

This letter is in response to Notification to the Parties No. 2001/037, dated 31 May 2001. In that Notification, the Secretariat requested comments from the Parties on the suggested revisions to Resolution Conf. 9.24, as generated by the Criteria Working Group and the Joint Meeting of the Plants and Animals Committees. Our comments are attached.

We appreciate the hard work of the Criteria Working Group and the Plants and Animals Committees, and the Chairmen's efforts to present a document for consideration at the next meeting of the Standing Committee. We consider this a high priority for the Parties between now and COP12. Our specific comments on the Chairmen's report are attached, but we have some general comments as well.

Resolution Conf 9.24 in its present form represents a compromise developed 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 appears to have accommodated the wishes of the Parties, effected sound conservation, and generally resulted in appropriate CITES listings for the world's fauna and flora in international trade. Furthermore, the criteria in Resolution Conf. 9.24 have been effective at both COP10 and COP11 in allowing amendments of the Appendices, including addition, deletion, transfer between Appendices of species, in most cases by consensus, further demonstrating that the criteria operate satisfactorily. We see a need for improvement (as noted in the attachment) in the original Annexes 3 and 6, and particularly 5--definitions, explanations, and guidelines. The operative text, biological criteria, and precautionary measures in Annexes 1, 2, and 3 are not, in our opinion, scientifically flawed, and we are wary of some conceptual changes in their current revisions. Furthermore, this substantive revision is not mandated by Resolution Conf. 9.24 and its final recommendation to "review the criteria, notes, definitions, guidelines, and their applicability to different groups of organisms." In fact, it seems there has been little effort within the Criteria Working Group to address the criteria's applicability to various taxa and thus offer a practical evaluation of the need for revision. In other words, the Parties are now forced to consider significant philosophical shifts in the listing criteria without an objective analysis of their current reliability for classifying species for CITES purposes.

For instance, some changes to Annex 4 (on precautionary measures) discourage proposals affecting species under review pursuant to Resolution Conf. 8.9. We believe it is inappropriate to preclude the consideration of a change in listing of a species because it has been placed in the Significant Trade Review process. Similarly, we are concerned over the proposed changes and explanatory text for Annex 2 that refer to costs and new enforcement problems associated with listing proposals. Resolution Conf. 9.24 has always been intended to provide a sound scientific basis for evaluating the long-term viability of a species, and it is inappropriate to introduce economic or administrative concerns in a scientific evaluation.

Finally, we believe that listing criteria should be precautionary, allowing the Parties to act in the interest of conserving species in the absence of complete information. Such an approach is mentioned in the original operative text and Annex 4, but is contradicted in some of the potential revisions. We make special note of this in our comments regarding the definition of "affected by trade" and the potential impact on taxa being considered for Appendix I.

Thank you very much for the opportunity to comment. We look forward to seeing the final report from the Chairmen, as well as fruitful discussions at COP12 next year.

Sincerely,

Robert R. Gabel, Acting Chief
Division of Scientific Authority

Attachment

**Comments of the United States of America
on suggested changes to Resolution Conf. 9.24
[Notification to the Parties No. 2001/37]**

General note: We would like clarification as to how the final report will be submitted to the Parties before COP12. Specifically, we are interested in knowing whether the Chairmen's and Parties' comments will be included for all to consider. We believe that some tabulation or other presentation of comments would facilitate discussions at COP12, and would avoid lengthy questions and unnecessary debate over issues that have been addressed in detail by the Criteria Working Group.

p. 3, first "RECOMMENDS": We strongly object to this new aspect of the operative text, because it requires an analysis of risk of *the listing* as a precursor to an Appendix-I proposal. We are particularly concerned that the nature of the risks to be considered or how they should be measured is undefined, whereas benefits are defined as those relating to conservation. This allows the potential for the introduction of subjective non-biological factors to preclude a biologically justifiable listing. Listing criteria should focus on straightforward biological concepts, applied in a precautionary manner to ensure the continued survival of species subject to trade. 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 prescribe how Parties should view risks or benefits of a listing, except as failure to act may affect the conservation of the species.

p. 3, second "RESOLVES": We cannot support the suggested language. We believe it is inappropriate to allow the Significant Trade Review process to interfere with the need for enhanced protection of a species whose status is deteriorating. The process of Resolution Conf. 8.9 can be lengthy, sometimes spanning several years, and an ongoing decline of the species could compel the Parties to transfer that species to Appendix I before that process is completed. The Parties may still consider information derived from the Significant Trade Review process relative to a species that is the subject of a proposal. Furthermore, allowing the submission of proposals to transfer species from Appendix II to Appendix I, even if they are subject to the Significant Trade Review process, could serve as an incentive for timely implementation of recommendations and other actions resulting from the review. If the aggregate of information available on the species, including information derived from the Significant Trade Review, does not satisfy the biological criteria or is otherwise inappropriate, we trust in the integrity and wisdom of the Parties to not adopt it.

p. 4, first "RESOLVES": We support this concept regarding annotations, but suggests additional language to clarify intent and strengthen Conf. 11.21. Specifically, we recommend adding to the end of the sentence:

“and should be harmonized with existing annotations, and be specific and accurate as to affected parts and derivatives,”

p. 6, Annex 1, original criterion D: By suggesting that Criterion D in Annex 1 is primarily used in reference to substantial illegal trade, the Chairmen's explanation ignores the effect of re-

opening legal trade in a downlisted species. If the downlisting was premature, with Parties misjudging the regulatory and enforcement controls in range countries, legal Appendix-II trade could place vulnerable species in such jeopardy that they would have to be returned to Appendix I in the near future. The logical endpoint of this, without current Criterion D, would keep a downlisted species in Appendix II until it became endangered as per the Annex 1 biological criteria. All of this could occur before the Significant Trade Review or Annex 4 review procedures addressed the factors adversely affecting the species.

The Chairmen also state that species likely to meet Annex 1 biological criteria in the near future should be placed in Appendix II with trade restrictions. Such an approach places species in Appendix II when they otherwise qualify for Appendix I, presumably as an incentive for range countries to implement management changes to achieve sustainable commercial trade in the species. While we realize that these types of listings have been accepted as a compromise when the Conference of the Parties was unwilling to support transfer of a species to Appendix I, such an approach would actually seem to complicate the way in which such species are handled without actually simplifying processes for resuming commercial trade. First, placing species in Appendix-II with zero quotas, which is often how these are handled, prohibits trade in scientific or other non-commercial specimens unless the listing is further annotated; an Appendix-I listing would allow trade in such specimens without further clarification of the listing. Second, the Chairmen's analysis also discounts the enhanced domestic protection that can be obtained through an Appendix-I listing. Appendix-I taxa are often afforded more significant protection under national laws than their Appendix-II counterparts with zero trade quotas. Finally, whether the eventual improvement in status of the species results in transfer from Appendix I to Appendix II, or elimination of a zero quota adopted by the Parties for an Appendix-II species, such a decision must be taken by the Conference of the Parties in either case and would require the same improvements in management by range countries. We see no advantage to attempting to substitute modified Appendix-II listings for Appendix I in these cases, but some disadvantages emerge. Therefore, we recommend retaining the current Criterion D.

p. 7, Annex 2a, new criteria A and B: We do not object to most of the proposed changes for Annex 2a, although we did not find the original criteria scientifically flawed. In fact, we believe that the original criterion B(ii) shows foresight and precaution when it addresses trade in a species that has been “reducing it to a population level at which its survival would be threatened by other influences.” These “other influences” include invasive species or habitat loss, which constitute major threats to biodiversity in the 21st Century but are not addressed in the current revisions. We offer the following substitute language for Criterion B:

B. It is known, or can be inferred or projected, that regulation of trade in the species is required to ensure that the harvest of specimens from the wild is sustainable and is not reducing wild populations to a level at which their survival would be threatened by other influences.

p. 8, Annex 2b, explanatory notes for Criterion A: We note that the Chairmen make reference to the “enforcement problems and costs” resulting from the adoption or non-adoption of a proposal for Appendix-II listing. As noted in our cover letter, this background text is inappropriate for an objective analysis of listing criteria. Invoking cost-benefit or financial

considerations in the CITES biological listing criteria only obscures the distinction between science and political considerations.

p. 8, Annex 3: We agree that much of the new suggested text clarifies Annex 3 and the precautionary approach in CITES. However, the first new paragraph condones split-listing only when transferring a taxon from Appendix I to Appendix II. The original text was broader and accommodated other “special cases” as necessary. We believe that the original text is preferable, understanding that the conditions in the second paragraph should be followed.

We also believe the second new paragraph (dealing with split-listing acceptability) might be enhanced with the following changes:

“In view of the potential enforcement problems 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 excluded from the Appendices, or in individuals of migratory species being in different Appendices depending on their seasonal movements.”

We believe this discourages unenforceable split-listings in migratory individuals, while diminishing the implied burden for Parties to demonstrate enforcement problems before a split-listing is adopted.

p. 11, Annex 5, “Species”:

We believe that this definition augments and clarifies Resolution Conf. 9.24 well. We would simply suggest that the following sentence be added to the second paragraph of the definition:

“Where applicable, Parties should follow the standard taxonomic references adopted by the Conference of the Parties to determine the validity and accepted nomenclature of taxa, their generally accepted taxonomic level (subspecies, species, etc.), and geographic distribution.”

p. 11, Annex 5, “Affected by trade”:

Although we are unconcerned about its placement in either the operative text or Annex 5, the we cannot agree with the new definition of “affected by trade” proposed by the Chairmen’s report. The proposed changes imply that Parties must prove that trade is or will be detrimental to a taxon in any Appendix-I listing proposal. We note that Article II.1. of the Convention only requires that these species “*may be affected by trade.*” To force a burden of proof on proponents of a listing proposal restricts the intent of Article I and runs counter to the precautionary approach described elsewhere in the resolution. In addition, the Chairmen have eliminated Annex 4’s reference to acting in the “best interest of the conservation of the species,” and modified it in the operative text by admonishing Parties to adopt measures that are “proportionate to the anticipated risks to the species.” We disagree that the proposed language offers a “stronger and more direct reference” to the precautionary approach, nor that it offers guidance to the Parties. The original text specified that uncertainty should not be used as a reason for failing to act; the new text eliminates all reference to uncertainty and imposes a burden of proof about risks before action should be initiated. We believe this is an unacceptable

and significant change in the CITES listing criteria, not asked for by the Parties at COP9, and not called for now.

We recommend retention of the original operative text definition of “affected by trade,” regardless of its placement in Annex 5 or the operative text. If changes must be made, we would offer more neutral language as below:

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.*

Information to establish the potential demand for a taxon may be obtained from historical trade patterns of the same or similar species.

p. 12, Annex 5, “Decline”: We note that a period should be inserted after the first sentence in the fifth paragraph. We suggest deleting the word “however” in the beginning of the fourth sentence, and replacing the word “but” in the same sentence with “nevertheless.” These minor editorial changes improve clarity.

p. 16, Annex 5, “Vulnerability”: We note that “extension” should be changed to “extinction” in the second paragraph. Also, the second bullet text referring to low absolute numbers of biomass or restricted area of distribution could be deleted as redundant with listing criteria in Annex 1. Another vulnerability factor could be added to the list as:

Strong aggregating behavior (e.g., fish schooling)

p. 16, Annex 6, “Annotations”: As noted above, we believe that new annotations should be harmonized with existing annotations where possible, and should specify parts and derivatives accurately and in plain language. These concepts could be re-emphasized in this section by adding this supplementary sentence at the end:

New annotations should be harmonized with existing annotations, and be specific and accurate as to affected parts and derivatives.

p. 20, Annex 6, “Utilization and trade”: We recommend an additional component for this section of species proposals to identify the parts and derivatives in trade. Such information would help Parties understand the kinds of products in trade and, if the proposal is adopted, help countries implement the listing. Specifically, an additional section (3.6) on parts and derivatives could be added as below:

"3.6 Identification of parts and derivatives in trade

To the extent possible, list parts and derivatives in trade, Customs tariff codes specific for those parts and derivatives, and major importing and exporting countries that trade in those parts and derivatives."