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On behalf of WWF-International, this letter is in response to CITES Notification to the Parties No. 2001/37, in which comments were requested from both CITES Party Governments and International Non-governmental Organisations, on possible amendments to Resolution Conf. 9.24, the current criteria for amendment of CITES Appendices I and II. We note that in Resolution Conf. 9.24, the Parties asked that the "text and annexes of this Resolution be fully reviewed before the 12th 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." We will respond to the Notification, and possible amendments to Conf. 9.24, in that context.

WWF believes that it is vital that the listing criteria for amendments of CITES Appendices I and II be scientifically rigorous, while at the same time sufficiently flexible and precautionary. It is vital that listing proposals be based on sound scientific and technical information. It is also vital that developing countries not be precluded from submitting proposals for their native species, in the interest of precaution and conservation, out of concern that sufficient scientific rigor may be lacking. Furthermore, we believe Conf. 9.24 has worked well, and any revisions must take into consideration whether they improve the ability of Parties around the world to develop and evaluate proposals to amend the CITES Appendices.

Our comments will address each section and Annex of Reso. Conf. 9.24, and the proposed amendments in Notification 2001/37. Page numbers refer to pages in the Notification.

Preamble

First "Recalling"

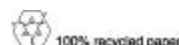
We believe that it would be preferable in the Preamble to be clear as to what review was undertaken post-COP11, and to clarify that the review was called for in Conf. 9.24, and endorsed at COP11 by the Parties. The draft amended text is not sufficiently precise. Conf. 9.24 did not recommend that the text and annexes be fully reviewed before COP12. To be precise, the correct language is "the text and 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*". This distinction is important. The Parties recognized that the validity of the criteria, notes and guidelines for different groups of organisms required review. We note that such a taxon-based review has not taken place, for a multiplicity of reasons. We recommend the following text instead of the first new paragraph in the draft revised resolution:

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';

Last paragraph of current Conf. 9.24

Acting President:
The Hon Mrs Sara Morrison
Director General: Dr Claude Martin
President Emeritus:
HRH The Duke of Edinburgh

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WWF-Fondo Mondiale per la Natura
WWF-Fondo Mundial para la Naturaleza
WWF-Fonds Mondial pour la Nature
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We do not agree with deletion of this paragraph. The retention here, in addition to later in the resolution, of the concept of the precautionary principle, is vital. Nothing is gained through its deletion.

First operative paragraph

We do not concur with deletion of the existing paragraph and the proposed substitution. The proposed revision makes no reference to scientific uncertainty, which is a key element of the precautionary principle. The proposed revision is not a restatement of the precautionary principle, and introduces new elements that are not relevant to listing of species in the CITES Appendices. Further, this paragraph would put an undue burden on developing countries, or other countries with limited resources, to undertake risk analyses prior to submission of proposals to amend the Appendices. Also, the only measures that Parties adopt pursuant to this resolution are amendments of Appendices I and II, and as such the term "adopt measures proportionate to the anticipated risks to the species" is unclear. We recognise that there are many risks to species in addition to over-exploitation for international trade, but that is the risk the CITES Convention addresses. We recognise that the original language is also not as precise as one would like, but it is preferable, clearer, and should be retained.

Second "RESOLVES", paragraph b)

We do not see how deletion of this paragraph improves the resolution, or makes it clearer for Parties as to how to prepare and evaluate proposals to amend the Appendices. We cannot support the proposed changes (which have been moved to Annex 5). We will discuss the proposed edits in our Annex 5 comments.

Second "RESOLVES", new paragraph d)

The text states that "species should be included in more than one appendix at the same time, and higher taxa should be included in the appendices only if the species or higher taxa concerned satisfy the relevant criteria listed in Annex 3)." However, Annex 3 is clearly not a list of criteria applicable to species, but rather sets out guidelines that should be followed by those making listing decisions in these special cases. This provision should thus be modified to "species should be included in more than one appendix at the same time, and higher taxa should be included in the appendices, only in accordance with the guidelines in Annex 3."

First RECOMMENDS (page 3):

We do not see the utility of this paragraph, and we recommend its deletion. This is not a criterion for listing, and is not precautionary. This also introduces the concept of risk analysis, which does not appear in the treaty, and poses an undue burden for developing countries. We also do not have credible evidence that the problem alluded to here actually exists. This is a policy issue, rather than a scientific issue. If a country believes that there will be no conservation benefit to inclusion of a species in Appendix I, it can choose to either not submit a proposal, or not support a proposal; that is separate from the scientific issue of whether or not the species qualifies for inclusion or retention in Appendix I. The paragraph should be deleted.

Last paragraph on page 3.

We are strongly opposed to this paragraph, for several reasons:



- This is virtually the same text that was proposed before the December 2000 Joint Meeting of the Animals and Plants Committee (reflected in Notification 2000/38), and was resoundingly opposed by Parties in writing and in attendance at that meeting.
- The annotated explanation in Notification 2001/37 states that the intent of this text is to strengthen Reso. Conf. 8.9 as an alternative for Appendix I listing. Such a statement unfortunately misrepresents Conf. 8.9. WWF strongly supports Conf. 8.9 (the Significant Trade Process), as a means to ensure that trade in Appendix II species is sustainable, and that Parties are effectively implementing Article IV of the treaty. That is an iterative, ongoing process however. Unfortunately, in some cases, with the best intents of the significant trade process, species decline to levels that they no longer qualify for Appendix II listing, and qualify for Appendix I. WWF notes that even with effective CITES implementation, a species may decline due to other threats (habitat loss, habitat conversion, invasive species, toxics, etc.).
- It would not be responsible conservation to preclude inclusion of a species in Appendix I if it so qualified, because another process is ongoing. The two processes are separate.
- Conf. 8.9 is not *per se* an alternative to Appendix I listing. Rather, it is an excellent mechanism that can and should be used to facilitate effective Appendix II implementation, and to work to ensure that a given species does not decline so as to qualify for Appendix I. The distinction is significant.
- Some range countries may be effectively implementing Appendix II, but populations in other countries decline precipitously and qualify for Appendix I; it would not be responsible to preclude range countries from submitting proposals to list species in Appendix I due to the existence of the Conf. 8.9 process.
- Most importantly, it is the sovereign right of any country to submit a proposal to transfer a species to Appendix I. It is not acceptable under international law to use a resolution to limit that right.

We share the desire to not see more species qualify for Appendix I. However, this proposed text is not acceptable and should be deleted.

Penultimate RESOLVES, page 4

We concur with the first portion of this sentence, that annotations should be made in accordance with the applicable Resolutions of the COP. We believe that the text "and on the basis of the best scientific advice" is not needed, however, and begs the question as to whose advice is being referred to. Perhaps it would be preferable to state, "... and on the basis of the best available scientific, technical, enforcement, and trade information."

ENCOURAGES, page 4

We support this paragraph, in that whenever relevant biological or other data are available they should be evaluated in the supporting statement of any proposal. We do not however believe this requires Parties to submit or undertake population viability analyses, or other similar assessments.

New paragraph A, subparagraph iv): Recruitment

We support the inclusion of recruitment as a factor that should be assessed.

New paragraph B, subparagraph i)

We are pleased that this paragraph has been restored. It should be noted that the Criteria Working Group was not unanimous in its suggestion to delete it, and we are pleased that it has been restored.



New paragraph B, subparagraph iv)

We do not concur with inclusion of the phrase, "in those life history stages that are of critical importance for the continued survival of the species." We are sympathetic to the concerns expressed by fisheries experts that large short-term fluctuations may occur naturally in small wild populations of highly r-selected species. If that is the case, the population will not be small (the nature of this paragraph of the Annex), the species will not qualify for Appendix I, nor will a Party submit such a proposal. Unfortunately, inclusion of this phrase may put a burden on Parties, particularly developing countries, to feel they must demonstrate which life history stage is the most important for a species; all life history stages are by definition of importance to a species' survival.

Furthermore, any life history stage is of critical importance to a species' continued survival, as consistently removing it would lead to extinction. The intention in this provision is to restrict the application of the "large short term fluctuation in number of individuals" criteria to life history stages in which these fluctuations are likely to have critical impacts on the continued survival of the species, rather than stages in which fluctuations are likely to have less impact. This could be changed to "large short-term fluctuations in the number of individuals in the life history stages in which these fluctuations are likely to have critical impacts on the continued survival of the species". However, a solution more consistent with the rest of the document is to leave this explanation to Annex 5, as for decline. This provision could then become "large short-term fluctuations in the number of individuals", with discussion of fluctuations in reproductively valuable life history stages in Annex 5.

Paragraph C, subparagraph ii)

We support the inclusion of recruitment as a factor that should be assessed.

Paragraph D

We support retention of this paragraph, as in the original Conf. 9.24. The inclusion of this concept in Annex 2a is not equivalent. Furthermore, the explanation provided by the Secretariat begs the question. The explanation states that in the case of substantial illegal trade, it would be more appropriate and practical to opt for inclusion in Appendix II with trade restrictions. That is a decision for the Parties to make, based on their evaluation of the status of the species, and other information. We do not occur that in the case of substantial illegal trade, Appendix II with trade restrictions is necessarily the best option at all. That language should be struck. For example, in the case of the tiger, snow leopard, Tibetan antelope, and other Asian species, the species are correctly in Appendix I, and we are working with others to reduce illegal trade and promote the conservation of the species. Appendix II with trade restrictions is NOT always the answer. We also note that based on much experience, Appendix I is a more effective deterrent to illegal trade than Appendix II, due to increased penalties, enforcement measures, and increased attention from the judiciary in many countries. Further, this paragraph was wisely included at COP9 as a precautionary measure designed to preclude premature transfer of a species to Appendix II. This paragraph is NOT duplicative, and must be retained.

Annex 2a: Criteria for inclusion of species in Appendix II in accordance with Article II, paragraph 2(a)



We are not convinced that the proposed amendments are any improvement over the original language in Annex 2a. We recognise that the current Annex 2a may be imprecise, but we fear extensive debate at COP12 over the proposed revisions, and the proposed revisions do not really add. The proposed revisions are also less precautionary, and decrease the flexibility of Parties to prepare and submit proposals to include native species in Appendix II.

In the current Annex 2a, the Parties included the concept of exceeding the level that can be continued in perpetuity, to reflect a need to ensure that trade is sustainable in the long-term. The proposed revisions lose this sense. Also, the current Annex 2a introduced the concept that if trade reduces a population to a level at which its survival would be threatened by other influences, then listing in CITES Appendix II is desirable. Other influences could include habitat loss or degradation, climate change effects, toxics, invasive species, or other impacts. This concept has been removed from the revision.

We also note that the CITES treaty only requires that to be included in Appendix II, a species "may become threatened with extinction". The proposed Annex 2a removes this degree of flexibility. That is not to say that we believe that thousands more species should be included in Appendix II. Many, many species that qualify will not be proposed by Party governments, but we support retaining the necessary flexibility.

Therefore, we prefer the retention of the original paragraphs A and B. If that is not possible, we prefer combining the sense of new paragraph B with the old Annex 2a.

Annex 2b: Criteria for the inclusion of species in Appendix II in accordance with Article II, paragraph 2(b)

New paragraph A is not that different from the original paragraph A, except there is a requirement for the proponent country to demonstrate that a non-expert is unlikely to be able to distinguish between them. In concept this is acceptable, but we are concerned that many countries may feel constrained as to how to demonstrate this. This should be deleted here, since a request for such information is already included in Annex 6 (the proposal format), in new paragraph 9. We would suggest expansion of that paragraph in Annex 6 instead of including this requirement here.

We do not believe that it is wise to delete old paragraph B. We believe that in cases where most species in a large taxon are already included in Appendix I or II, there is a significant burden on enforcement and customs officers if one or two species are not listed in the Appendices. This is a burden, particularly for developing countries. It is far preferable to include the entire taxon in such cases, as we believe the original language was included for just this reason. It should be retained in addition to the new paragraph B.

Annex 3: Special cases

There are some improvements here, and other changes that we recommend. We concur that split listing should be avoided. However, the first paragraph basically states that split listing is to be used when a population is transferred from Appendix I to II. However, there should be recognition, as there was previously, that enforcement problems will result whenever a species is listed in more than one Appendix, in spite of the Parties' best efforts, and in spite of any annotations. The current text in the first paragraph removes enforcement concerns, and the second paragraph appears to state that enforcement concerns only arise when some populations of a species are excluded from the Appendices. That is NOT the case; enforcement



challenges are increased in any split-listing situation. Further, we recall agreement at the Criteria Working Group meeting to include language that states, "When split-listing does occur, this should generally be on the basis of national or continental populations, rather than subspecies, and that individuals of populations of migratory species should not be in more than one Appendix." We would recommend inclusion of such language. Also, the reference to Annex 4 in the proposed revision limits the applicability of this Annex, as the issue of split-listing is far broader than the transfer of a population from Appendix I to II. We therefore suggest the following language for this Annex:

Listing of a species in more than one appendix should be avoided in general, in view of the enforcement problems and challenges it creates.

When split-listing does occur:

this should generally be on the basis of national or regional populations, rather than on the basis of subspecies; and

this should generally not result in some populations being excluded from the Appendices.

Individuals of populations of migratory species should not be in more than one Appendix.

(the last two paragraphs are not proposed to be amended, and we support that)

Annex 4: Precautionary measures

We note that the Criteria Working Group evaluated this annex, although technically the review envisaged in Doc. 11.25, Decision 11.2, and Conf. 9.24 was limited to the definitions, notes, and guidelines, and the criteria, and their applicability to different groups or organisms. We believe that the proposed revisions to this Annex are not more precautionary, nor do they improve the criteria; further, they do not deal with the applicability of the criteria to different taxa.

Previous Paragraph A

We do not concur with deletion of this paragraph. We do not agree that it is redundant. It sets the correct tone for this annex, and should be retained. The issue of redundancy of text, or editorial conciseness, is secondary to the need to be clear to parties, and to give guidance on this issue.

Further, the deleted paragraph A is substantially different in content from the text under RESOLVES in the operational part of the resolution. The deleted text makes reference to uncertainty. Uncertainty is the basic "trigger" for the application of precaution: to delete references to it effectively removes any invocation of the precautionary approach, and leaves the first half of this provision ("...the Parties shall act in the best interest of the species concerned and of its conservation") less clear. The aim of the Convention is to act in the best interest of the species concerned and of conservation. We also recall that at the December 2000 Joint Meeting on the listing criteria, no Party present concurred with deletion of this paragraph.

New paragraph A (former paragraph B)

Again, we believe that the original text is preferable, as it is more precautionary. The new language is not an improvement, and reverses the burden of proof on Parties. The original basically stated that species should be retained in Appendix I, unless they fail to satisfy the Appendix I criteria, and then they should only be transferred to Appendix II if certain precautionary criteria are met. The proposed revision is much weaker, as



it basically states that species should be transferred to Appendix II if they do not satisfy the Appendix I criteria, with a weak encouragement of one of several precautionary safeguards. We prefer the original text.

New paragraph A, subparagraph c: We concur with deletion of old paragraph c, and retention of old paragraphs d and e (new c and d).

Paragraph A.3

We concur with the proposed change in this paragraph.

Paragraph A.4

We do not support deletion of the original paragraph 4. It is NOT the same as the proposed new paragraph 4. We support retention of both paragraphs. The old paragraph 4 presents a useful concept. Further, the explanation states that "the Chairmen propose the following new text." The proposed new text is valid, but is unrelated to the sense of old paragraph 4. The Parties discussed paragraph 4 at COP9, and there was consensus to provide guidance that even if a species qualifies for removal from the Appendices, if it would result in qualifying for re-inclusion in the near future, then nothing is gained by removing it at this time. The paragraph should stay.

Annex 5: Definitions, explanations and guidelines

We support the proposed revision of the title of this Annex, to better reflect its content.

Species

We support defining the term. Although for those familiar with CITES the term is clear in the treaty, those in other disciplines have been confused as to what constitutes a listable entity under the CITES Convention, and this should provide clarity. There needs to be more discussion however regarding the term "stocks", since this generally refers not to a geographically separate population or other biological entity, but rather a management unit. Animals may be found in different stocks, but not be able to be differentiated genetically or through other means. Further, stock boundaries may be changed by other international instruments or agreements. This does not detract from our support for defining species, but rather highlights the need for further discussion of this issue.

Affected by trade

We do not support the proposed new definition of what constitutes "is or may be affected by trade", for the following reasons:

- The revision assumes that to be affected by trade, that trade must be detrimental. That may suffice for currently unlisted species, but there may be species included in Appendix II, for which CITES is being effectively implemented by range countries. If CITES is effectively implemented, the treaty requires all trade to be non-detrimental. Therefore, that species would not be affected by trade under this proposed new definition. This is a tautology that should be avoided. Trade can be positive, negative, or neutral, depending on the circumstances, management and enforcement measures in place, status of the species in the wild, etc.



- This draft new definition puts an unacceptable burden on proponent countries to prove that trade has a detrimental impact on a species. The draft text erects a very high hurdle for potential listing proposals. A proponent must actually demonstrate that trade has a detrimental impact on the status of the species. This is not acceptable: for many species gathering scientifically adequate evidence of the detriment, and the causal link between trade and detriment, is currently simply impossible.
- The Convention does not require that trade be detrimental to qualify a species for inclusion in Appendix I. The treaty clearly states that a species "is or may be affected by trade". The draft text requires that a species IS affected by trade, leaving out the MAY BE AFFECTED element. This is not acceptable, since it is inconsistent with the Convention text, which is the binding legal instrument.
- The precautionary principle would dictate that even the potential risk of harm by trade would be sufficient for inclusion or retention of a species in Appendix I, if it qualified biologically. Also, this proposed definition ignores the concept of potential demand, and whether a species might enter trade if Appendix I controls were removed. This is wisely embodied in the existing subparagraphs iii) and iv), and should not be deleted. We believe that amending this concept of what constitutes "affected by trade" does not add to the Parties' understanding, nor in any way assist in a taxon-based review (as was called for in Conf. 9.24). We therefore prefer retention of the original language.

Area of distribution

We support the proposed changes to the text.

Decline

We strongly support the proposed revisions here, as a significant improvement to the original text. We strongly support the clear definition of both extent of decline and recent rate of decline. The inclusion of the concept of extent of decline is highly important, is biologically-based, and will be useful to the Parties. We welcome the inclusion of historical extent of decline, and the concept of baseline "as far back into history as possible." This allows the Parties to assess the issue of shifting baseline, for species for which it is relevant, and brings the concepts used in wildlife management and fisheries management into the criteria.

We note that the numerical guidelines in the original text were annotated as to the fact that they are examples only, and there will be cases where they did not apply. The same sort of language should be restored for the numerical guidelines here.

Fluctuations

We do not believe that two years is useful as a definition of short term fluctuation, since it is not applicable for many species. Although it originated in the original Conf. 9.24, perhaps it should be revisited, and a function of generation time considered instead.

Near future

We do not support the proposed definition. We do not believe that it is necessary or useful to define "near future". We also believe that 5-10 years is unacceptably short for many species, particularly those that are long-lived. Currently, this is the time scale at which a species should be listed on Appendix I and commercial trade prohibited. Leaving things this late would be disastrous for many species with long generation times.



For example, by this stage, a species with a generation time of 30 years would be in serious trouble. It is in fact not possible to propose a definition of “near future” which applies across taxa and life histories, and therefore should not even be attempted. We recall that the Criteria Working Group did not reach consensus on this, and we believe it should be deleted. It creates unnecessary confusion, and is not biologically-based.

Population issues

We strongly support establishment of this section, and we applaud the effort to bring population issues under one heading in this Annex.

Population: we support the proposed revisions, as they are incorporated in the population size section that follows.

Population size

We appreciate this section, and the useful summary and guidelines that follow. We support adding the concept of effective population size, and encourage its inclusion in Annex 6 as well. Of course, not all Parties drafting proposals will be able to address effective population size, as this definition makes clear, but the concept is very useful and is biologically meaningful.

Recruitment

We support inclusion of this term in the criteria, and its definition in Annex 5.

Vulnerability

We strongly support this discussion and definition of vulnerability, and the factors provided. This is a significant improvement, and will greatly benefit Parties in preparing and evaluating future proposals.

Therefore, we recommend including in the operative portion of the resolution a paragraph that states:

"When evaluating a proposal to amend the Appendices, Parties should take into consideration the vulnerability of a species, and related taxon- or case-specific biological and other factors that affect its vulnerability."

There is one typographical error. The second sentence should read "... the extinction risk associated...", instead of "the extension risk associated".

Annex 6: Format for proposals to amend the Appendices

We support the proposed revisions to this Annex, as a significant improvement. We support asking Parties to specify which of the criteria are satisfied, and any relevant annotations, in order to assist other Parties in evaluating a proposal. The general requirement for a maximum of 12 pages is fine, but there should be some flexibility when a single proposal covers more than one species (such as in the case of a proposal to list a suite of related species, or an entire genus under Article II.2.b). We understand that the concept of vulnerability (in Annex 5) was introduced by the Criteria Working Group after Annex 6 was evaluated; we suggest that vulnerability and vulnerability factors be identified in Annex 6 as well.

New paragraph 9



We believe that the deleted text can be retained, since it can be useful to have that information, when it is relevant.

New paragraph 10

We believe that the last sentence is too harsh, and should be more flexible. We believe that the same language as that in the next paragraph should be used. We concur that relevant intergovernmental organizations should be consulted, but asking Parties to "take their views fully into account" could be misinterpreted to mean that the views of the other bodies must prevail. We know that is not the intent, and as such we recommend the following text:

Provide details of the consultation undertaken to secure comments on the proposal from any relevant competent intergovernmental organizations responsible for the conservation or management of the species. Comments received should be provided, and addressed if applicable. When comments were sought but not received in time to enable their inclusion in the supporting statement, this should be noted, as well as the date of the request.

In conclusion, we are committed to the conservation of species subject to international trade, and to ensuring the effective implementation of the CITES Convention towards that goal. We look forward to working with you on this and other CITES issues between now and COP12, and of course after. Please don't hesitate to let us know how we can work together to improve the scientific validity of the listing criteria, to enhance the conservation of species subject to international trade, while also enhancing the capacity of range countries to implement the Convention.

Sincerely,

Dr. Susan S. Lieberman
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WWF-International