1992) – Development of New Criteria for Amendment of the Appendices.

Annex 1 Biological criteria for Appendix I

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

A species is considered to be threatened with extinction if it meets, or is likely to meet, **at least one** of the following criteria.

A. The wild population is small, and is characterized by **at least one** of the following:

- i) an observed, inferred or projected decline in the number of individuals or the area and quality of habitat; or
- ii) each sub-population being very small; or
- iii) a majority of individuals, during one or more life-history phases, being concentrated in one sub-population; or
- iv) large short-term fluctuations in the number of individuals; or
- v) a high vulnerability due to the species' biology or behaviour (including migration).

B. The wild population has a restricted area of distribution and is characterized by **at least one** of the following:

- i) fragmentation or occurrence at very few locations; or
- ii) large fluctuations in the area of distribution or the number of sub-populations; or
- iii) a high vulnerability due to the species' biology or behaviour (including migration); or
- iv) an observed, inferred or projected decrease in any one of the following:
 - the area of distribution; or
 - the number of sub-populations; or
 - the number of individuals; or
 - the area or quality of habitat; or
 - reproductive potential

C. A decline in the number of individuals in the wild, which has been **either**:

- i) observed as ongoing or as having occurred in the past (but with a potential to resume); or
- ii) inferred or projected on the basis of any one of the following:
 - a decrease in area or quality of habitat; or
 - levels or patterns of exploitation; or

- threats from extrinsic factors such as the effects of pathogens, competitors, parasites, predators, hybridization, introduced species and the effects of toxins and pollutants; or
- decreasing reproductive potential.

D. The status of the species is such that if the species is not included in Appendix I, it is likely to satisfy one or more of the above criteria within a period of five years.

Annex 2 a

Criteria for the inclusion of species in Appendix II in accordance with Article II, paragraph 2 (a)

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.
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Annex 2 b

Criteria for the inclusion of species in Appendix II in accordance with Article II, paragraph 2 (b)

Species should be included in Appendix II in accordance with Article II, paragraph 2 (b), if they satisfy one of the following criteria.

A. The specimens resemble specimens of a species included in Appendix II under the provisions of Article II, paragraph 2 (a), or in Appendix I, such that a non-expert, with reasonable effort, is unlikely to be able to distinguish between them.

B. The species is a member of a taxon of which most of the species are included in Appendix II under the provisions of Article II, paragraph 2 (a), or in Appendix I, and the remaining species must be included to bring trade in specimens of the others under effective control.

Annex 3

Special cases

Split-listing

Listing of a species in more than one Appendix should be avoided in general in view of the enforcement problems it creates. When split-listing does occur, this should generally be on the basis of national or continental populations, rather than subspecies. Split-listings that place some populations of a species in the Appendices, and the rest outside the Appendices, should normally not be permitted.

For species outside the jurisdiction of any State, listing in the Appendices should use the terms used in other relevant international agreements, if any, to define the population. If no such international agreement exists, then the Appendices should define the population by region or by geographic coordinates.

Taxonomic names below the species level should not be used in the Appendices unless the taxon in question is highly distinctive and the use of the name would not give rise to enforcement problems.

Higher taxa

If all species of a higher taxon are included in Appendix I or II, they should be included under the name of the higher taxon. If some species in a higher taxon are included in Appendix I or II and all the rest in the other Appendix, the latter species should be included under the name of the higher taxon, with an appropriate annotation.

Annex 4 Precautionary measures

A. When considering proposals to amend the Appendices, the Parties shall, in the case of uncertainty, either as regards the status of a species or as regards the impact of trade on the conservation of a species, act in the best interest of the conservation of the species.

B. 1. No species listed in Appendix I shall be removed from the Appendices unless it has been first transferred to Appendix II, with monitoring of any impact of trade on the species for at least two intervals between meetings of the Conference of the Parties.

2. Species included in Appendix I should only be considered for transfer to Appendix II if they do not satisfy the relevant criteria in Annex 1. Even if such species do not satisfy the relevant criteria in Annex 1, they should be retained in Appendix I unless they satisfy one of the following criteria:

- a) the species is not in demand for international trade, nor is its transfer to Appendix II likely to stimulate trade in, or cause enforcement problems for, any other species included in Appendix I; or
- b) the species is likely to be in demand for trade, but its management is such that the Conference of the Parties is satisfied with:
 - i) implementation by the range States of the requirements of the Convention, in particular Article IV; and
 - ii) appropriate enforcement controls and compliance with the requirements of the Convention; or
- c) an integral part of the amendment proposal is an export quota approved by the Conference of the Parties, based on management measures described in the supporting statement of the amendment proposal, provided that effective enforcement controls are in place; or
- d) an integral part of the amendment proposal is an export quota approved by the Conference of the Parties for a specified period of time, based on management measures described in the supporting statement of the amendment proposal, provided that effective enforcement controls are in place; or
- e) a ranching proposal is submitted consistent with the applicable Resolutions of the Conference of the Parties and is approved.

3. No proposal for transfer of a species from Appendix I to Appendix II with an export quota shall be considered from a Party that has entered a reservation for the species in question, unless that Party agrees to remove the reservation within 90 days of the adoption of the amendment.

4. No species should be deleted from Appendix II if such deletion would be likely to result in it qualifying for inclusion in the Appendices in the near future.

C. The following review procedures shall apply when a species is transferred to Appendix II pursuant to paragraphs B 2 c) and B 2 d) above.

1. Where the Plants Committee, the Animals Committee or a Party becomes aware of problems in compliance with the management measures and export quotas of another Party, the Secretariat shall be informed and, if the Secretariat fails to resolve the matter satisfactorily, it shall inform the Standing Committee which may, after consultation with the Party concerned, recommend to all Parties that they suspend trade with that Party in specimens of CITES-listed species, and/or request the Depository Government to prepare a proposal to transfer the population back to Appendix I.

2. If, on review of a quota and its supporting management measures, the Animals or Plants Committee encounters any problems with compliance or potential detriment to a species, the relevant Committee shall request the Depository Government to prepare a proposal for appropriate remedial action.

D. If the proponent Party wishes to renew, amend or delete a quota established pursuant to paragraph B 2 d) above, it shall submit an appropriate proposal for consideration at the next meeting of the Conference of the Parties. In anticipation of there being no such proposal submitted, the Depository Government shall submit a proposal for consideration at the next meeting of the Conference of the Parties to impose a zero quota.

E. Species that are regarded as possibly extinct should not be deleted from Appendix I if they may be affected by trade in the event of their rediscovery; these species should be annotated in the Appendices as 'p.e.' (i.e. possibly extinct).

Annex 5

Definitions, notes and guidelines

Area of distribution

Area of distribution is defined as the area contained within the shortest continuous imaginary boundary which can be drawn to encompass all the known, inferred or projected sites of occurrence, excluding cases of vagrancy (though inferring and projecting area of occurrence should be undertaken carefully, and in a precautionary manner). The area within the imaginary boundary should, however, exclude significant areas where the species does not occur, and so in defining area of distribution, account should be taken of discontinuities or disjunctions in the spatial distribution of species. For migratory species, the area of distribution is the smallest area essential at any stage for the survival of that species (e.g. colonial nesting sites, feeding sites, etc.). For some species in trade where data exist to make an estimate, a figure of less than 10,000 km² has been found to be an appropriate guideline (not a threshold) of what constitutes a restricted area of distribution. However, this figure is presented only as an example, since it is impossible to give numerical values that are applicable to all taxa. There will be many cases where this numerical guideline does not apply.

Decline

A decline is a reduction in the number of individuals, or a decrease of the area of distribution, the causes of which are either not known or not adequately controlled. It need not necessarily still be continuing. Natural fluctuations will not normally count as part of a decline, but an observed decline should not be considered part of a natural fluctuation unless there is evidence for this. A decline that is the result of a harvesting programme that reduces the population to a planned level, not detrimental to the survival of the species, is not covered by the term 'decline'.

For some species in trade where data exist to make an estimate, a decrease of 50% or more in total within 5 years or two generations, whichever is the longer, has been found to be an appropriate guideline (not a threshold) of what constitutes a decline. A guideline (not a threshold) of what constitutes a decline in a small wild population could be 20% or more in total within ten years or three generations, whichever is the longer. However, both these figures are presented only as examples, since it is impossible to give numerical values that are applicable to all taxa. There will be many cases where these numerical guidelines do not apply.

Extended period

The meaning of the term extended period will vary according to the biological characteristics of the species. Selection of the period will depend upon the observed pattern of natural fluctuations in the abundance of the species and on whether the number of specimens removed from the wild is consistent with a sustainable harvesting programme that is based on these natural fluctuations.

Fragmentation

Fragmentation refers to the case where most individuals within a taxon are found in small and relatively isolated sub-populations, which increases the probability that these small sub-populations will become extinct and the opportunities for re-establishment are limited. For some species in trade where data exist to make an estimate, an area of distribution of 500 km² or less for each sub-population has been found to be an appropriate guideline (not a threshold) of what constitutes fragmentation. However, this figure is presented only as an example, since it is impossible to give numerical values that are applicable to all taxa. There will be many cases where this numerical guideline does not apply.

Generation

Generation is measured as the average age of parents in the population; except in the case of species that breed only once a lifetime, this will always be longer than the age at maturity.

Large fluctuations

Large fluctuations occur in a number of species where the population size or area of distribution varies widely, rapidly and frequently, with a variation greater than one order of magnitude. For some species in trade where data exist to make an estimate, a figure of two years or less has been found to be an appropriate guideline (not a threshold) of what constitutes a short-term fluctuation. However, this

figure is presented only as an example, since it is impossible to give numerical values that are applicable to all taxa. There will be many cases where this numerical guideline does not apply.

Population

Population is measured as the total number of individuals of the species (as defined in Article I of the Convention). In the case of species biologically dependent on other species for all or part of their life cycles, biologically appropriate values for the host species should be chosen. For some species in trade where data exist to make an estimate, a figure of less than 5,000 individuals has been found to be an appropriate guideline (not a threshold) of what constitutes a small wild population. However, this figure is presented only as an example, since it is impossible to give numerical values that are applicable to all taxa. There will be many cases where this numerical guideline does not apply.

Possibly extinct

A species is presumed extinct when exhaustive surveys in known and/or suspected habitat, and at appropriate times (diurnal, seasonal, annual), throughout its historic range have failed to record an individual. Before a species can be declared possibly extinct, surveys should take place over a time frame appropriate to the species' life cycle and life form.

Sub-populations

Sub-populations are defined as geographically or otherwise distinct groups in the population between which there is little exchange. For some species in trade where data exist to make an estimate, a figure of less than 500 individuals has been found to be an appropriate guideline (not a threshold) of what constitutes a very small sub-population. However, this figure is presented only as an example, since it is impossible to give numerical values that are applicable to all taxa. There will be many cases where this numerical guideline does not apply.

Threatened with extinction

Threatened with extinction is defined by Annex 1. The vulnerability of a species to threats of extinction depends on its population demographics, biological characteristics, such as body size, trophic level, life cycle, breeding structure or social structure requirements for successful reproduction, and vulnerability due to aggregating habits, natural fluctuations in population size (dimensions of time and magnitude), residency/migratory patterns. This makes it impossible to give numerical values for population size or area of distribution that are applicable to all taxa.

Annex 6

Format for proposals to amend the Appendices

The following provides information and instructions for the submission of a proposal to amend the Appendices and the appropriate supporting statement. Proponents should be guided by the need to provide to the Conference of the Parties sufficient information, of sufficient quality and in sufficient detail (to the extent available), to allow the Conference to judge the proposal against the criteria established for the proposed action. This means that the relevant published and unpublished sources of information should be used, but acknowledges that for some species the amount of scientific information will be limited. Furthermore, this means that it may not be possible to address all elements of the Proposal Format.

A. Proposal

The proponent should indicate the intent of the specific action being proposed and the relevant criteria against which the proposal is to be judged.

- Inclusion in Appendix I
- Inclusion in Appendix II
- in accordance with Article II 2(a)
- in accordance with Article II 2(b)
- for reasons of look-alike problems (in this case, the name of the similar species already included in the Appendices should be given in section C 7. Additional Remarks)
- for other reasons (such as those referred to in Annex 3 to this Resolution)
- Transfer from Appendix I to Appendix II in accordance with a precautionary measure specified in Annex 4 to this Resolution
- Deletion from Appendix II
- Other action (provide explanation)

B. Proponent

The proponent may only be a Party to the Convention, in accordance with Article XV of the Convention.

C. Supporting statement

1. Taxonomy

The proponent should provide sufficient information to allow the Conference of the Parties to identify clearly the taxon that is the subject of the proposal.

1.1 Class

1.2 Order

1.3 Family

1.4 Genus, species or subspecies, including author and year

If the species concerned is included in one of the standard lists of names or taxonomic references adopted by the Conference of the Parties, the name provided by that reference should be entered here. If the species concerned is not included in one of the adopted standard references, the proponent should provide references as to the source of the name used.

1.5 Scientific synonyms

1.6 Common names

The proponent should provide information on other scientific names or synonyms under which the species concerned may be known currently, especially if these names are used in the trade in the species.

1.7 Code numbers

If the species concerned is already included in the Appendices, refer to the code numbers in the CITES Identification Manual.

2. Biological parameters

The information required in this section is a summary of the principal results of surveys, literature searches, and other studies. The references used must be listed in section 8. of the proposal. It is understood that the quality of information available will vary a lot. But these instructions indicate the type of information that is required.

2.1 Distribution

Give an estimate of the current range of the species, and specify the references used. Specify the types of habitats occupied and, if possible, the extent of each habitat type over the range of the species. If possible, provide information to indicate whether or not the distribution of the species is continuous and, if it is not, indicate to what degree it is fragmented.

2.2 Habitat availability

Give information on the nature, rate and extent of habitat loss and/or degradation, if possible with information from at least three points in time, and give the basis for future projections.

2.3 Population status

Give an estimate of the total population or number of individuals with: i) date and nature of census; and ii) justification for any inferences made about total population size and/or number of individuals. Give the number of sub-populations, where possible their estimated size, and the date and method of census. Give an estimate of, or information on, the size of the population in captivity.

2.4 Population trends

Basic, quantitative and referenced information should be provided on whether the population of the species is increasing, stable or declining. The period over which the trend, if any, has been measured should be indicated. If the species naturally undergoes marked fluctuations in population size, information should be provided to demonstrate that the trend transcends natural fluctuations. If generation-time has been used in estimating the trend, state how the generation-time has been estimated.

2.5 Geographic trends

Give data on the nature, rate and extent of decrease in range area or number of sub-populations, if possible with information from at least three points in time. Give data on the degree and periodicity of fluctuations in range area or number of sub-populations, if possible with information from at least three points in time.

2.6 Role of the species in its ecosystem

Give information about the specific relationship that exists between this species and others living in the same ecosystem. Indicate the possible consequences of depletion of the population of the species proposed for listing, for those depending on or associated with it.

2.7 Threats

Specify the nature, intensity and extent of threats (e.g. habitat loss and/or degradation; exploitation; effects of introduced species, competitors, pathogens, parasites, predators, hybridization and the effects of toxins and pollutants; etc), if possible with information from at least three points in time, and give the basis for future projections.

3. Utilization and trade

3.1 National utilization

Give data on the level of exploitation, indicating trends if possible. Specify the purposes of exploitation. Provide details of harvest methods. Assess the importance of the offtake and the relationship between national and international trade.

Provide details of any stockpiles known to exist, and the measures that might be taken to dispose of them.

Where applicable, provide details of commercial captive-breeding or artificial propagation operations for the species in question, including the size of captive stock and the production, and the extent to which these operations are either contributing to a conservation programme or meeting a demand that would otherwise be met by specimens from the wild.

3.2 Legal international trade

Quantify the level of international trade, identifying the source of statistics used (e.g. Customs statistics, CITES annual report data, FAO data, industry reports, etc.). Provide justification for inferences made about trade levels. Provide information about the nature of the trade (e.g. primarily for commercial purposes, primarily live specimens, primarily parts and derivatives, primarily of captive-bred or artificially propagated specimens, etc.) and about how the proposed amendment is expected to affect the nature of the trade.

3.3 Illegal trade

To the extent possible, quantify the level of illegal trade, including national and international trade, and provide details of the nature of this trade. Assess the relative importance of this trade as it relates to legal offtake for national use or legal international trade. Provide information on how the proposed amendment is expected to affect the nature of the trade.

3.4 Actual or potential trade impacts

Comment on the actual or potential trade impacts of the proposed amendment on the species in question, and on the reason for believing that trade might become a threat to the survival of the species in question, or on whether trade may be beneficial to the survival of the species in question. Where applicable, include information on the actual or potential ecological impacts of the change in trade controls.

3.5 Captive breeding or artificial propagation for commercial purposes (outside country of origin)

To the extent possible, provide information on the extent of captive breeding or artificial propagation outside the country or countries of origin.

4. Conservation and management

4.1 Legal status

4.1.1 National

Provide details of legislation relating to the conservation of the species, including its habitat, either specifically (such as endangered species legislation) or generally (such as legislation on wildlife and accompanying regulations). Indicate the nature of legal protection (i.e. is the species totally protected, or whether harvesting is regulated or controlled). Provide an assessment of the effectiveness of this legislation in ensuring the protection and/or wise management of the species.

Provide similar information relating to legislation governing the management of trade in the species in question. Provide an assessment of the effectiveness of this legislation in controlling illegal trade in the species.

4.1.2 International

In preparing proposals to amend the Appendices, consult in advance with the relevant competent intergovernmental organizations responsible for the conservation and management of the species, and take their views fully into account.

Provide details of international instruments relating to the species in question, including the nature of the protection afforded by such instruments. Provide an assessment of the effectiveness of these instruments in ensuring the protection and/or wise management of the species.

Provide similar information relating to international instruments relating to the management of trade in the species in question. Provide an assessment of the effectiveness of these instruments in controlling illegal trade in the species.

4.2 Species management

4.2.1 Population monitoring

Provide details of programmes in place in the range States to monitor the status of wild populations and the sustainability of offtake from the wild. Such programmes might be under the auspices of government or through non-governmental organizations or scientific institutions. Indicate the extent to which non-governmental monitoring programmes link to governmental decision-making.

4.2.2 Habitat conservation

Provide details of programmes in place in the range States to protect the habitat of the species in question, both inside and outside protected areas. Provide details about the nature of the protection offered by the programmes in question.

4.2.3 Management measures

Provide details of programmes in place in the range States to manage populations of the species in question (e.g. controlled harvest from the wild, captive breeding or artificial propagation, reintroduction, ranching, quota systems, etc.). Include, where appropriate, details such as planned harvest rates, planned population sizes, mechanisms for ensuring that the advice of those responsible for management of the species is taken into account, mechanisms and criteria for the establishment of quotas, etc.

Where applicable, provide details of any mechanisms used to ensure a return from utilization of the species in question to conservation and/or management programmes (e.g. pricing schemes, community ownership plans, export tariffs, etc.).

4.3 Control measures

4.3.1 International trade

Provide information regarding measures in place, in addition to CITES, to control the movement of specimens of the species in question across international borders. Include information about marking schemes in place, if any.

4.3.2 Domestic measures

Provide information regarding controls in the range States aimed at ensuring a sustainable harvest from the wild of the species in question. Include information on education, compliance and enforcement activities as appropriate and an assessment of the effectiveness of the programmes.

5. Information on similar species

Give the names of species of which specimens in trade look very similar, state how they may be distinguished, and explain whether or not it is reasonable to expect an informed non-expert to be able to make a firm identification. Outline measures that would need to be taken to handle potential difficulties in distinguishing between specimens of this and similar species.

If the proposed amendment would be likely to lead to an increase in trade in the species concerned, explain why this would not result in unsustainable trade in similar species.

6. Other comments

Provide details of the consultation undertaken to secure comments on the proposal from the range States of the species, either through direct contact or via the CITES Secretariat. Comments received from each country should be provided. Where comments were sought but not received in sufficient time to enable their inclusion in the supporting statement, this should be noted, as well as the date of the request.

In cases of consultation with Parties via the CITES Secretariat, information from range States and non-range States should be separated.

In the case of species that are also managed through other international agreements or intergovernmental bodies, provide details of the consultations undertaken to obtain the comments of those organizations or bodies, and indicate how those comments have been addressed in the supporting statement. Where comments were sought but not received in sufficient time to enable their inclusion in the supporting statement, this should be noted, as well as the date of the request.

7. Additional remarks

8. References

* Amended at the 12th meeting of the Conference of the Parties.