

The TRAFFIC Network appreciates the important opportunity to comment on the proposed changes to the Resolution Conf. 9.24 provided by CITES Notification No. 2001/037. We believe that a great number of sound improvements to the existing text have been proposed and are appreciative of the dedicated work of the CITES Criteria Working Group. However, since revision of this resolution will obviously have a significant impact on the scope and implementation of CITES, we feel that several aspects of the proposed revisions require further consideration in order to address fully the deficiencies within Resolution Conf 9.24 identified by the Criteria Working Group, Parties, the Secretariat and others. These points are addressed below following the format given in Notification No. 2001/037.

Preamble

First Recalling

We believe that it is appropriate to include a full quote from the original text of Res. Conf. 9.24, i.e. "...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."

Operative paragraphs

First Resolves

We support the aim of revising and amalgamating the text contained within this paragraph and that of the last Recognizing in the Preamble, to provide consistent guidance to the Parties in invoking and interpreting a precautionary approach to decision-making. However, we believe that a reference to uncertainty needs to be incorporated and suggests adding the language "shall take uncertainty into account and act in the best interest of the species concerned".

The phrase "...adopt measures proportionate to the anticipated risks" is ambiguous. We would prefer to see this clarified, for example, "...adopt measures that have the highest chance of enhancing the conservation of the species in practice". However, if the concept of risk is retained, we believe it is important that this term be well defined, particularly to indicate how Parties should act in situations where it may be impossible to assess (anticipated) risk, presumably to the conservation of the species. If this language is retained, the proponent (through Annex 6) is also not specifically asked to provide information on the "anticipated risks" to the species of the amendment proposed, how these would be monitored, assessed and what remedial actions would be taken would be taken if problems arise. Where applicable, provision of such information by the proponent should greatly assist the Parties in evaluating amendment proposals.

Second Resolves, new paragraph d

Since Annex 3 contains guidelines rather than criteria, the term "criteria" should be changed to "guidelines" or a similarly appropriate term. To clarify this paragraph further, it may be useful to incorporate the term "split-listings" into this paragraph so that it directly relates to the sub-title of Annex 3 to which this paragraph refers.

First Recommends

This paragraph contains a very important principle, in that there are factors other than the satisfying of the listing criteria that should be considered when evaluating amendment proposals. However, we would suggest text such as the following to aid clarification, "RECOMMENDS that

a species meeting the criteria for inclusion in Appendix I should normally be included on that Appendix unless the risk of the listing is considered to outweigh the conservation benefit of the listing.”.

Fourth Resolves

TRAFFIC has always acknowledged and given careful thought to the Significant Trade Review process when evaluating amendment proposals as one of many elements that must be considered in whether such a listing proposal should be supported. However, although this is an important factor and one that should always be considered, the proposed language suggests that transfers to Appendix I should more or less be precluded if the species is being reviewed under Resolution Conf. 8.9. Although in some cases this may be appropriate, in many cases this will not be appropriate and retention in Appendix II will not be in the best interest of the species and its conservation. Therefore, we recommend deletion of this paragraph.

In light of the potential for amendment proposals being submitted for species being reviewed under Resolution Conf. 8.9, we would support the inclusion of a section in Annex 6 requesting the proponent to state why the procedures outlined in Resolution Conf. 8.9 are not sufficient, and therefore why up-listing to Appendix I is believed to be warranted.

Annexes

Annex 1: new paragraph B, subparagraph iv

The principle contained within this subparagraph is an important one. However, we believe that it is necessary to clarify which life stages this subparagraph refers to. We therefore suggest changing the text to read “in the number of *mature* individuals...”.

Paragraph C

As with the above paragraph, it may be useful to define which “individuals” are being referred to. Such definition should of course be in accordance with the appropriate definition of “marked decline” contained within Annex 5.

Paragraph D

We appreciate the justification for removing this paragraph. However, we believe that this step needs to be carefully considered since procedures for setting and amending precautionary quotas for Appendix II species are not established, and we believe, that if this paragraph is deleted, such guidance needs to be incorporated into Annex 4. Another consideration is whether species listed in Appendix II with zero export quotas would be afforded the same degree of regulatory protection applied to Appendix I species under national legislation employed by the Parties.

Annex 2b, paragraph A

We concur with the changes proposed, with the exception of the language “for which the proponent has demonstrated”. This language is not an appropriate listing criterion and should be deleted from here, and instead be maintained as proposed in paragraph 9 of Annex 6, but with a specific reference to Annex 2b listings. It therefore falls to the COP and not the proponent to determine, based on information provided by the proponent in Annex 6 paragraph 9, and possibly supplemented by information from the technical committees, as to whether a non-expert using basic identification materials and with reasonable effort is unlikely to be able to distinguish between such species.

Annex 2b, paragraph B

We agree with the intent of broadening the application of this criterion. However, we feel that the Parties would benefit from elaboration of the term “compelling reason”.

Annex 4

New Paragraph A2

We would encourage the retention of “only” as opposed to the proposed “normally” as the inclusion of “normally” adds an unnecessary ambiguity to the criteria. This change appears to argue that down-listings could, in some as yet unarticulated situation, occur even if the Annex 1 criteria remain met OR any of the precautionary safeguards are unmet; or, not occur even if the Annex 1 criteria are no longer met AND at least one of the precautionary safeguards are met.

The only specific trade restrictions within paragraph A2 of Annex 4 are export quotas. However, the Parties may consider adopting other restrictions that are not acknowledged or incorporated into the proposed revisions within Annex 4. For example: other forms of quota such as those covering specimens introduced from the sea and re-export quotas; imposition of conditions under which export of a specified product may be carried out (e.g. Decision 11.3 regarding export of ivory); export of products obtained through non-destructive harvesting (e.g. Vicuna annotation °606). These are important mechanisms for down-listing from Appendix I and we believe that some guidance of what kinds of restrictions are allowed and the circumstances under which these may be appropriate, would be helpful.

The terms “appropriate enforcement” and “effective enforcement” are used within paragraphs A2bii and A2c respectively. We believe that it is important to define and distinguish between these terms since these relate to a selection of important precautionary safeguards that can be met when down-listing species from Appendix I. Standardising a definition of appropriate / effective enforcement across all Parties with such a diversity of resources, geography and infrastructures, etc. will of course be impossible and a pragmatic approach is vital. However, we do believe that the Parties would benefit from some general interpretation of these terms within Annex 5. For example, the term “appropriate” could be changed to make it clearer that it is about maintaining a base minimum standard level of enforcement, perhaps by using a term such as “baseline enforcement”. Likewise, the term “effective” is extremely subjective and could be made clearer to show that it is important to be both cost effective and proactive, and that a Party must be able to measure results in order to show that enforcement measures are effective.

Since there are no guidelines for these terms, it is unclear whether proponents are expected to demonstrate that enforcement is appropriate / effective in potential importing countries as well as exporting ones and other range States. By way of the information requested in Annex 6, paragraph 8.3 Control measures, this presumably applies to one or more (but not *all*) range States. We believe that it should be specified *where* effective or appropriate enforcement measures need to be demonstrated to fulfil these safeguards.

The safeguards contained within paragraphs A2bii and A2c apply to proposals to split-list species between Appendix I and Appendix II. However, in such cases it is unclear whether it needs to be determined that enforcement is appropriate / effective for the population that is proposed to remain in Appendix I, or for the population proposed for transfer to Appendix II. Presumably, appropriate / effective enforcement measures should apply to all populations within the Appendices that are under consideration. If this is the case, this should be stated to aid the evaluation of proposals by the COP regarding the scope this criterion.

New Paragraph A4

We disagree with removal of the existing paragraph 4, as this is an appropriate precautionary measure, providing a valid concept that is not duplicative to the proposed text. We would prefer to see both the existing and proposed paragraphs retained.

New Paragraph B

We note that these procedures now apply to species that have been subject to ranching proposals and we agree that this is a useful procedure to apply. However, the text contained within B1 and B2 are very similar, and feel that confusion will arise from this. For example, in B1, the technical committees are to advise the Secretariat of any problems and it is the Standing Committee that is

responsible for requesting the Depository Government to prepare remedial amendment proposals. However, in B2, the technical committees are not requested to advise the Secretariat of any problems, and they are responsible for directly requesting the Depository Government to prepare remedial amendment proposals. We question whether there is a need to have two separate procedures, and if not, would suggest retaining B1 over B2 with an expansion of the current scope of “population”, e.g. to “species”. If two different procedures are justified, it would be useful to indicate directly within B1 and B2 to which paragraph they refer – i.e. either A2c or A2d.

New Paragraph C

We remain concerned that there are no criteria within the Resolution or elsewhere under the Convention for assessing any proposal for renewing, amending or deleting such quotas. If it is deemed that the most relevant criteria by which to judge such a proposal are those in Annex 4, new Paragraph A2c (management measures and effective enforcement controls), this should be stated. If these ‘criteria’ are not considered appropriate, we believe the Parties would strongly benefit from guidance as to the appropriate criteria to use since the use of quotas will continue to be a useful and well-utilised mechanism with regards to down-listings. Note that new paragraph C should refer to “paragraph A2c above” and not to “paragraph A2d above”.

In addition to the range of restrictions utilised for down-listing species, the Parties are increasingly imposing restrictions on species in Appendix II as an alternative to up-listing to Appendix I. For example, the proposal for up-listing *Manis* spp. at COP 11 resulted in a zero export quota being imposed for the specimens of three pangolin species removed from the wild and traded for primarily commercial purposes (under annotation 612). This could be considered a precautionary measure, however, there are no guidelines or criteria for how such restrictions will be reviewed or evaluated, and we feel that such guidance is warranted.

Annex 5: Species

We are concerned regarding the broad proposed definitions for “species” and “subspecies” and feel that this important definition warrants further consideration. Our concerns relate particularly to the concept of fisheries stocks as being biologically separate units, whereas they are primarily determined on the basis of management boundaries. It is important that the Convention is able to utilise fisheries management boundaries and we feel that “fisheries stocks” be better, although not fully, suited to being incorporated under the term “geographically separate population”.

Affected by Trade

We welcome the attempt to focus the definition of “is or may be affected by trade” and concur that this be related to detriment since this definition regards inclusion of species in Appendix I only. However, we also believe that the strict requirement of showing that trade “has a detrimental impact” to be too narrow in paragraph i., and as recommended by the Criteria Working Group, would strongly support “has” being replaced by “may have”.

Decline

We appreciate the attempt to qualify this important term, but disagree with the proposed guidelines. We concur with IUCN’s comments regarding the extent, reversibility and proposed time frame for measuring decline, and suggest that the proposed text be revised in light of these concerns.

Extended period

If Annex 2a is amended as proposed, this definition should be deleted as it is no longer referred to in the Resolution.

Fluctuations

Although guidance as to the definition of “fluctuation” would be useful to Parties, the reference to “two years”, even with the disclaimer that follows, may be to be more hurtful than helpful. It will more often be inapplicable than applicable and should be reconsidered.

Generation *time*

We believe the concept of “generation time” to be of fundamental importance and should be retained. In this case, we suggest revising the definition to reflect the new IUCN definition of “generation time”.

Near Future

Again, the use of a specific period of time may be problematic for taxa with very different life histories. If the “5-10 years” is to be retained at all, it should be accompanied by a clearer disclaimer about its frequent inapplicability as found in the definition of “fluctuations”.

Annex 6

Though there is a benefit to limiting the length of each proposal, the inclusion of “normally” adds unnecessary ambiguity, and an example of when the 12-page rule should not strictly apply would be useful, e.g. a single proposal incorporating multiple taxa.

Also, given the extensive list of information requirements proposed in Annex 6, we doubt that most proposals will be able to adequately present a case for listing action that covers all of the information required within this page limitation. To add to this, the existing text that “furthermore, this means that it may not be possible to address all elements of the proposal format” is of concern, since the page limitation combined with the additional information proposed to be requested, could easily result in some critical aspects of the proposal format being omitted.

Paragraph A: Proposal

Regarding the inclusion of species under Article II 2(b), it would seem logical for information on look-alike species to be provided within paragraph 9: Information on Similar Species, and not in paragraph 11.

Paragraph A: Annotations

We suggest deletion of the word “substantive” as this is open to different interpretation, and because such information would be beneficial to all proposals containing annotations.

Paragraph 1.6: Common Names

We suggest a change of title to “Other names” since the information requested clearly expands beyond common names. We also suggest that “trade names” deserve a separate sub-paragraph, since vast numbers of species are known in trade only by their pharmaceutical or other trade names, and therefore dedicated provision of this information would clearly assist the Parties in evaluating trade in such species.

Paragraph 6.2: Legal trade

It is unclear what the term “importance” refers to e.g. economic or cultural, and this would benefit from clarification

Paragraph 9: Information on similar species

The word “informed” should be replaced by the definition in Annex 2b to which this section applies – i.e. “to expect a non-expert using basic identification materials and with reasonable effort to be able to make...”.

We hope that our comments are useful in further consideration of the revision of Resolution Conf. 9.24 and look forward to providing further input. If clarification of our comments is needed, please do not hesitate to contact us.

Best regards,

Steven Broad
Executive Director