

Species Survival Network

*working within CITES**

for the protection and conservation of species in international commercial trade

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Willem Wijnstekers, Secretary General
CITES Secretariat
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SUBMITTED BY FAX AND EMAIL

Dear Mr. Wijnstekers,

Review of the CITES Listing Criteria Submission of the Species Survival Network (SSN)

The Species Survival Network, as an international NGO registered with the CITES Secretariat, appreciates this opportunity to provide comments to the CITES Secretariat in reference to the most recent draft revision of Resolution Conf. 9.24, as circulated in Notification to the Parties Number 2001/037. SSN considers this to be an extremely important matter crucial to the future operation and effectiveness of the CITES treaty.

In general, some of the changes proposed in the draft text are improvements (for example, the expansion of the requirement in Annex 4 that proponents of a downlisting drop any reservations to include all such cases, not merely those relating to quotas). However, we feel that there are a large number of serious criticisms that can be made against the proposed changes.

General Comments

Resolution Conf 9.24 contains very specific language with respect to the review process to be taken prior to the Twelfth Meeting of the Conference of the Parties. Although it calls for a full review, it specifically states that this review is to be "with regard to the scientific validity of the criteria, definitions, notes and guidelines and their applicability to different groups of organisms." Although it is clearly true that no resolution can prevent the Parties from looking at future changes to its language in any way that they see fit, we nonetheless believe that there was an excellent reason for enshrining these conditions for a future review into Resolution Conf 9.24, and that this language should have been the basis of the mandate for the current revision process.

Resolution Conf 9.24 in its present form represents a compromise arrived at after more than two years of intense and detailed work, 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 the CITES 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.

We therefore believe that, consistent with the language in Resolution Conf 9.24, the revision process should have focused on refining the criteria with respect to making them more applicable to a broad range of taxa. Unfortunately, many of the suggested changes in the most recent draft text seem to have been motivated not by a desire to improve the criteria in the manner requested by the Parties, but by a desire (which we believe to be a minority view) 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.

We are also concerned that many of the proposed changes in the most recent draft were neither requested by the Parties nor recommended by the Criteria Working Group. It was our understanding that, with the exception of the definitions proposed in Annex 5 arising from the second meeting of the Criteria Working Group, the current draft was to be drawn up by the Chairs of the Animals and Plants Committees in order to reflect the results of the Joint Meeting of the two Committees last December. On this understanding, the text should not have included entirely new language that was considered neither by the Parties at the Joint Meeting nor, to our knowledge, by the Criteria Working Group. We have specifically indicated these passages in our comments below.

We also consider it unfortunate that no formal report was produced as a result of the Second Meeting of the Criteria Working Group (as was done for the first meeting) so that the reasoning behind the Group's proposed changes to Annex 5 could have been made available.

Specific Comments [Numbered]

Preamble:

1. First Paragraphs: The proposed changes to these paragraphs were not proposed by the CWG, or by any Party.

The proposed text of the second paragraph should quote the language in Res. Conf. RC 9.24 in order to set out the precise justification for the review. SSN suggests:

RECALLING that Resolution Conf. 9.24, adopted by the Conference of the Parties at its ninth meeting (Fort Lauderdale, 1994) recommended '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';

2. Last RECOGNIZING: SSN recommends that the original paragraph be retained. The proposed change removes all reference to the precautionary principle in the preamble. See comments under the first RESOLVES below.

Operational Paragraphs:

3. First RESOLVES: SSN strongly recommends that the original paragraph be retained. Despite the comments of the Chairs that the proposed change makes "a stronger and more direct reference to the precautionary principle", the new language is not, in fact, a restatement of the precautionary principle at all.

The revised paragraph, unlike the original, makes no reference to scientific uncertainty, which is the key condition triggering the application of the precautionary principle as it is understood in international law. Because the degree of risk facing a species cannot be anticipated accurately, a genuine precautionary approach, based on uncertainty, must be retained in the Criteria.

The new language referring to "measures that are proportionate to the anticipated risks to the species" is self-evident, unnecessary and has nothing to do with using precaution in cases of scientific uncertainty.

4. Second RESOLVES, Paragraph (a): The suggested change was not proposed by the CWG, or by any Party.

The added language "*in accordance with Article II, paragraph 1*" is unnecessary, because Article II, paragraph 1 provides the only way to add species to Appendix I.

5. Second RESOLVES, deletion of original Paragraph (b): SSN recommends that the original language be retained

as part of the operative section of the resolution. This is not a definition, but a condition for listing (especially subparagraph (iv), which should be retained). SSN has, in addition, serious objections to the changes that have been proposed, which we believe are more restrictive than the treaty itself and violate the precautionary principle. We have included our detailed comments under the proposed definition of “affected by trade” in Annex 5 (our #25).

6. Second RESOLVES, Paragraph (c): The suggested change was not proposed by the CWG, or by any Party.

SSN recommends the original language be retained. Removing the word “any” from this criterion shifts its meaning away from encouraging the listing of all appropriate species. As the chair’s explanation of the change is that it was intended only to “clarify” the paragraph, rather than change its meaning, and as the treaty text makes clear that Article II(2)(a) should apply to “all” species that meet the specified criteria, the original wording should be retained.

7. Second RESOLVES, Paragraph (e): The suggested change was not proposed by the CWG, or by any Party.

SSN recommends the original language (original paragraph (f)) be retained. Even a small amount of trade may be detrimental for some species. The words “negligible probability” in the new draft text are too vague to be useful. They could mean either that trade is unlikely to happen, or that there is a likelihood of some small amount of trade. The proposed change is therefore less clear than the original.

8. Third RESOLVES: The suggested change was not proposed by the CWG, or by any Party.

SSN recommends the original language be retained. The proposed new language increases the burden on Parties.

9. [First New RESOLVES Proposed by CWG]: SSN agrees that this proposed paragraph should not be included.

10. First RECOMMENDS: SSN strongly opposes the inclusion of this new paragraph. It is not precautionary, and places a very difficult burden of proof on proponents.

There is little evidence that the problem this paragraph purports to address has ever occurred. If it ever does arise, Parties can consider that risk without special language. Even if such a problem were to occur it would reflect, not an inappropriate listing, but failure to enforce the treaty. The proper way to deal with such an issue is for the Parties to improve their levels of CITES enforcement and other relevant conservation measures.

11. Fourth RESOLVES: SSN opposes the inclusion of this new paragraph. As all Appendix II species are potentially subject to review, the language as worded could apply to all listed species.

Resolution Conf. 8.9, a measure that SSN strongly supports, is not, however, a legal alternative to Appendix I as suggested by the Chairs. The Parties did not give either the CWG or the Chairs a mandate to convert it into one. A Resolution cannot be an alternative to a procedure mandated by the Convention. Instead, 8.9 addresses problems with the implementation of Article IV that could, if unsolved, place a species in need of Appendix I protection. The Significant Trade Review may take years to complete, and a transfer to Appendix I should always be a possible alternative if the review is not working effectively.

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, indeed, an Appendix I listing is necessary or the conservation threat facing a species warrants immediate action.

12. Fifth RESOLVES: SSN opposes the inclusion of this new paragraph. We particularly oppose the addition of the words “on the basis of the best scientific evidence”. “Best scientific evidence” is not defined, and the third RESOLVES already states that “proposals...should be based on the best information available.” This information should include not only scientific evidence, but also data on trade, enforcement, and related issues. The rest of the proposed paragraph is self-evident and unnecessary.

13. ENCOURAGES: SSN opposes the inclusion of this new paragraph. The new language, even though it is only an "encouragement", places an additional burden on Parties, and it may well be difficult to gather the data this paragraph requires.

Annex 1: Biological Criteria for Appendix I

14. Paragraph B [original Paragraph A]: SSN supports the restoration of criterion B (i) in the most recent draft.

We oppose, however, the new language in Criterion B (iv), which is unclear and unnecessary. All life history stages are of critical importance to the survival of a species. As this criterion already applies only to small populations, any large short-term fluctuation will increase that species' vulnerability, regardless of the life history stage at which it occurs. The original wording should be retained.

Though the new language may have relevance to some fishes, it is not appropriate for most terrestrial species or for many marine species, including corals and cetaceans.

15. Paragraph C: SSN opposes the use of the term "marked decline". Its meaning is unclear, and it has not been specifically defined in Annex 5. For species with small populations, any decline, no matter how small, may pose a serious risk. A decline that may be small with respect to the total population could include high numbers of age- or sex-specific individuals, such as breeding females or herd matriarchs, whose loss could be critical to the population. The new language ignores this possibility.

The terms "decreasing reproductive potential" [in the original text of Resolution Conf. 9.24] and "decreasing recruitment" [in the current draft] have different meanings. Both terms should be retained and clearly defined.

16. [Deletion of Original Paragraph D]: SSN opposes the deletion of original paragraph (D). D is a precautionary criterion, designed to avoid premature down-listing of Appendix I species that might otherwise have to be returned to Appendix I in the near future. Despite the comments by the Chairs (that "it would be more practical to opt for inclusion in Appendix II with trade restrictions"), Appendix I provides more protection against illegal trade than Appendix II. Penalties may be stricter, and there may be fewer opportunities for laundering of illegal specimens.

Deleting 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. 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.

Annex 2: Criteria for Inclusion of Species in Appendix II in Accordance with Article II, Para 2a

17. SSN supports the retention of the original Paragraph (A).

SSN supports the retention of the term "inferred", the deletion of the term "international", and the deletion of the CWG's proposed Criterion C.

The added words "*on the basis of available information on the status and trends of the wild population(s)*" limit the type of information that may be considered, and should be deleted.

SSN disagrees with the Chairs that the new paragraph (A) incorporates former criterion (D) from Annex 1. D is a precautionary criterion, to avoid premature downlisting of Appendix I species, and should be retained in Annex 1 (see above). The paragraph as worded is not precautionary.

The original paragraph (B) should be retained. The new Paragraph B ignores the effect of harvests for reasons other than trade, and removes language on the potential detrimental impact of trade that should be retained.

Annex 2: Criteria for Inclusion of Species in Appendix II in Accordance with Article II, Para 2b

18. SSN opposes the requirement in Paragraph A that a “proponent has demonstrated” that non-experts cannot distinguish between species. This places a burden of proof on proponents, with no guidance provided on what a “non-expert” is, what “basic identification materials” are, how they might be reliably made available to non-experts, or what needs to be proven to show that the specimens are unlikely to be distinguished.

To our knowledge, there is no comprehensive set of “basic identification materials” universally available to the multitude of customs agents, fish and wildlife officers, and border guards responsible for implementing the treaty on a day to day basis. The CITES Identification Manual is not sufficiently accessible to meet this definition. In the absence of a common and universally available set of “basic identification materials,” the “demonstration” requirement proposed in revised paragraph A is meaningless. We do not see how this language is either workable or precautionary.

SSN opposes the removal of the original paragraph B from RC 9.24. Removing it will make the listing of higher taxa on the CITES appendices almost impossible, without any clear indication having been received from the Parties that this is desirable. The original language provides a clear justification for listing decisions; the replacement paragraph is meaningless and is likely to increase confusion.

Annex 3: Special Cases

19. Split-listing: SSN supports retention of the original wording in Resolution Conf. 9.24. The first sentence and last clause of the original first paragraph refer to concepts not addressed in the new language. The first sentence makes a much stronger statement about enforcement problems caused by split-listing than does the revision. The Parties have agreed that enforcement problems are sufficient reason to avoid a split listing. The last clause of the original first paragraph recommends not split-listing species so that some populations are on the Appendices and some are off. The new text says this is only undesirable when it creates enforcement problems; we believe it should be avoided in general.

The original wording makes clear that a split listing should be the exception rather than the rule. All proposals are governed by Annex 4, so a reference to it here is not necessary. 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 conservation-based justification for such a distinction. In fact transferring part of an Appendix I species to Appendix II may increase the probability of illegal trade in the remaining Appendix I populations, and should be avoided.

Annex 4: Precautionary Measures

20. [Deletion of Original Paragraph A]: SSN strongly opposes deletion of this paragraph. Its language is absolutely central to the precautionary principle, and certainly belongs at the head of any Annex dealing with precautionary measures. The revision eliminates all reference to uncertainty, the basis of the precautionary principle. SSN disagrees with the Chairs that the wording in the first RESOLVES paragraph is stronger (see comments in the operational section above).

At the Joint Meeting, no Party supported this deletion, and a number spoke out against it.

21. Paragraph A.2 [formerly B.2]: The suggested change was not proposed by the CWG, or by any Party.

SSN strongly objects to the proposed new wording. The new language is not precautionary, and completely reverses the onus of the original.

While the original resolution says species should be retained on Appendix I unless they fail to satisfy Appendix I criteria, the new language insists that they must be downlisted if they do so. Though the Chairs have commented that this reinforces the precautionary approach, it in fact does the opposite.

The deletion of Paragraph(c) would require that all quotas under this Annex be time-limited, with no guidance on what happens when these quotas expire.

Paragraph A.3 [formerly B.3]: SSN supports this change.

23. Paragraph A.4 [formerly B.4]: SSN agrees with the new language, but opposes the deletion of the original Paragraph 4, which deals with a quite different matter. Both paragraphs should be used. Not all species traded in unsustainable levels have been reviewed under Resolution Conf. 8.9.

Annex 5: Definitions, Explanations and Guidelines

24. Species: SSN does not believe that marine species proposed for listing or delisting should be split according to stock. We are concerned that the term “stock” has been included under “geographically separate population” rather than being separately defined. Stocks are non-biologically based management units, not biological populations, and specimens from different stocks may interbreed and/or be indistinguishable from one another. Further, stock boundaries may be changed under other international agreements for non-scientific reasons, thereby altering the geographical scope of listings on the CITES Appendices without input from the Parties.

25. Affected by Trade: The suggested change was not proposed by the CWG, or by any Party.

SSN supports the retention of the original language as part of the operative text (see comments above). We strongly object to the new wording.

The proposed language is more restrictive than the treaty itself. CITES does not require that trade be proven to be detrimental before a species can be listed on Appendix I, only that the species “is or may be affected” by trade (the phrase “affected by trade” only applies to listing on Appendix I, under Article II.1). Under the proposed language an endangered species known to be in trade, but for which the effect of trade is not fully understood, could not be listed on Appendix I.

Such a result violates the precautionary principle, which requires that trade should be a matter of concern for any species “threatened with extinction”, even if the precise effect of this trade is not known. Further, it is often difficult, if not impossible, to prove that trade has had a detrimental impact on a species; the proposed language raises the burden of proof on the proponent.

We further oppose the removal of original subparagraph (iv). It has been deleted on the grounds that it is “a listing criterion” and not properly part of the definition of “is or may be affected by trade.” However, the language has not been reinserted anywhere else in the text; thus, this precautionary measure has been completely removed from the resolution. As noted under the operational paragraphs above, we believe in any case that this entire section is a listing criterion, not a definition.

26. Decline: SSN supports the recognition of long-term decline, but has difficulties with other proposed changes to this definition.

The proposed language eliminates the concept of generation time, a factor of critical importance in judging a species’ decline. The IUCN criteria for endangerment, for example, rely heavily on generation time. We recommend that the words “over a time frame appropriate to the species’ life cycle and life form”, already used in the definition of “possibly extinct” (see below) be substituted for the words “over a recent time period” in the first paragraph.

No source is given for the threshold of 50% in ten years for “marked recent decline”; it is wholly inappropriate for whales, sea turtles and other long-lived species. No basis is given for the guidelines suggested in the new language.

Numerical guidelines in the original text were clearly labeled “not a threshold” as a unanimous compromise after lengthy negotiations among the Parties. No Party has asked that this clarifying language be abandoned, and it is used in other proposed definitions in this Annex. The cautionary language [*“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”*] is necessary and should be retained.

27. [Deletion of “Generation”]: Although the Chairs comment that this term is no longer used in the criteria, it is still used in the definition of “Vulnerability” and should be used elsewhere.

28. Fluctuations: Although the guidelines of “two years” and “one order of magnitude” are carried over from the original resolution, SSN believes they should be re-examined. Neither the original nor the revised language considers generation time. However, biological fluctuations cannot be properly interpreted without knowing about the generation time and recruitment rate of the species involved.

29. Near Future: SSN does not see a need to define this term, particularly in numerical terms. The 5-10 year period appears to have been chosen arbitrarily.

If the term must be defined, it should be on the basis of the biological characteristics of the species involved, including life span, time to maturity and recruitment rate, the nature of the threats the species faces. However, because these will vary on a case-by-case basis, a formal general definition of the term is unnecessary.

30. Population Issues: SSN does not, in general, see the need for the “population size” section, or the need to define “small subpopulation” or “very small subpopulation” in general terms. The individual characteristics of species should, instead, be taken into account on a case-by-case basis when considering population matters.

Sub-population: Defining a subpopulation as is done here ignores mixtures of non-breeding individuals on the feeding grounds, such as happens with sea turtles.

Population Size: Though SSN agrees that “effective population size” is a biologically meaningful concept, we believe that introducing it here will add considerably to the burden on Parties.

For most species, it is difficult enough to determine the number of animals in a population, let alone determining the number capable of reproduction, or those who are actually adding recruits to the population (which, in some species, may be only a small subset of reproductively functional adults). Even if it is possible for ongoing or future studies to estimate the number of reproductive members, baseline studies done in the past will probably not have done so. Therefore there will be no way to compare effective population sizes over time.

Excluding individuals reproductively suppressed may ignore key animals like elderly elephant matriarchs.

SSN also notes that this section ignores the direction of the Parties in Resolution Conf. 9.24 to review definitions “and their applicability to different groups of organisms”; instead, the definition adopts across-the-board guidelines without distinguishing among different groups of animals or plants.

31. Possibly extinct: The words “over a time frame appropriate to the species’ life cycle and life form” – a clear reference to generation time and recruitment rate – should occur elsewhere, in definitions of terms like “decline”.

Annex 6: Format for Proposals to Amend the Appendices

32. (2.1) Distribution: SSN prefers the original wording, “Give an estimate of the current range ...” as there are not always sufficient data available to “specify” the current range.

33. (3.5) [formerly 2.6] Role of the species in its ecosystem: SSN prefers the original wording. The emphasis should be on the impact of depletion of the population, not the potential impact of the proposal. The former wording stresses the importance of the population (as opposed to the species), a more important unit when considering ecological role.

34. (4.) Status and trends: SSN believes that in the phrase “the type of information that is required” the word “required” should be replaced by “appropriate”. There is no mechanism in the Convention for rejecting a proposal, except by a vote of the Parties, merely because it fails to meet formal “requirements”.

35. (4.1) Habitat trends: The new wording has been taken from old para 2.2, "Habitat availability". However, para. 2.2 also contained the words "give the basis for future projections". These words have been deleted. They should be retained here.

36. (4.2) Population size: The requirement to estimate numbers "differentiated by relevant age class" is often impossible to fulfill (though we note that this information is only to be given "where possible"). SSN believes that the requirement to give "date and method of census" should be retained so that the reported population sizes can be properly evaluated.

37. (5.) Threats: Assessing the "relative importance" of threats may be impossible and in any case is not relevant to the Convention, which only requires that a species be affected by trade. The reference to "relative importance", and the last sentence of the proposed language, should therefore be deleted.

38. (5.6) Actual or potential trade impacts of the proposal: The original last sentence referring to ecological impact should be retained, as the text of the Convention emphasizes the ecological role of a species.

39. (8.1) Management measures: The reference to "mechanisms for ensuring that the advice of those responsible for management of the species is taken into account" in the original text should be retained.

40. (8.2) Population monitoring: SSN believes that the original language referring to non-governmental organizations and scientific institutions should be restored.

41. (10.) Consultations: SSN objects to the new language. The requirement that Proponents must take views of inter-governmental agencies into account in their proposals is much stronger wording than the original; however, it is not clear what "take their view fully into account" actually means. If it means that the views of such organizations are to supersede those of the Parties, the requirement violates both the Convention and state sovereignty. The original language, requiring only that such organizations be consulted, should be retained.

Once again, SSN appreciates the opportunity to submit these comments to the Secretariat; we understand that all comments received from international NGOs will be circulated to the Parties, and we appreciate the Secretariat's commitment to providing this service. As always, SSN is fully willing to assist the Secretariat and the Parties in making CITES as effective as possible, and we would welcome any further opportunities to making the listing criteria vital tools in this process.

Sincerely,

Ronald Orenstein
Chair, SSN Listing Criteria Working Group

For the Board of the Species Survival Network