

## Review of criteria for amendment of Appendices I and II

### COMMENTS OF IWMC WORLD CONSERVATION TRUST ON THE REPORT OF THE FIRST MEETING OF THE CRITERIA WORKING GROUP AND ON PROPOSED CHANGES TO RESOLUTION CONF. 9.24

First of all, IWMC World Conservation Trust wants to congratulate the Criteria Working Group (CWG) for the excellent work it has accomplished in a very short time. The report has been reviewed by various IWMC Members and what follows is a summary of points raised.

#### General comments

**Footnote 2**, which refers to **paragraph 17** of the CWG report, indicate that ‘species’ will appear in inverted commas when it refers to the definition of the word in Article I of the Convention. This is done in the report itself but not in the draft amended resolution. This might have been useful to fully eliminate the confusion. However, as species is essentially used as defined in the Convention, this seems logical, it might have been preferable to place the word in inverted commas when used in its biological context, or to precise that qualification as it has been done under items 3. Species Overview and 4. Status and trends of Annex 6.

CITES is about international trade and the definition of the word ‘trade’ in Article I of the Convention is clear. To add ‘international’ to ‘trade’ as it has been done in some of the proposed changes, e.g. as indicated in **paragraph 18** of the report, may create some confusion. When CITES, and CITES Resolutions and Decisions refer to trade it should always be understood that the reference is to international trade, unless expressly specified otherwise. However, if it is felt really necessary to include ‘international’ when reference is made to ‘trade’, this should be done not only in the revised or added sentences but throughout the draft revised resolution.

#### Preamble

As indicated in **paragraph 16** of the CWG Report, no change to the preamble of Resolution Conf. 9.24 is proposed. Nevertheless, we have the feeling that some rewording would be useful regarding the 11<sup>th</sup> and 12<sup>th</sup> paragraphs, those concerning consultations. There are two aspects in the consultation process:

1. On one side the consultations by the Parties submitting amendment proposals;
2. On the other side the consultations by the Secretariat in relation with submitted proposals.

The consultations to be conducted by the Parties (1), or at their request, are dealt with in Resolution Conf. 8.21, as far as range States are concerned. The consultations to be conducted by the Secretariat (2) are dealt with in the text of the Convention (Article XV).

With the current wording, it is not clear, regarding intergovernmental bodies, whether they have to be consulted by the proponent Parties also or by the Secretariat only. The latter would appear more logical, although it does not mean that the proponents should not refer to publications and decisions from such bodies. This interpretation appears to have been acknowledged by the CWG as it is proposing to delete the first paragraph under item **7.2 International**, in Annex 6. In conclusion, the following wording is proposed for both paragraphs to separate the role of the proponent Parties from that of the Secretariat and to differentiate what is compulsory from what is the result of recommendations.

"RECOGNIZING that the range States of a species subject to an amendment proposal should be consulted by the proponent or on its behalf following the procedures recommended by the Conference of the Parties and that all Parties shall be consulted by the Secretariat in accordance with Article XV, paragraph 1(a), of the Convention;"

"RECOGNIZING further that the Secretariat, in accordance with the same Article, shall consult intergovernmental bodies having competence in relation to the management of marine species, and should also consult other intergovernmental bodies having a function in relation to any species subject to a proposal for amendment;"

#### The operative part

The intent of the changes proposed in **paragraph 18** of the report is well understood and supported. However, we have some concern with part of the wording. **Sub-paragraph ii)** concerns cases where there is no conclusive evidence of trade. In such circumstances how would it be possible to determine that the probable trade has a detrimental impact? This case seems to represent circumstances under which the 'species' may be affected by trade. Therefore the subparagraph should end: "... and that trade may have a detrimental impact on ... "

**Sub-paragraph iii)** seems to refer essentially to 'species' listed in Appendix I for which a transfer to Appendix II is proposed. Indeed, if the species would be listed in Appendix II or not listed at all, the existence of trade would be known. The use of the word 'demand' instead of trade is acknowledged. However, we have the feeling that it should be qualified by the word 'commercial', since non-commercial trade is possible under an Appendix-I listing. Because of that, it would be preferable, in our opinion, to replace the words 'and any international trade' by the words 'and any such (commercial) demand'.

**Sub-paragraph iv)** seems to refer also to 'species' listed in Appendix I for which a transfer to Appendix II is proposed. Therefore, here also the word 'commercial' should be added before (international) trade. In fact, the difference between sub-paragraphs iii) and iv) is rather small and may just be a semantic issue. Are both sub-paragraphs necessary?

We agree with and support the first and third **RESOLVES** proposed for addition to the operative part. We believe however that the third added paragraph should rather be a **RECOMMENDS** if it is considered as really necessary. In fact, it may be considered that it is covered by the precautionary principle under which the Parties shall act in the best interest of the conservation of the species when considering proposals for amendment of Appendices I and II. Indeed, to so act does not mean necessarily that the species must be listed.

Regarding the new **RESOLVES** concerning annotations (see also **paragraph 74** of the CWG report), we have the feeling that it does not follow what the Conference of the Parties decided at CoP11 when it adopted document Doc. 11.24, and the attached draft resolution with a few amendments. The document stated clearly, and this was approved by the Secretariat in its comment, that the new resolution should be combined or consolidated with Resolution Conf. 9.24 when it will be revised at CoP12. The new **RESOLVES** may not be considered as a consolidation. To follow the decision of the Parties we would recommend that the annotation process or conditions be included in a new annex to the revised resolution Conf. 9.24, and that the new paragraph under **RESOLVES** be amended accordingly.

If the consolidation is made as suggested in document Doc. 11.24 approved at CoP11 and as suggested above, the list of **REPEALED** Resolutions in the last paragraph of the operative part will need to be amended through the addition of the following sub-paragraph: "m) Resolution Conf. 11.20 (Gigiri, 2000) – Use of annotations in Appendices I and II".

## Annex 1

The changes proposed in **paragraphs 27 and 28** of the CWG report have not been properly inserted in the draft revised Annex 1. The new wording has been added to the current texts of criterion C and of criterion A, respectively, instead of being substituted to those texts.

## Annex 3

We support the proposed changes. However, in the first paragraph under **Split-listing**, we would recommend that the word ‘down-listing’ be replaced by the word ‘transfer’ as in CITES text and elsewhere in the Resolution under consideration.

## Annex 6

Under **A, in accordance with Article II 2(b)**, first indent : ‘section C7 Additional Remarks’ should read ‘section C11 Additional Remarks’.

Under **Annotations**, if Resolution Conf. 11.20 is consolidated with the revised resolution, as explained above, the wording of the middle sentence would need to be amended accordingly, i.e. to read: "Whether the proposed annotation is in compliance with Annex 7( ?) of this Resolution; and".

Under **3. Species Overview**, the new wording may imply the need for a Party proposing an amendment concerning a separate population, in particular of a species with a vast range, to conduct a considerable volume of work, which that Party might not have the capacity to conduct for various reasons, unless it is understood that this is strictly limited by the words ‘for appropriate context’. It appears that the meaning of these words should be clarified, as well as the precise nature of what is expected from the proponent Party, keeping in mind that the word species is essentially and adequately used in the draft resolution, as in Resolution Conf. 9.24, in accordance with the definition provided in Article I of the Convention. This remark is also applicable to item **4. Status and trends**.

Under item **8.6 Safeguards**, as suggested above about Annex 3, the first sentence should read: "In the case of proposals of transfer from Appendix I to Appendix II or of deletion from Appendix II, or ...".

## Additional comments

We have the feeling that two elements of significance, which were not subject to specific references in Resolution Conf. 9.24, have not been considered either by the CWG, although they might deserve some special consideration, in particular in Annex 6 about the Format for proposals. They are both linked to marine species.

1. The first element is in relation with species of which specimens or populations occur in **waters not under the jurisdiction of any State**.
2. The second is in relation with species subject to **aquaculture or mariculture**, a production process that may be associated with either captive-breeding or ranching. Aquaculture, considering its enormous and increasing economic importance may deserve a special treatment.

It is simply suggested here that these two elements be subject to some specific discussions.

Lausanne, 12 October 2000