

The German ministry of environment, nature conservation and nuclear power plant security has sent us their proposed revision of the criteria for the amendment of Appendices I and II.

NABU would like to comment as follows:

CITES is the only effective instrument capable of achieving an at least rudimentary protection of species. This is precisely the reason why it is important that CITES is not undermined. Even 25 years after CITES came into effect in Germany no one can claim that the majority of problems have been addressed or solved but at least in some areas damage limitation has been possible.

The list of species threatened with extinction is growing all the time. Extinction caused by human action is increasing exponentially. We are constantly robbing humanity of the necessary foundation for its existence and destroying our natural heritage.

CITES is therefore becoming more important all the time. However, conflicts of interest are also constantly on the increase.

By discussing the listing criteria we are homing in on CITES raison d'etre, since the protective status of a species determines trade restrictions and thereby the future of the species.

It is therefore essential that great care is taken when revising the listing criteria. It is impossible to comment on the wording of approximately 25 pages of text in exhaustive detail. This is why **NABU** would like to emphasize certain fundamental points and highlight certain sections of the text.

We have serious reservations about the revised text. If it boils down to a vote to decide between the old and new version, without an extensive discussion of the new wording, we would opt for retaining the old version.

It is striking that the new version would result in listing fewer endangered species, this effectively results in less protection. The **precautionary principle** is no longer given enough prominence, even though it was of fundamental importance for the founding fathers of the WA. Only the precautionary principle can guarantee a long term sustainable and wise use. It is therefore of vital importance, that this principle remains firmly in place and is neither deleted nor watered down. On the contrary it should be emphasized more strongly than ever.

"If in doubt err on the side of the species". However, in the revised version the principle is reversed. The burden of proof is not applied appropriately in many instances. A **reversal of the burden of proof** has been implemented.

Additional hurdles for declaring a species as endangered have been erected. **NABU** would like to warn against this in strongest possible terms. This is the wrong way of going about things.

Here are some examples from the text which illustrate this negative trend:

P. 2 (at top of page): The preamble which contained the precautionary principle has been deleted as has the first operational part. A new wording replaces the first operational paragraph.

However, in the new wording the phrase "precautionary principle" does not appear at all. The new version is therefore significantly worse.

Moreover, in the original version of the first operational paragraph it was stated that scientific uncertainty should not be interpreted to the detriment of endangered species, this is also in line with precautionary principle.

This element is also lacking in the new version and the burden of proof is also applied inappropriately in many instances. This adds to the precarious situation of endangered species.

The definition of "is or may be affected in trade" has been deleted in this section. In the notes it is stated that the definition has been incorporated in Annex 5. However, upon reading Annex 5 it quickly becomes apparent that hereto the definition employed until now is also destined to be deleted and replaced with a significantly shorter definition - see page 11.

The new definition is too narrow and contains once more a reversal of the burden of proof. Now it is requested to prove that trade **"has a detrimental impact on the status of the species"**. Once again the precautionary principle is neglected if not completely done away with.

In the old version: "is or may be affected in trade" meant:

- it is known to be in trade
- it is probably in trade, but conclusive evidence is lacking
- there is potential international demand for specimens,
- it would probably enter trade were it not subject to Appendix I controls.

The suspicion of relevance to trade was sufficient until now. In contrast, it is now necessary to prove that trade has a **detrimental impact on the status of the species**.

The same occurs in ii): new wording: " it is suspected to be in trade, or there is potential international demand for the species **that may be detrimental to its survival in the wild.**"

It is therefore clear that, in cases of uncertainty, a species' protective status is undermined rather than enhanced. This is unacceptable and indeed clashes with the original intention of the WA, which set out to protect species from becoming endangered by trade.

Page 3:

The new wording also tends towards neglecting the precautionary principle: "Recommends that a species should normally not be included in Appendix I when the risk of the listing is considered to outweigh the conservation benefit of the listing".

This means that a species is no longer listed when it is in need of protection, but instead a cost-benefit analysis is carried out. Such a consideration is however misplaced. This amounts to a capitulation to the vested interests of those who support intensive use.

Lacking the necessary information regarding the reasons why these sections were included in the document, we can only make some speculative remarks:

Does this mean that listing a species in Appendix 1 increases the trade value to such an extent that the demand for the species and its market value increase? And that therefore it may be preferable not to list the species or to list it in Appendix II only? This too amounts to a capitulation. Other methods must be applied in order to curtail growing demand, in particular the implementation of the relevant policies have to be adhered to at the national level - in the case of Germany paragraph § 30 a in connection with § 30 Section 1 in connection with § 20 f BNatSchG has to be taken into account.

The wording on page 3 below is also of serious concern and should be rejected:

"Resolves that Parties should not normally approve the transfer to Appendix I of species subject to review under the provisions of Resolution Conf. 8.9 (Rev.) or establish zero export quota for such species unless **the proponent, following consultation with the Animals and Plants Committee, demonstrates why the procedures outlined in Resolution Conf. 8.9 (Rev.) are not sufficient**".

Once again detrimental conditions are introduced for the proponent, who suddenly has to demonstrate and prove that other methods are not sufficient.

Therefore fewer species are listed in Appendix I.

Page 7 and 8:

The following text has been suggested:

" A The specimens of a species in the form in which they are traded resemble specimens of a species included in Appendix II under the provisions of Article II, paragraph 2 (a), or in Appendix I, **for which the proponent has demonstrated that a non-expert**, using basic identification materials and with reasonable effort, is unlikely to be able to distinguish between them".

Once again an additional hurdle has been introduced. How is the proponent supposed to present proof? On a purely practical level it is almost impossible.

About Annex 3

Split-Listing:

Split- Listing should be avoided.

Here unsolvable problems of implementation are being created. Since species are indistinguishable genetically, it means that the defense of a guilty party (that we are dealing with an Appendix II species) cannot be successfully challenged.

Since the perpetrator can only be charged if the conditions laid out in § 30 a BNatSchG are met , i.e. if he is acting either in a commercial capacity or a regular basis or if we are dealing with heavily protected species, it follows that the prosecution will come to nothing (except in cases of commercial capacity or regular basis), in cases of of split-listing. Effective species protection becomes impossible.

In the case of **migratory species** split-listing would appear to be even less meaningful or even nonsensical, since the individual population groups are indistinguishable.

For migratory species split-listing ought to be replaced with a more appropriate wording. Otherwise we have to find a wording which rules out split-listing categorically, so that it can only be applied in exceptional circumstances, and the tendency to extend it to more and more cases is brought to an end.

Annex 4: **precautionary measures**

The text in section A must not be deleted. It stresses the precautionary principle and says that "in the case of uncertainty" one should err on the side of the species.

There has to be a firm commitment to the precautionary principle and in line with this direct and unambiguous words have to be found.

Yours sincerely,

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