

This letter is in response to Notification to the Parties No. 2000/51, dated 31 August 2000. In that Notification, the Secretariat requested comments from the Parties to CITES to the Report of the First Meeting of the Criteria Working Group (CWG), which met in August 2000 in Canberra, Australia. We note that the responses of the Parties were requested by 15 October 2000. These comments are on behalf of the United States government on the Report of the CWG, and represent the work of an interagency process here in the United States. We look forward to the discussions regarding the CITES listing criteria (Resolution Conf. 9.24), to take place at the upcoming Joint Meeting of the CITES Animals and Plants Committees, scheduled to take place 7-9 December 2000 here in the United States.

Our comments are presented in the context of Doc. 11.25, adopted by consensus (with minor amendments) at COP11 in Nairobi, Kenya in April 2000. Unfortunately, we have not received the final decision document, such that we cannot refer to it properly by its appropriate decision number.

We appreciate the hard work of the Criteria Working Group, and the efforts of its members to present a document for our discussions in December at the Joint Meeting. The United States considers this a high priority for the work of the Animals and Plants Committees, and the Parties, between now and COP12. Our specific comments on numbered paragraphs in the report of the Criteria Working Group are attached. However, we have some general comments as well.

Specifically, Resolution Conf 9.24 contains very specific language with respect to the review process to be taken prior to the COP12. Specifically, in the final operative paragraph in the body of Conf. 9.24, the Conference of the Parties recommends that:

“..the text and the annexes of this Resolution be fully reviewed before the twelfth meeting of the Conference of the Parties with regard to the scientific validity of the criteria, definitions, notes and guidelines and their applicability to different groups of organisms”.

Thus, Conf. 9.24 (and thereby Doc. 11.25 from COP11) calls for a review that specifically deals with the *scientific validity and applicability of the criteria to specific taxa* [emphasis added]. We believe that the Criteria Working Group did not fully fulfill this obligation, which should be its primary focus, and thereby the primary focus of the work of the Animals and Plants Committees. Although of course nothing prevents the Parties from proposing future changes to language of any resolution, the sorts of detailed proposed amendments to Conf. 9.24 circulated by the Secretariat in Notification 2000/51 do not fulfill the mandate stated above for the criteria review. They both go too far, and do not go far enough. It is our hope that clearer, more taxon-specific and explicit criteria, with specific text in the relevant Annexes, will encourage the presentation of proposals that are easier to evaluate, with compelling arguments for changing the status of species on the Appendices and the level of regulation of their international trade.

The United States agrees that there is a need to evaluate the criteria and associated definitions, notes and guidelines for their applicability to different groups of organisms. We believe that considerably

more work is needed to accomplish this objective. Although the CWG made a good start in discussing the criteria and guidelines, it did not recommend any changes to Annex 5, which contains the definitions, notes, and guidelines. At present, it appears that the criteria are set up to be as general as possible so as not to inadvertently exclude any species from consideration, while the guidelines are more specific containing, among other things, numerical guidelines (not thresholds) to define "small" population size and "small" area of distribution. The United States believes that the Criteria should remain as broad and general as possible, while the guidelines could and should be further developed to assist the Parties in selecting candidate species for listing by CITES. Thus, the United States believes that more effort should be devoted to revision of Annex 5, rather than the criteria themselves. The United States recommends that the Animals and Plants Committees develop a process for conducting a review of the criteria and guidelines for representative taxon groups and/or life history strategies. The United States is in the process of conducting such a review for several taxa, including exploited marine fish and invertebrates, marine turtles, and certain marine mammals, focusing on species occurring in U.S. waters. We recommend that the joint meeting establish a process, working with scientists (including IUCN Specialist Groups), to undertake taxon-specific reviews between now and COP12 as part of the review of Annex 5 of Conf 9.24.

Further, we believe that there is a definite need for the CWG, and the Plants and Animals Committees, to consider differences in life history parameters of various taxonomic groups. To this end, the FAO Technical Consultation of FAO saw the need for a further Technical Consultation to review various taxonomic groups to ascertain criteria that might be applicable to specific marine taxa. We believe that this process would be appropriate, not only for marine species, but for others as well, and would be consistent with the mandate in Conf. 9.24.

Resolution Conf 9.24 in its present form represents a compromise arrived at after more than two years of intense and detailed work, with which we were closely and very actively involved, with repeated negotiations and opportunities for comment by the CITES Parties. It is a compromise that should not lightly be set aside. By adopting it, the Parties set CITES on a course of scientifically-based pragmatism, without a strong ideological position either for or against listing species on the Appendices. Although we do not regard its text as perfect by any means, we recognize that it represents a balanced position that reflects the attitude of the Parties as a whole towards our treaty. That the Parties prefer a balanced approach is further borne out by the results of the study of the Effectiveness of the Convention, conducted after the adoption of Resolution Conf 9.24. The survey of the Parties undertaken as part of that study showed that there is no general feeling that CITES should shift its position towards a more restrictive view of the Appendices. Furthermore, the criteria in Conf. 9.24 have been effective at both COP10 and COP11 in allowing both the 'uplisting' and 'downlisting' of species, and in most cases by consensus, further demonstrating that the criteria operate satisfactorily.

We therefore believe that the Working Group should have concentrated its efforts, following the language in Resolution Conf 9.24, on refining the criteria with respect to making them more applicable to a broad range of taxa. In checking our files and notes from the work leading up to COP9, and in the detailed discussions and working group analyses at COP9, and in the comments of Parties and others, we find agreement that a focus on specific taxa was needed. There was consensus at COP9 that time

did not allow for such a detailed review at that time, and that two meetings of the Conference of the Parties would guide our evaluations as to how the criteria could be adjusted to deal with a broad range of taxa. Therefore, in addition to our specific comments (attached), we urge the members of the Plants and Animals Committees to reexamine the review process and more closely follow the directive in Resolution Conf 9.24.

In our view, it is not the task of the Criteria Working Group, or the Joint Meeting of the Animals and Plants Committees, to alter the underlying principles of the criteria. Unfortunately, many of the changes suggested in the Report of the First Meeting of the Criteria Working Group (either by “consensus”, minority view, or suggestions by the Secretariat) seem to have been motivated not by a desire to improve the criteria in the manner requested by the Parties, but by a desire to make listing on the Appendices, or uplisting, more difficult and deletion of species from the Appendices, or downlisting, easier, and to weaken the precautionary basis for the listing process. Such is not the role of scientifically-based criteria. Rather, it is up to each contracting Party to determine if a proposal should be developed, and if so how to develop such a proposal in the context of the criteria. It is then up to each Party to analyze the proposal, evaluate it against the criteria, and determine whether to support it or not at a meeting of the Conference of the Parties.

We are also quite concerned by proposed amendments to Conf. 9.24 that are inconsistent with the CITES treaty itself. Specifically, nothing in a resolution outlining scientifically-based listing criteria can or should ever limit the right of contracting Parties to submit a proposal. If a proposal does not satisfy the criteria, or is otherwise inappropriate, we trust in the integrity and wisdom of the Parties to not adopt it. However, we strongly oppose any language in a listing criteria resolution that limits the right of Parties to submit proposals.

Thank you very much for the opportunity to comment. We request that these comments and those of other Parties that reply to Notification 2000/51 be provided to participants at the upcoming Joint Meeting of the Animals and Plants Committees.

Sincerely,

<signed: October 13, 2000>

Kenneth Stansell

Acting Assistant Director - International Affairs

**Comments of the United States of America
on the Report of the First Meeting of the Criteria Working Group
[Notification to the Parties No. 2000/51]**

Note: Paragraph numbers refer to paragraphs in the Report.

Please also refer to these paragraph comments when evaluating the draft revisions to Conf. 9.24.

17. We disagree strongly with the statement in this paragraph that the text of the Convention clearly implies that “such trade should also have a negative effect on the status of the species”.

While a resolution may interpret the text of the Convention, it may not be used to alter its meaning or intent. We find no problems with the current operative part of Conf. 9.24 as regards the term “is or may be affected by trade” (Conf. 9.24, second RESOLVES, paragraph b); we do not concur with changing it, nor with the changes proposed.

18. We cannot agree with the definition proposed here for paragraph b), dealing with whether a species “is or may be affected by trade”. First, various English-language dictionaries define “affect” to mean “to influence or impress”. The word “affect” does not refer only to negative impacts. Restricting the meaning of the term, as is proposed, places an additional onus, not present in the treaty itself, on Parties seeking to include species in the Appendices. While it may be comparatively easy to prove that trade in a species will have a discernible impact -- often simple examination of trade figures may be enough -- it is much more difficult, and perhaps impossible in some cases, to show that the impact is negative. Such findings are more appropriate in the non-detriment findings required by Articles III and IV, and not in the listing criteria. Furthermore, in the proposed wording in paragraph b) under the Second RESOLVES clauses i) through iv), as written a proponent must always prove that trade is having a detrimental impact on the species. As revised, subparagraph b) would never allow a species to be listed if there were any degree of uncertainty about the impact of trade on the species. For example, original clause ii) justifies listing a species if the species is probably in international trade, even if conclusive evidence is lacking. This provision is consistent with the express intent of the Parties that, in cases of uncertainty, decisions be made in the best interest of the conservation of the species. By contrast, the new “detrimental impact” element in clause ii) is set off by a comma from the term “probably” and the phrase “if conclusive evidence is lacking,” removing it from the purview of these terms. As a result of this absolutist construction, this criterion would not be satisfied unless the proponent could prove that trade is having a detrimental impact. We suggest the following language instead, as a “compromise” between the existing language and the CWG Report’s proposal:

b) a species “is or may be affected by trade” if:

- i) it is known to be in international trade and trade may have an impact on the status of the species;
- ii) it is probably in international trade, although conclusive evidence is lacking, and trade may have an impact on the status of the species;
- iii) there is potential international demand for specimens of the species, and any international trade in the species may have an impact on its status;

- iv) it would probably enter trade were it not subject to Appendix I controls, and that trade may have an impact on its status.

20. The statement that the current criteria have not been applied to any commercial fishery stocks is not technically correct. The proposals submitted for the great white shark, whale shark, and basking shark for consideration at COP11 were evaluated using Conf. 9.24. Although the proposals were not adopted by the Parties, they were evaluated by them using the current criteria. We do agree however that more work needs to be done (as instructed by Conf. 9.24) to review and evaluate the text and the annexes of Conf. 9.24 with regard to the scientific validity of the criteria, definitions, notes and guidelines and their applicability to various marine taxa subject to commercial fisheries.

21. We do not see how changing the sequence of the three criteria would be useful. Rather, it will result in unnecessary confusion by Parties in preparing listing proposals.

22. We cannot agree that Criterion D of Annex 1 can and should be deleted. We have evaluated this issue extensively since the meeting of the CWG, and believe it should not be deleted; we also cannot agree with the statement in the last sentence of this paragraph. Criterion D of Conf. 9.24, Annex 1 is a precautionary measure designed to avoid downlisting species that may have to be returned to Appendix I in the near future. As such we do not believe that merely incorporating it into the criteria in Annex 2a is an improvement. This aspect of Annex 1 addresses the issue of retaining a species on Appendix I as opposed to transferring it to Appendix II. We believe that this was the original intent of the Parties, rather than having it simply as an argument for inclusion on Appendix II as an interim measure. The concept should therefore be mentioned in both Annexes. The current mention in Annex 1 protects currently listed Appendix I species from premature downlisting. The mention in Annex 2a protects unlisted species that need to be listed on Appendix II. The two concepts are quite different. By suggesting that the criteria in Annex 1 should only be used in reference to substantial illegal trade, the paragraph completely ignores the issue of the effect of re-opening legal trade in a downlisted species, even if such trade would be likely to place the species in such jeopardy that it would have to be returned to Appendix I in the near future. In fact, without Criterion D a species in such a situation would have to be retained on Appendix II once downlisted until such time as one of the other criteria were met. This is not only potentially damaging to species conservation, it could prove costly and wasteful to implement in range states.

Furthermore, we do not agree with the statement that inclusion in Appendix II with a trade prohibition or restriction is a preferable option. It may be preferable in some cases, but certainly not as an overarching principle. Parties should be free to propose, and support if appropriate, either Appendix I or Appendix II with a trade restriction such as a zero quota, depending on the status of the species concerned and the relevant situation. More significantly, if the status of a species is such that it meets the Appendix I criteria, or is about to meet the criteria, then a listing proposal is reasonable, and nothing in the criteria should limit a Party's ability to submit such a proposal.

23. The CWG report suggests that the word "mature" should be used as an adjective of "individual" in current criterion A based on the argument that "several animal and plant species produce large amounts of offspring of which only a relatively small part contributes to the recruitment of the species". While this argument seems reasonable at first it may not be as generally applicable as the CWG believed and after detailed analysis the United States recommends that it not be added to Criterion A, for a number of reasons:

In many cases, addition of the word "mature" actually reduces the flexibility of the criteria in terms of considering valid candidates for listing. For example, one could consider the hypothetical example of a previously unexploited population that takes several years to reach maturity, where suddenly, an international market develops for trade in the juveniles of the species. The juveniles are very valuable and it doesn't take long for harvest rates to reach unsustainable levels. However, due to the late maturity of the species, the high juvenile mortality rates may not translate into significant reductions in mature biomass for several years, by which time the species as a whole could be severely over-exploited. It is important for the criteria to retain sufficient flexibility to address those situations where international trade is focused on juvenile specimens of a species, thereby justifying an analysis of trade impacts on that vital stage of the life cycle. There may also be other examples where addition of the word "mature" results in a reduction in the flexibility of the criteria and impedes consideration of a particular species when other evidence indicates that listing of this species should be a priority.

Furthermore, the CWG itself suggested that use of the term "mature" might cause some problems when applied to particular plant species. Plant and animal demographics are inherently distinct. Typically, plant demographers analyze plant populations in terms of stage of growth, and not chronological age, which would make the term "mature" in listing criteria less than helpful. Also, plant survival and fecundity, important factors in assessing the status of populations in the wild, are determined largely by the size and physiological status of the individual plant (and not its "maturity"). In the case of trees, mature refers to the culmination of mean annual increment or nearly old growth. This age is reached long after reproductive age is reached. Plants have the ability to remain in a non-reproductive growth phase before reproduction. Some bamboos and trees, for example, spend years to even decades in a non-reproductive phase. Other plant species can delay flowering, or are single reproducers, or reproduce asexually. This plasticity in plant growth and reproduction necessitates retaining sufficient flexibility in the criteria.

Therefore, we believe that returning to the original language, and omission of the word "mature", leaves the criterion flexible and certainly does not preclude focusing on the mature portion of the population(s) when considering a species for listing. In fact, the existing phrase "during one or more life history phases" would seem to already encourage focus on the most relevant life history phase of a species.

24. We do not feel that Subcriterion i) of the current criterion A is redundant and should be deleted. If a population size is small, possibly at or below minimum viable population size, any drop in population should be of concern. For species with populations significantly higher than minimum viable, however,

the addition of “marked” in Criterion “C” is good.

25. We support the concept of including some degree of decline, or qualifying decline in some way. In many cases “marked decline” is acceptable, although we recognize for some species it may not be appropriate. We also suggest consideration of the issue of whether or not a given decline is significant. In some cases, a large population may have a marked but planned or permitted decline (*e.g.* some commercial fish species, and some tree species). The concept of significance could be tied to the planned sustained or minimum viable population levels, when appropriate. A “marked decline” might be defined as a function of the number of individuals involved, fecundity, and length of life cycle to get a sense of the significance of the decline. However, this sort of analysis is more appropriate in the context of a species’ biology, and is the sort of issue where a taxon-specific, biologically-based review of the criteria in the manner prescribed by Resolution Conf 9.24 would be useful.

27 and 28. We prefer replacing “recruitment/reproductive success” with “recruitment, reproductive success”, as the two are not the same. Alternatively, we would recommend “recruitment into the reproductive age classes and subsequent reproductive success of the individuals” or even just “decreasing recruitment or reproductive success” (since reproductive potential can be confusing.

29-31. While we concur that stock assessments and population viability assessments are desirable, it should be made clear that there are actually very few species for which the data required for such analyses are available.

34-43. These paragraphs of the CWG report propose a new method for judging whether species should be considered for inclusion in Appendix II. We consider this “model” to be premature for these purposes, as part of the core criteria. In particular, we do not support including quantitative “triggers” or cut-offs in the criteria themselves. However, we recommend an analysis and evaluation of this concept on a taxon-by-taxon basis, to assess if inclusion of such percentages in the Definitions and Guidelines in Annex 5 might be preferable to the current figures in that Annex. We do not find useful the applicability of fixed percentages regardless of the taxon or life history characteristics, but an assessment of various percentages for a diverse range of case studies could be very useful.

Certainly, the concept of using a criterion such as "the current population level relative to some historical or potential level" is appealing, and for many taxa the science of sustainable yield is well developed enough to be of some use in listing criteria. We do consider it potentially useful if such a model could help shape how Parties can think of the concepts of minimum viable population, sustainable level, biological potential, etc. and their relationship to each other. The use of such concepts could greatly enhance species proposals that include them. Although it may be difficult to estimate pristine or historical abundance quantitatively, experts often use qualitative judgements about current abundance relative to historical or potential abundance as a basis for making inferences about the current status of a species. For example, when trying to determine whether a number like 500 or 5000 is "small", it may be necessary to consider these levels relative to what may have been and what potentially could still be

(taking account of irreversible changes in the habitat or other relevant features of the environment) in order to differentiate between species that are essentially "naturally small" (i.e. have persisted at low levels in restricted areas for long periods) versus those that may be a remnant of their former size and distribution. Because population figures for many exploited species are based on catch or trade statistics, and often are not collected until after trade has been underway for some time, there is necessarily great uncertainty in attempting to project past pristine population levels for such species. Thus, the concept requires considerably more evaluation and further development before it is presented to the CITES Parties.

The United States will be conducting some work to further evaluate and develop the model and expects to be able report on its findings at the Joint Meeting of the Animals and Plants Committee, to be held 7-9 December 2000 here in the United States.

36. We recommend "evaluate the significance" rather than "evaluate the effect" of international trade.

37, 42, 43. The discussion in these paragraphs implies that the listing threshold for Appendix II is congruent with the biological threshold for issuing permits (trade that is not detrimental to the survival of the species). Such a construction would be plainly at odds with the plain language and intent of the treaty, which contemplate the inclusion of taxa in Appendix II before threats to their conservation status arise; the permitting mechanism in Article IV is then used to ensure that such taxa are sustainably managed to avoid any future decline in status to Appendix I. To accept the language in paragraphs 37, 42, and 43 would result in the unintended consequence of an Appendix II listing being synonymous with a trade ban, which we cannot accept.

45-47. We cannot support requiring such a "risk analysis" by Parties submitting a proposal. It is burdensome on Parties, particularly range countries, and goes beyond the treaty. This is a scare argument (that somehow there is a risk of including a species in the Appendices). Further, the statement that including a species in Appendix I might be "taken in the wrong belief that the listing as such has solved the conservation concerns" is an unnecessary polemic that does not belong in a criteria document. We are not aware of studies published in the literature that substantiate such allegation. Furthermore, the report indicates that the Criteria Working Group discussed the need to "assess the risks associated with a listing". Having had a representative at the meeting of the CWG, we note that some members of the group also suggested including the benefits of a listing (in addition to the risks).

48. We do not understand why it is necessary to suggest language to deal with a problem that, as the previous paragraph points out, has never been proven to exist. It does not appear that this text was suggested by the Criteria Working Group, and as such should be struck. Even if such a problem were to exist, it would appear to reflect not a listing issue, but rather failure to effectively enforce the treaty. The proper way to deal with such an issue, should it exist, is for the Parties to improve their levels of CITES enforcement and implementation.

The Parties that signed or acceded to CITES made the policy judgment that species covered by the definitions in Article II are best conserved through the permitting requirements outlined in Articles III, IV, and V. It would be improper for the Parties (and certainly beyond the mandate of any working group or committee) to alter or limit the plain language and intent of the treaty, without a formal amendment to the treaty text.

49. We object to the tone and text of this paragraph, and the continuing of this line of thinking in the proposed revisions to Conf. 9.24. It is argumentative and unnecessary to state that the Convention “was not designed for this purpose”. We agree that Parties need to develop adequate national legislation pursuant to Article VIII of the treaty. However, it is appropriate for Parties to propose inclusion of species, particularly native species, in Appendix II, if they deem the species to so qualify, and that the regulation of international trade in the species in accordance with CITES Appendix II is warranted. This paragraph should be struck.

51-53. We object strongly to the proposed language in paragraph 53. We note that the CWG did not come up with this language, and it should be struck. We strongly support the Significant Trade Review process; we were one of its original architects. However, the mere fact that a species is under review does not preclude a Party, particularly range states, from proposing its transfer from Appendix II to I. If such an avenue is precluded, one important incentive for Parties to cooperate with the recommendations coming out of the review process would be foreclosed. Furthermore, this line of discussion is far too argumentative, and is beyond the remit of listing criteria.

| Status as a “significant trade” species should not be a bar to uplisting, if the status of the species so warrants. Waiting until the review process is completed could take many years, and in fact with some species the process may never reach a satisfactory end point. We believe that the Parties should always be free to consider the effectiveness of the Significant Trade Review for any species in an unbiased and precautionary manner, and to decide on a case-by-case basis whether measures taken under Resolution Conf 8.9 are adequate or if an Appendix I listing is necessary.

The listing criteria cannot, and should not, be used to preclude any Party from submitting a proposal for a species that qualifies. Such a prohibition violates Article XV, paragraph 1.b. of the CITES treaty, which states: “Any Party may propose an amendment to Appendix I or II for consideration at the next meeting.” No resolution, which is “soft law”, can take that right away from a contracting Party.

55-56. We do not agree with the interpretation of Article II paragraph 2 (a) in paragraph 55. The “strict regulation” referred to refers only to CITES measures. Therefore the concerns raised by some participants in the Working Group are unfounded. We therefore do not believe that the language proposed in paragraph 56 is necessary. If, however, the Parties desire to include language similar to that set out in paragraph 56, the text should be adjusted by including a commitment to list species that qualify under the provisions of Annexes 2a and 2b. This language, would add an important tone of neutrality that must be maintained in any revision of Conf. 9.24.

59. We do not concur with the reference in the last sentence of this paragraph to costs associated with a listing under Article II.2.b. We do concur with asking a proponent to demonstrate what products are in trade, and how they are difficult to distinguish from those of other species, but we do not concur with the cost element. There is nothing in CITES suggesting that cost should be included as a factor in listing decisions; it would be a violation of the spirit of the treaty to do so.

62. We suggest expanding the last sentence of this paragraph to read, "When split-listing does occur, this should generally be on the basis of national or continental populations, and should not result in some populations being outside the Appendices, or in individuals of some populations of migratory species being in more than one Appendix."

67-68. Although we agree that paragraph a of Annex 4 is redundant, we believe it to be a most necessary redundancy, and its removal could create unnecessary confusion. This language is central to the precautionary approach, and certainly belongs at the head of any Annex dealing with precautionary measures. Indeed, it sets the stage for defining what is meant by the term "precautionary".

72. We support the recommended changes to Annex 6 of Conf. 9.24, and any further efforts to make the format for proposals more closely follow the annexes of the resolution.

75-76. We agree with these recommendations.

Comments on Proposed Revised Text for Resolution Conf. 9.24 (in addition to the comments above on relevant paragraphs of the CWG report):

Please refer to the discussion, above, for specific paragraphs (and references to proposed revisions to Conf. 9.24). In particular, our discussion regarding paragraphs 17-18 should be referred to. The expanded wording proposed here does not say what happens if a species is known to be in trade, but the effect of that trade is not entirely understood. It could be read as requiring that a detrimental impact must be proved, which, as discussed above, is not precautionary or consistent with the treaty. In addition, the reference to detrimental impact is redundant as the impact of trade is already considered under the biological criteria.

Fourth RESOLVES: As discussed above, we oppose this added paragraph. It is unnecessary and contrary to the explicit language of the treaty, as discussed above. For species managed under international management regimes, such as many marine species, this paragraph would require the Parties to CITES to pass judgment on other operating conventions -- something that may be extremely difficult to do even if the scientific evidence suggests that these conventions are not fulfilling their mandates. We believe there is already adequate opportunity to consult other international treaties for marine species, as spelled out in Articles XIV and XV of the CITES treaty. Under the proposed new paragraph, therefore, CITES might well be prevented from listing a species until an unproven trade regime actually fails, even if such listing would make a positive contribution to the species' conservation.

This is highly contrary to the precautionary principle.

RESOLVES/RECOMMENDS: see comments on paragraph 48 above. We cannot support this text.

Fifth RESOLVES: see comments on paragraphs 51-53 above. We cannot support this text.

ENCOURAGES: This text is acceptable.

Annex 1, Criterion A, instead of “recruitment/reproductive success or reproductive potential”, we recommend:

“recruitment into reproductive age classes and subsequent reproductive success”, or
“recruitment or reproductive success”.

As discussed above, extensively, under our comments on paragraph 23, we do not support replacing “individuals” with “mature individuals”.

Annex 1, Criterion B. Terms such as "large short term fluctuations" need definition (in Annex 5).

Annex 1, Criterion C.: see comments on paragraphs 23-25 above. The addition of the word "marked" is not necessarily helpful. It would be preferable to discuss this in the Annexes, with some taxon-based specificity. The Conference of the Parties is always required to determine whether a decline is sufficiently great to warrant listing. More significantly, if a species has already been greatly reduced, any additional decline, however small, is significant even if the rate of the decline as a percentage of the population is slowing. The same is true for any population that is already small or highly fragmented. We recommend further evaluation in Annex 5 of what is meant by "marked decline".

Annex 1, Criterion D.: see comments on paragraph 22 above. Criterion D should be retained.

Annex 2a: the rewording of the criteria in this Annex appears to go beyond the language of Article II of the treaty, which only requires the possibility that a species may become "threatened with extinction". We do not see any deficiency in fact in the existing Annex 2a criteria, and believe them to be sufficiently robust for the taxa we have evaluated. We do not object to removing the word “inferred”, but would like some discussion in the Annexes of the concept “can be projected”. Further, criterion B. is somewhat confusingly worded and does not seem to add anything not already in criterion A. Substituting strict regulation requirements for simple biological parameters makes the analysis more difficult, as it is not clear what the term means in this case. We feel that the original language was much simpler and easier to follow, and is likely to promote more useful debate.

We note that there appears to be a problem with the wording of the added criterion C. Although the wording in the main text of the report is "to enable use", in the draft resolution it is given as "to limit use". These, of course, have highly different meanings. If this language is to be included, the appropriate word

is of course "limit". There is no way that a CITES listing could, or should, "enable" use of species to a greater extent than could be achieved by leaving the species off the Appendices altogether.

Annex 2b: We do not understand the elimination of criterion B. from this Annex.

Annex 3 -- Split Listing: Please refer above to our comments on paragraph 62. Generally, the modifications are an improvement. However, removing the language referring to enforcement problems deletes the main reason for avoiding split listings in the first place. We object to this change, and believe that enforcement challenges must be included. The Parties have agreed that enforcement problems are sufficient reason to avoid a split listing, most recently in the case of the Australian population of dugong (adopted by COP11). Further, the reference to Annex 4 in this case makes it appear that a split listing is acceptable if it will facilitate trade, but not acceptable otherwise. There is no justification for such a distinction.

Annex 4, original paragraph A: We prefer to retain this precautionary language, which represents an important statement of the precautionary principle with respect to CITES. This language is central to the precautionary approach, and certainly belongs at the head of any Annex dealing with precautionary measures.

Annex 4, Paragraph A.3. We can support the deletion of the terms "with an export quota".

Annex 4, Paragraph A. 4: We do not concur with replacing the original wording with this new wording, which is neither precautionary nor helpful. The original wording should be retained.

Annex 4, Paragraph B. 4: We feel strongly that the revision of paragraph B4 is inappropriate because it is totally irrelevant to the concept of "precautionary". Although the revised statement B4 may belong elsewhere, it definitely does not belong in Annex 4.

Annex 6: We support the revised format for proposals, with the following suggestions:

Paragraph 3: Species overview: We support considering a species in its entirety. However, if a species has an extensive range and shows variation in population size and growth or decline in different areas, this needs to be presented in a proposal. There should also be a place for proponents to discuss information on genetic variation in populations, unique adaptations, intraspecific variation, etc. This should be elaborated in Annex 6, and possibly in Annex 5 as well.

Paragraph 4.1: Population size. The concept we are really concerned about is not just the number of individuals, but of effectively reproductive individuals, their success at reproducing, and recruitment into that group. In the descriptions of species' status, criteria should be

included for how population size was determined (*e.g.*, age class, reproductive status of individuals, number of individuals/ unit area). This may be very important for certain taxa (*e.g.*, tree species). In addition, habitat fragmentation can have drastic effects on population size, or the pool of interbreeding individuals in an area, and the criteria should provide for this.

Paragraph 3.4: Role of the species in its ecosystem. In addition to the proposed text, we recommend adding: “Explain if the elimination of this role will have a secondary effect that may threaten the survival of the species itself.”

Paragraph 4.1: After “population abundance”, add: “genetic variability”.

Paragraph 8.1: Management measures. Add the italicized text:
Provide details of programs in place in the range States to manage populations of the species *and habitats* in question mechanisms and criteria for the establishment and implementation of quotas, *protection of key habitat values, projected area of area habitat protected, and the effectiveness of these measures.*

Paragraph 8.4, Captive breeding: After “artificial propagation operations”, add “*including plantations.*”

Paragraph 8.5, Habitat conservation. Add: “In the case of trees, assuring that harvesting practices are designed to protect the habitat that the trees themselves provide.”