

Report of the

**EXPERT CONSULTATION ON IMPLEMENTATION ISSUES ASSOCIATED WITH
LISTING COMMERCIALY-EXPLOITED AQUATIC SPECIES ON CITES
APPENDICES**

Rome, 25-28 May 2004

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at the CITES CoP13 meeting (available in English only)



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PREPARATION OF THIS DOCUMENT

This is the report of the Expert Consultation on Implementation Issues Associated with Listing Commercially-exploited Aquatic Species on CITES Appendices, held at FAO Headquarters from 25 to 28 May 2004.

Distribution:

Participants
All FAO Members
Directors of Fisheries
FAO Fisheries Department
FAO Regional and Subregional Fisheries Officers
CITES Secretariat

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ABSTRACT

The Expert Consultation on Implementation Issues Associated with Listing Commercially-exploited Aquatic Species on CITES Appendices was held at FAO Headquarters from 25 to 28 May 2004. It was held in response to the agreement by the Twenty-fifth Session of the FAO Committee on Fisheries (COFI) that an Expert Consultation should be convened to address the following issues, related to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES):

- CITES Article II Fundamental Principles, Paragraph 2(b), the 'look-alike' clause;
- Annex 3 of CITES Resolution Conf. 9.24 Criteria for Amendment of Appendices I and II, which deals with split-listing; and aquaculture issues as a group, noting the inter-relationships in these topics.
- Administrative and monitoring implications of listing and down-listing, including the implications of Annex 4 of Res. Conf. 9.24 for this. It was agreed that this should also include an analysis of the socio-economic impact of listing on sturgeon, queen conch and a number of hypothetical listing proposals.

The meeting was attended by 11 experts from 10 countries, with expertise covering the terms of reference for the Consultation, and by a member of the CITES Secretariat.

After extensive discussions, the Consultation agreed on a number of key recommendations. Amongst these were that States needed to improve communication and co-ordination between their national governmental agencies responsible for CITES implementation and those responsible for natural resource management, including fisheries. Attention was drawn to the concern of many FAO members that a sufficiently responsive and flexible mechanism for listing and de-listing is required in CITES. It was suggested that FAO could raise this concern with CITES, taking into consideration the nature of safeguard mechanisms for down-listing commercially-exploited aquatic species and the manner in which they might be applied. The Consultation discussed the approaches used within CITES to assist Customs and others in identifying specimens and species. It raised the need to examine alternative approaches that would effectively address enforcement and identification issues in a manner that would avoid unnecessary listing of look-alike species. Similarly there was examination of the potential problems for fisheries if there was inflexible adherence by CITES Parties to the guidance on split-listing. The nature and implications of CITES permitting procedures for aquaculture systems were examined.

The Consultation examined some case studies of commercially-exploited aquatic species that were on a CITES Appendix but these did not provide sufficient information on the costs and benefits of a CITES listing. It was recommended that further work on this was required. The Consultation raised the need for capacity-building to assist States to meet their obligations under CITES. Attention was drawn to the fact that implementation of the FAO Code of Conduct for Responsible Fisheries and the associated international plans of action should help to reduce the incidence of listing proposals for commercially-exploited aquatic species.

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BACKGROUND AND PURPOSE OF THE EXPERT CONSULTATION

1. This Expert Consultation was held in response to the agreement by the Twenty-fifth Session of the FAO Committee on Fisheries (COFI) that an Expert Consultation should be convened to address the following issues, related to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES):

- CITES Article II Fundamental Principles, Paragraph 2(b), the 'look-alike' clause;
- Annex 3 of CITES Resolution Conf. 9.24 Criteria for Amendment of Appendices I and II, which deals with split-listing; and aquaculture issues as a group, noting the inter-relationships in these topics.
- Administrative and monitoring implications of listing and down-listing, including the implications of Annex 4 of Res. Conf. 9.24 for this. It was agreed that this should also include an analysis of the socio-economic impact of listing of sturgeon, queen conch and a number of hypothetical listing proposals. It was suggested that participants to this consultation include those with direct experience in implementation of CITES regulations for such cases.

THE EXPERT CONSULTATION

2. The Expert Consultation was held in Rome, Italy, from 25 to 28 May, hosted by FAO, with funding from the FAO Regular Programme and the Governments of Japan, Norway and the United States of America.

3. The meeting was attended by 11 experts from 10 countries, with expertise covering the terms of reference for the Consultation, and by a member of the CITES Secretariat (see Appendix B). The Agenda adopted is included as Appendix A. Four working documents were prepared as resource material for the meeting, providing information on:

- i) the fundamental principles of CITES;
- ii) the administrative and monitoring implications of listing and down-listing;
- iii) a case study on queen conch; and
- iv) a case study on sturgeons.

4. The meeting was opened by Mr Ichiro Nomura, Assistant Director General, Fisheries Department who welcomed the participants and provided some background to the work undertaken by FAO in relation to CITES and commercially-exploited aquatic species. The text of his statement is reproduced in Appendix C.

5. Mohammed Pourkazemi was elected Chair of the Consultation and Hank Jenkins was elected vice-Chair.

OUTCOME OF THE MEETING

6. The Expert Consultation recognised that opinions differ amongst FAO Members on the potential role of CITES in relation to commercially-exploited aquatic species. The report of this Consultation should be read taking due account of this range of views.

A. INTRODUCTION

The role and mechanisms of CITES

7. The principal purpose of CITES is to ensure that international trade in specimens of wild animals and plants does not threaten their survival. CITES does this through providing a legislative and regulatory framework for international co-operation in controlling trade¹ in wildlife species listed in Appendix I, II and III of the Convention.

8. The principal decision-making body is the Conference of the Parties (CoP), which is required to meet regularly. To facilitate implementation of the Convention between meetings of the Conference of the Parties, a Standing Committee has been established and three technical committees have also been established; the Animals Committee, Plants Committee and Nomenclature Committee. Implementation is further enhanced through the adoption of resolutions and decisions.

- Appendix I includes species threatened with extinction which are or may be affected by international trade. Trade in an Appendix-I species may only be authorised in exceptional circumstances and any such trade may not be for a primarily commercial purpose.
- Appendix II includes species that may become threatened if trade is not effectively regulated. Other 'look-alike' species should be listed in Appendix II, if necessary, to ensure the effective regulation of trade in species listed in that Appendix because of trade threats. This is discussed further in paragraphs 48 to 51.
- Appendix III includes species that are subject to regulation within the jurisdiction of a Party seeking the co-operation of other States to control their exploitation through trade.

9. Proposals to amend Appendices I and II require a two-thirds majority of the Parties present and voting at a meeting of the CoP². Resolution Conf 9.24 (Rev. CoP12) resolves that, when considering proposals to amend the Appendices, the views, if any, of intergovernmental organisations with competence for the management of the species concerned should be taken into account. Any Party can unilaterally include a species in Appendix III at any time, however Parties have been requested first to consult widely with any other range States and the Plants and Animals Committees before including a species in Appendix III. A listing Party can also unilaterally remove that species from Appendix III.

CITES, FAO and commercially-exploited aquatic species.

10. FAO has been actively involved in CITES in relation to commercially-exploited aquatic species since the 9th meeting of the CITES CoP in 1994 (Resolution Conf. 9.17 on sharks). Following this, a proposal was made at the 10th Meeting of the CoP for the creation of a CITES working group for marine fisheries. In response to the concerns of some FAO Members that the CITES criteria and evaluation process might not be appropriate to deal with exploited and managed fishery resources, a process of work and engagement by FAO with CITES was subsequently initiated. This work has focused

¹ Trade under CITES is defined as import, export, re-export and introduction from the sea.

² There is also provision for decisions on amendment proposals to be taken by postal vote.

primarily on the CITES listing criteria and the scientific evaluation of listing proposals. Good progress has been made in these areas and, pending decisions to be made at CoP 13 in October 2004, a number of important recommendations proposed by FAO will be incorporated into the CITES revised listing criteria.

11. The term 'commercially-exploited aquatic species' in relation to CITES has been agreed within FAO to encompass 'resources exploited by fisheries in marine and large freshwater bodies'. In relation to the taxa 'there was full support for considering invertebrate and fish species, although some countries requested that all exploited aquatic species including marine mammals should also be considered where appropriate.'³ On the basis of those discussions, this Expert Consultation focused on fish and invertebrate species.

12. Commercially-exploited aquatic species make substantial contributions to food security, employment and income generation in many countries. The desire to minimize unnecessary or inappropriate negative impacts on those contributions was an important factor giving rise to the agreed terms of reference for this Consultation. The two case studies discussed at the Consultation give some indication of the social and economic importance of fisheries in general. Queen conch *Strombus gigas* listed in CITES Appendix II, is currently harvested commercially in approximately 25 countries and dependent territories throughout the Caribbean region. In Jamaica alone, the annual Queen Conch landings for 1998 were estimated to be worth around US\$ 15-20 million making it economically Jamaica's most valuable fishery and it creates employment for 3 000 people. The Sturgeons Acipenseriformes, listed in Appendix II, occur in Europe, North America and East Asia. There are ten range states fishing for sturgeon on the Black and Caspian Seas. The wholesale value of caviar and sturgeon flesh from the Caspian Sea range states in 2003 was approximately US\$ 60-65 million and, in the Islamic Republic of Iran alone, more than 2 000 people were employed in the fishery and directly related activities (pers. comm. M. Pourkazemi).

B. MECHANICS OF IMPLEMENTATION

Institutions and personnel

13. The Convention requires each Party to designate one or more Management Authorities and one or more Scientific Authorities.

14. The Management Authority is mandated to ensure that the provisions of the Convention are met for trade in a listed species to occur. In performing these functions, the Management Authority must, for some requirements, rely on advice from the Scientific Authority. The Management Authority may also seek advice from other appropriately qualified institutions including regional organisations.

15. Responsibility for fisheries management is often vested in a separate government department to that responsible for CITES implementation. FAO has drawn attention to the need for improved communication and co-ordination between the respective authorities in order to achieve more effective co-ordination within government. CITES has expressed a similar need and, for example, Decision 12.53 requested CITES Management Authorities to strengthen their collaboration and cooperation with appropriate fisheries agencies regarding the management of seahorse (*Hippocampus*)

³ FAO. 2000. Report of the Technical Consultation on the Suitability of the CITES Criteria for Listing Commercially-exploited Aquatic Species, Rome, Italy, 28-30 June 2000. FAO Fisheries Report No. 629. FAO, Rome.

species. The possibility for more than one Authority to be designated by a Party allows for different areas of government to be responsible for particular species.

16. The Scientific Authority is responsible for advising whether trade in a listed species will be detrimental to the survival of that species. In order to discharge this responsibility effectively, the decision-making process of the Scientific Authority must be independent of the Management Authority.

CITES permits and certificates

In general

17. International trade in CITES-listed species is regulated according to a system of permits and certificates. The particular Appendix in which a taxon is included determines the level of regulation and the nature of the trade which can be conducted.

18. Export of Appendix-I and -II species requires a finding that export will not be detrimental to the survival of the species in the wild and a legal finding that the specimen was not obtained in contravention of the laws of that State for the protection of fauna and flora. Export or re-export of an Appendix-I species also requires the prior grant of an import permit from the importing country. The import permit is granted when the importing country is satisfied that the specimen is not to be used for primarily commercial purposes. Re-export requires a certificate to be granted that the import was in accordance with CITES provisions.

19. There are specific circumstances under which certain Parties may be relieved of CITES obligations with respect to trade in marine species listed in Appendix II. This is discussed further in paragraphs 30 and 31.

20. The obligations for a Party listing a species in Appendix III are different to those for non-listing Parties. A country having listed a species in Appendix III must issue an export permit prior to the specimens being exported. Such permits are granted on the basis of a finding that the specimen has not been illegally obtained. There is no requirement for a non-detriment finding.

21. Export of Appendix-III species from non-listing Parties requires a 'certificate of origin' granted on the basis that the specimen originated in that country. A re-export certificate is required where the specimens have previously been imported.

Introduction from the sea

22. 'Introduction from the Sea' is a significant provision in the application of CITES to some marine species, and is defined as '...transportation into a State of specimens of any species which were taken in the marine environment not under the jurisdiction of any State'. To date CITES Parties have not formally clarified what constitutes jurisdictional waters and the implementation implications for commercially-harvested marine species.

23. In relation to species listed in Appendices I or II, the Management Authority of the State of introduction must grant a certificate of introduction from the sea before such an introduction takes place. The granting of a certificate of introduction requires a non-detriment finding to be made by the Scientific Authority of the State of introduction. It has not yet been clarified whether the State of introduction is the flag State of the fishing vessel concerned or the State into which the catch is first landed.

24. In respect to Appendix-II species, Article IV.7 provides for the Scientific Authority to consult with '...other national scientific authorities or, when appropriate, international scientific authorities...' with regard to the possibility of setting annual

quotas on the number of specimens able to be introduced. For certain marine species caught on the high seas there are well-developed scientific analyses of the status of stocks and estimates of the level of sustainable catch. This may be of particular relevance to species harvested on the high seas under the mandate of a regional fisheries management organisation (RFMO) and for which an annual total allowable catch (TAC) may have been set. There are cases of stocks and species that are not currently under the mandate of a RFMO and for which little is known about sustainable catch. In relation to a listed species falling within this category, CITES Parties would need to develop a coordinated approach to making a non-detriment finding.

25. The decision by a Party to grant a certificate of introduction from the sea does not require a finding to be made that the catch was legally obtained. However, CITES specimens introduced from the sea may have been taken in a manner that contravened the conservation and management measures of a regional fisheries management organisation (e.g., illegal, unreported and unregulated fishing on the high seas). A Party may decide not to grant a certificate of introduction on the basis that specimens were obtained in contravention of the requirements of national legislation and other relevant international treaties and agreements to which that State is also a Party.

26. The lack of clarity in some issues relating to introduction from the sea has not affected the practical application of the CITES provisions despite there being some species listed in Appendix I or II (e.g. basking shark *Cetorhinus maximus* and whale shark *Rhincodon typus*) that are potentially harvested from such areas. Differing interpretations of 'introduction from the sea' are however an area that requires further consideration and clarification by the Parties and is the subject of a separate FAO Expert Consultation to be held in June 2004.

Non-detriment findings

27. Article IV.2a explains that before granting a permit for trade in specimens of species included in Appendix II, a Scientific Authority of the State of export must advise the Management Authority that such export will not be detrimental to the survival of that species. Furthermore, in order to ensure that trade in specimens of Appendix-II species is not detrimental to the survival of the species in the wild, Article IV.3 requires the Scientific Authority to monitor export permits issued against actual exports and determine when such exports should be limited in order 'to maintain that species throughout its range at a level consistent with its role in the ecosystems in which it occurs and well above the level at which that species might become eligible for inclusion in Appendix I'. Whenever such determinations are made, the Scientific Authority of the exporting Party is required to advise the appropriate Management Authority of suitable measures to be taken to limit the grant of export permits for specimens of that species. One such mechanism that has been adopted is the use of annual export quotas. Export quotas may either be established voluntarily by exporting Parties, established by the Conference of the Parties or as a result of the Significant Trade Review (see paragraphs 34 to 35).

28. There is no standard formula or methodology for making non-detriment findings for Appendix-I and -II species. Resolution Conf. 10.3 contains recommendations on the types and sources of information that might be taken into account when making such findings. Management regimes for aquatic species vary in complexity from sophisticated stock assessment models reliant on extensive catch and fishery data to the application of relatively simple measures such as closed areas and minimum size limits. Depending on the nature of the resource, an effective management regime from anywhere within this range may be sufficient to support a non-detriment finding. Article 7 of the 1995 FAO

Code of Conduct for Responsible Fisheries also provides guidance for the implementation of effective fisheries management, inherent in which is non-detrimental harvesting.

29. The responsibility for determining the basis on which to make a non-detriment finding lies with each Party and hence responsibility for determining at what level harvest is sustainable. However those determinations can be and have been queried by the Secretariat and other Parties and may, following consultation with the affected Party, be subject to change.

Relationship with other conventions and treaties dealing with marine species

30. Article XIV paragraphs 4 to 6 deals with the relationship between CITES and other treaties, conventions and international agreements that relate to marine species.

31. Under paragraph 4 a Party may be relieved of its obligations relating to marine species listed in Appendix II. This exemption only applies to agreements in force at the time of the coming into force of CITES (i.e., 1 July 1975). In this respect, it should be noted that a number of fisheries conventions and agreements were in force prior to that date, for example the Inter-American Tropical Tuna Commission (IATTC) entered into force on 3 March 1950 while the International Convention on the Conservation of Atlantic Tunas (ICCAT) entered into force on 21 March 1969.

Monitoring and tracking of trade

32. An important function of the Management Authority is to maintain records of trade in specimens of listed species and submit annual reports to the CITES Secretariat detailing that trade. These data are compiled and used by a Party to monitor and assess trade in a particular species. The information is also used as a foundation for determining candidate species for the Significant Trade Review.

33. In order to clearly differentiate specimens obtained directly from the wild from those derived from other production systems, each permit and certificate must display, *inter alia*, the country of origin and source code for the specimen. These codes assist in interpreting and monitoring trade from individual countries in listed species to assess potential trade impacts on wild populations and compliance with CITES trade controls.

Significant Trade Review

34. Effective implementation of Article IV non-detriment requirements is viewed by many Parties as lying at the nucleus of the Convention, as a means of preventing movement of species from Appendix II to Appendix I and the obvious disruption this would cause to legitimate international commerce. Selected taxa are periodically reviewed by the Animals and Plants Committees and Article IV implementation problems are identified through the Significant Trade Review.

35. Recommended actions, necessary to correct identified problems, are transmitted by the Secretariat to affected exporting Parties. Depending on the nature and urgency of the problem(s), the recipient Party has a specified period in which to satisfy the Secretariat, in consultation with the Chair of the Animals Committee or Plants Committee, that it has addressed and corrected the problem(s). The process applies to all Appendix-II species. Commercially-exploited Appendix-II species of priority concern that are traded in significant numbers are likely to remain potential candidates for review and possible consequent action under this procedure.

Non-compliance with CITES obligations

36. Mechanisms are in place to address non-compliance by Parties. Non-compliance that is species-specific may result from failure to implement the recommendations resulting from the Significant Trade Review within the prescribed timeframe. Party-specific non-compliance may result from an absence of national enabling legislation, failure to provide an annual report for three consecutive years or a high level of illegal trade in listed species. In both cases, the Secretariat undertakes extensive consultation and liaison with the Party concerned. Furthermore, some assistance may be made available to Parties to help them in implementing the Convention. The two case studies demonstrate that a number of countries have encountered substantial difficulty in complying with CITES provisions. Nevertheless, CITES has provided substantial support and the case studies also showed that some countries have made considerable progress.

37. Continuing failure, or the absence of progress, to redress compliance issues may lead to Parties adopting various measures that will bring a non-compliant Party into compliance. This may include, as a last resort, a decision by the Standing Committee to recommend that Parties suspend trade either for a specific species from the Party concerned (Significant Trade Review) or suspension in all trade in listed species from a Party. Such recommendations remain effective until such time as the Party concerned demonstrates to the satisfaction of the Standing Committee that it has taken appropriate remedial action.

38. Article XIV also provides for Parties to adopt stricter domestic measures in regulating trade in listed species. Such measures may result in the requirement by the importing Party for non-detriment to be demonstrated, with a failure to do so generally resulting in suspension of imports of that species to that Party.

Application of precautionary measures (Resolution Conf. 9.24 (Rev. CoP12) Annex 4)

39. Guidelines for transferring a species from Appendix I to Appendix II are presented in Annex 4 of Resolution Conf. 9.24 (Rev. CoP12). The introductory paragraph specifically requires Parties to exercise caution in cases of uncertainty when considering amendment proposals transferring a species from Appendix I to Appendix II and the Precautionary Principle is well embodied among the parameters that have to be satisfied. For example, no Appendix-I species can be deleted from the Appendices without first being transferred to Appendix II. Furthermore, even if a candidate taxon does not satisfy the Annex 1 criteria for inclusion in Appendix I, it should remain listed in that Appendix unless a suite of specified management 'safeguards' is satisfied. These have included:

- establishment of management and export quotas, with evidence that effective enforcement measures are in place;
- allowing only the export of products obtained through non-destructive harvesting (e.g., Vicuña *Vicugna vicugna* cloth produced from wool sheared from live animals);
- imposing conditions under which export of a specified product may be carried out (e.g. one-off sales of ivory from stockpiles once specific conditions have been met); and
- specifying an importing country or countries.

40. Historically the movement of species from Appendix I to Appendix II, relative to the numbers of taxa that have been included in Appendix I, has been infrequent.

41. Viable stocks of aquatic species represent a globally important source of food security. In this context, many FAO Members have expressed concern that the precautionary approach, as applied under CITES, could be subject to extreme interpretation using worst case scenarios and have proposed a more balanced approach and practicable use of the principle. An important recommendation from FAO has been the need for a sufficiently responsive and flexible mechanism for listing and de-listing.⁴

42. In the event that a commercially-exploited aquatic species is deemed to satisfy the criteria for inclusion in Appendices I or II, mechanisms should be in place that facilitate an appropriate response time to positive changes in the conservation status of such species. Further the nature of safeguard mechanisms for down-listing of Appendix-I species and the manner in which they might be applied may form the basis of future discussions between FAO and CITES.

C. IDENTIFYING LISTED SPECIES IN TRADE

43. The problem of identifying specimens of listed species in international trade is likely to be a significant one for many aquatic species. For example, many marine species are often widely traded in a highly processed form, such as fillets, making it difficult and in some cases impossible to distinguish visually between the products from listed and unlisted species.

44. The term 'specimen' is defined in Article I of CITES. As applied to animal species, it means any animal, whether alive or dead, and in the case of animal species included in Appendices I and II, any readily recognizable part or derivative thereof. For animal species included in Appendix III, the term means any readily recognizable part or derivative thereof specified in the Appendix in relation to the species. The term 'part or derivatives' is inclusive of all body parts and any processed products derived from an animal or part thereof.

45. The Parties have agreed to interpret the term 'readily recognizable' as including any specimen which appears from an accompanying document, the packaging or a mark or label, or from any other circumstances, to be a part or derivative of a species included in the Appendices, unless such a part or derivative is specifically exempted from the provisions of the Convention (Resolution Conf. 9.6 (Rev.)). The agreed interpretation of the term clarifies that identification of a part or derivative is not limited to the ability to physically identify products in trade to the species level. For example, a cosmetic product containing sturgeon caviar may not be identifiable by Customs or other officials as including a CITES-listed species. However, since the label specifies that the contents contain caviar, it is therefore considered to be readily recognizable under CITES.

46. The effective implementation of a CITES listing is largely dependent on the ability of Customs and other officials to be able to identify specimens derived from the listed species. If such identification does not occur, illegally obtained products may be laundered under other names, or products may be fraudulently labeled. Also, there may be cases when the documents accompanying a shipment do not clearly indicate the contents of the shipment at the species level, or adequate documentation may be lacking. In such

⁴ FAO. 2000. Report of the Technical Consultation on the Suitability of the CITES Criteria for Listing Commercially-exploited Aquatic Species, Rome, Italy, 28-30 June 2000. FAO Fisheries Report No. 629. FAO, Rome.

cases, the identification to species level may be difficult and require further information to verify the contents. For example, the fins from different shark species are often traded together and may not be visually distinguishable in a dried or other processed form. Conversely, legal export of specimens can be delayed or prohibited because they cannot be visually distinguished from species that are listed in the CITES Appendices.

47. There are a number of approaches used under CITES to mitigate the potential for problems with species identification that undermine the effectiveness of a listing. The implications of some of these approaches, in particular the look-alike provision, have given rise to concerns by some FAO Members. The most effective and practical approach, or mixture of approaches, would obviously vary depending on the biological characteristics of the aquatic species and the nature of the trade in specimens derived from it.

Look-alike provision

48. Article II, paragraph 2(b), states that Appendix II shall also include other species which must be subject to regulation in order to bring about effective control of Appendix-II species. Annex 2b of Resolution Conf. 9.24 (Rev. CoP12), the so-called 'look-alike' provision, interprets the application of this paragraph whereby species should be included in Appendix II when the specimens of that species resemble specimens of a species included in Appendix II or in Appendix I. The criteria for listing are either: (a) that a non-expert, with reasonable effort, is unlikely to be able to distinguish between the species, or (b) that a species is of a taxon of which most of the species are included in Appendix II or Appendix I, and the remaining species must be included to bring trade under effective control. Once listed in Appendix II, all species are subject to the same provisions and requirements, regardless of why they were listed in the Appendix. There is no provision within CITES to list species in Appendix III for look-alike reasons.

49. Concern has been raised by some FAO Members that widespread application of the look-alike clause could lead to unnecessary negative impacts on the fishing industry, fishermen and fishing communities. Concern was also raised over the feasibility of identifying products of species included in the Appendices for look-alike reasons, and the level of monitoring and control required.

50. There are circumstances where the inclusion for look-alike reasons has been considered by the Parties to CITES to be necessary. For example, a proposal to include all species of the genus *Hippocampus* in Appendix II of CITES was adopted at CoP12. Of the 32 species listed in the proposal, 26 were included in Appendix II under the look-alike provision. This was in order to allow Customs or other officials to recognize seahorses in trade, without needing to identify the specimen to the species level. This was considered by CITES to be especially important for the effective implementation of the listing with respect to trade in dried seahorses.

51. However, there are circumstances when it may not be practical to list species under the look-alike provision. Some members of the consultation expressed concern that the current criteria for listing species under the look-alike provision may discourage consideration of other mechanisms to bring about effective control for Appendix-I or -II species. Such mechanisms could include documentation or labeling schemes similar to those used to identify specimens as 'readily recognizable' (see Resolution Conf. 9.6 (Rev.)).

Identification guides and genetic testing

52. Identification manuals are a widely used tool within CITES to assist visual identification of CITES-listed species. For example, in relation to marine species, identification manuals have been produced to assist in the identification of hard corals, sturgeons and seahorses.

53. Such guides may prove extremely useful for some specimens, but for others genetic testing may be the only means by which to distinguish CITES-listed species. For certain species, like the sturgeon, DNA tests are already being used for the purposes of tracking trade at the species level. The main difficulties with such tests are the technical resources required and the costs. It is unlikely to be feasible to implement such rigorous testing regimes as a primary means of identifying specimens. However, there is potential to use testing as a secondary method to verify whether specimens identified by visual means are derived from a listed species.

Omit certain products from an Appendix-III listing

54. Under Appendix III, the ability exists to include only certain parts and derivatives of a species in the listing. The ability to make certain products exempt from the provisions of CITES may be a useful provision for some aquatic species where there is a practical inability to identify a particular product.

Sharing of information and testing technologies

55. The sharing of information and testing technologies assists CITES Parties to address the difficulties of identifying specimens in trade. One form of sharing information and technologies is through training workshops and other capacity-building initiatives (such as the interactive CD-ROM-based Customs training programme distributed by CITES).

Labeling and other identifying marks

56. As mentioned above, labeling products in trade allows them to be 'readily recognizable' in a CITES context. Improved labeling can address concerns relating to the difficulty of identifying products in trade. For example, sturgeon caviar products are labeled as to the species content and country of origin.

57. There is a growing number of documentation and labelling laws and schemes seeking to control, identify or both control and identify the source of fisheries products in trade. There are also various catch and trade documentation schemes that have been introduced by Regional Fisheries Organizations (RFOs) that seek to either control or gather information about the source of fisheries products in trade. The ultimate goal of the fisheries sector is to have an international standard for traceability of fishery products. Standardized traceability systems, which provide product information, could be useful to overcome identification problems of processed products.

Split-listing

58. Some FAO Members have noted that the definition of 'species' in CITES is very broad and may need clarification when applied to species exploited by fisheries. The term 'species' is defined in Article I of CITES to 'means any species, subspecies, or geographically separate population thereof'. This is not a biological definition, but rather the definition that is used in the Convention *inter alia* to allow a distinction to be made in the Appendices for listing purposes.

59. CITES provides for the listing of a species in more than one Appendix, commonly referred to as 'split-listing', whereby the provisions that apply would be different depending on where the trade takes place. The term also applies to cases where some sub-populations or subspecies may be listed and another may not. Split-listings are considered a valuable tool under CITES given that the conservation status of a species may vary considerably across its range. The concept of split-listing is a common one in a fisheries context, where procedures and regulations may vary according to the stock or geographic area concerned. From a regulatory viewpoint, secure methods of marking are required to identify specimens in trade and differentiate them from specimens that are not permitted. An example of split-listing of an aquatic species in CITES is the listing of minke whale *Balaenoptera acutorostrata*. The species is listed in Appendix I, except for the population of West Greenland, which is listed in Appendix II.

60. Although Resolution Conf. 9.24 (Rev. CoP12) advises that split-listings should generally be avoided because they create enforcement problems, it also provides guidance to the Parties with regard to when a split-listing is considered necessary.

- This should generally be on the basis of national or continental populations, rather than subspecies. Split-listings that place some populations of a species in the Appendices, and the rest outside the Appendices, should normally not be permitted.
- For species outside the jurisdiction of any State, listing in the Appendices should use the terms used in other relevant international agreements, if any, to define the population. If no such international agreement exists, then the Appendices should define the population by region or by geographic coordinates.
- Taxonomic names below the species level should not be used in the Appendices unless the taxon in question is highly distinctive and the use of the name would not give rise to enforcement problems.

61. In the case of highly migratory aquatic species, a concern is the possibility that the natural movement of species may lead to their being subject to different CITES provisions by crossing a boundary. Yellowfin tuna *Thunnus albacares* provides a useful hypothetical example. There are generally considered to be two distinct stocks in the Pacific – an eastern Pacific stock and a western and central Pacific stock. If the eastern stock was listed in one Appendix and the western and central Pacific stock in another Appendix this could create significant enforcement problems. Strong and effective monitoring, control and surveillance measures would be required to ensure that fish harvested from one stock were not transhipped and claimed as having been taken from the other stock. Fisheries management is not unfamiliar with this type of challenge with many jurisdictional boundaries existing, and different management measures applying to the resource on either side of the boundary, often creating an incentive for mis-reporting. This routinely occurs for species that straddle a coastal State's waters and potentially unregulated high seas areas. Nevertheless, the complex stock structure of many commercially-exploited aquatic species could lead to additional identification and enforcement problems under a CITES listing, beyond those of normal fisheries management. Further, inflexible adherence to the guidance on split-listing described above (i.e., the invocation to avoid split-listings) could result in stocks that would not otherwise qualify for listing being placed in Appendix II.

D. AQUACULTURE AND CULTURE-BASED FISHERIES

62. Listing a species in a CITES Appendix will have implications for aquaculture and culture-based fisheries using that species. CITES requirements are designed to ensure that trade can continue in these species provided that certain conditions are met.

63. FAO defines aquaculture as 'The farming of aquatic organisms including fish, molluscs, crustaceans and aquatic plants with some sort of intervention in the rearing process to enhance production, such as regular stocking, feeding, protection from predators, etc. Farming also implies individual or corporate ownership of the stock being cultivated'⁵. Culture-based fisheries are defined as activities aimed at supplementing or sustaining the recruitment of one or more aquatic species and raising the total production or the population of selected elements of a fishery beyond a level which is sustainable through natural processes⁵.

64. There are no definitions for aquaculture and culture-based fisheries in CITES at this time. Given the broad range of types of production systems that are included in the FAO definition of aquaculture, individuals produced in aquaculture could be considered as wild collected, captive born, bred-in-captivity or ranched within CITES.

65. CITES has adopted a precise definition of the term 'bred-in-captivity' (in Resolution Conf. 10.16 (Rev.)), which applies to offspring produced in a controlled environment of parents that mated in a controlled environment and requires the capability of the captive breeding stock to reliably produce second-generation offspring in a controlled environment. Some aquaculture operations may satisfy this definition, but some others would not. However, it is important to recognize that aquaculture and culture-based fisheries do not need to meet the CITES definition in order for commercial trade in specimens of Appendix-II species to occur. This would not preclude satisfying the usual requirements for trade in an Appendix-II species.

66. For trade in specimens of Appendix-II listed species, whether an aquaculture operation meets the definition for bred-in-captivity or not will determine whether export (for commercial or non-commercial trade) occurs with an export permit or a bred-in-captivity certificate. Source codes would identify on the CITES permit or certificate the origin of the specimens. In all cases the basic requirements are designed to ensure that trade is in specimens that are legally obtained and their trade is not detrimental to the survival of the species.

67. Trade for commercial purposes in specimens of an Appendix-I listed species produced in aquaculture could only occur if the definition of bred-in-captivity is met and the operation is registered with the CITES Secretariat as an operation breeding Appendix-I species for commercial purpose. In relation to aquatic species, currently there is one fish (Asian arowana *Scleropages formosus*) and numerous species of crocodilians for which such facilities are registered with the CITES Secretariat. Registration of a captive breeding facility producing specimens of a species that has not previously been registered occurs when no Party objects to an application for registration. If a Party objects, the approval of the registration is considered by the Conference of the Parties. Trade in specimens of Appendix-I listed species for non-commercial purposes could still occur, with an import and an export permit.

⁵ <http://www.fao.org/fi/glossary/default.asp>

68. The term 'ranching' is usually defined in fisheries as stocking, usually of juvenile finfish, crustaceans or molluscs from culture facilities, for growth to market size or to maturity in the natural environment.⁵ The term 'ranching' in CITES is defined in Resolution Conf. 11.16 as the rearing in a controlled environment of specimens taken from the wild. Currently this term is used only in the context of Appendix-I species transferred to Appendix II for ranching purposes. Certain strict controls apply to ranching operations under CITES including inventory systems, adequate identification of ranched specimens through a universal marking system, evidence that the ranching operation will be beneficial to the conservation of the wild population and that related harvests will be adequately controlled and monitored. Some Parties have begun to recognize other captive rearing or population/habitat enhancement activities as forms of ranching. The present definition of ranching within CITES will be discussed at CoP13.

E. IMPLICATIONS OF IMPLEMENTING THE LISTING OF A COMMERCIALY-EXPLOITED AQUATIC SPECIES

Administrative costs

69. The financial implications of a listing for an individual Party depend on the extent to which that Party is engaged in the trade of the listed species as an exporting, re-exporting or importing State. Any such costs will primarily relate to listings in Appendix II or III given that trade in Appendix-I species occurs only in limited circumstances although illegal trade may require the application of enforcement-related resources.

70. It is difficult to separate out the costs of implementing a CITES listing as these costs and tasks are usually absorbed by countries within the overall national resource management and enforcement programmes. However, the main costs directly associated with the implementation of a listing can generally be separated out as start-up costs and recurring costs.

71. Start-up costs for a new listing may include training and capacity building for government officials, education and awareness raising of the fisheries and aquaculture sectors of the requirements for trade under the listing and, where necessary, the production of tools to assist in the identification of specimens of the species in trade. For some Parties, particularly developing countries, the implementation of listings may require new infrastructure to be put in place. In regard to listings of commercially-exploited aquatic species, there is likely to be limited experience within government and industry of implementing such listings which may require more intensive efforts, and resultant higher costs, in the initial stages.

72. The recurring costs include:

- i) research upon which to base non-detriment findings;
- ii) processing of permit applications, compilation and submission of annual reports;
- iii) inspection of imports and exports and detection and prosecution of illegal trade.

73. This financial burden usually falls more on governments, especially the Management Authority, than on the private sector when a species is listed under CITES.

74. Some problems of administration and management of CITES-listed species could result from conflicting jurisdictions of environmental and fisheries agencies, as well as the lack of clarity about the lines of responsibility. Poor communication and coordination between these agencies can have negative implications for both areas of management (as discussed in paragraph 15).

75. The administrative and human capacity, in some countries and circumstances, may have to be improved to meet the additional obligations arising from listing a commercially-exploited aquatic species under CITES. This would be the case in those countries where fisheries management is not well developed or the infrastructure is deficient. Countries, regardless of economic status, have limited resources to devote to the enforcement and control of movement of fish and wildlife across borders, with other border control activities often being accorded higher priority.

76. The case studies provided some indications of administrative costs incurred in support of CITES listings. For example, the costs of undertaking surveillance of the queen conch fishing grounds around Jamaica in support of non-detriment findings are considerable. The Consultation noted that although the case studies of costs and benefits of implementing CITES listings provided some useful insights, further studies would need to be done in order to properly understand their implications. Research costs for non-detriment findings, issuing of permits and certificates, and inspection could be high and without bilateral/multilateral assistance, some governments may find it difficult to bear these costs. Delays due to the bureaucratic processes of issuing certificates and export permits can lead to reduction in economic value in some cases. However, documentation and other formalities required for trade under CITES should facilitate the movement of species or products with minimum delay.

Management

77. The 1995 FAO Code of Conduct for Responsible Fisheries provides a comprehensive guideline for fisheries management in countries where it is being implemented. CITES requires non-detriment findings which use the best available fisheries information and research data (see paragraph 28). Due to the practical realities in many developing countries where there is insufficient management capacity, when species are listed under CITES, Parties may need assistance to put the necessary management measures in place. In accordance with the Code of Conduct these measures should be included in an appropriate management plan. Where fisheries management is deficient, a CITES listing by itself does not solve the management problems. However, it may, under certain circumstances, contribute to more responsible management of the resources, as in the case of the queen conch fisheries of Jamaica. Management measures for CITES-listed species may also, under some circumstances, have benefits for other fisheries resources as well, resulting in an overall improvement in management for non-CITES-listed species.

78. Regulation of fishing pressure, including exploitation for international trade, may not help in addressing population declines resulting from habitat degradation, such as pollution and siltation. These factors may play significant roles in depletion of fisheries resources such as sturgeon and seahorses.

Social and economic implications of listing a commercially-exploited aquatic species

79. Fisheries, including aquaculture, provide a vital source of food, employment, recreation, trade and economic well-being for people throughout the world. Listing of commercially-exploited aquatic species under CITES may have implications for employment, income and food security, particularly in many developing countries. A listing in Appendix I will have immediate impacts because it results in a ban on commercial trade, while stock recovery may deliver socio-economic benefits in the longer term. Appendix-II listings may have initial negative impacts, but may deliver medium to long term benefits.

80. In the international market, a CITES listing may improve the flow of legally obtained products and reduce the chances of entry of illegally obtained products, which may increase the chance of stock recovery. In some countries, caviar exports from the Caspian Sea have benefited the processors and exporters in terms of higher prices from this CITES-listed species, although consumers may have borne these price increases. There is also the potential for reduced export income as a result of a listing. This could be a matter of concern for countries who are dependent on fish exports for foreign exchange, many of which are developing countries. This could lead to a reduction in employment opportunities and income of fishers, fish farmers, and fishworkers who are dependent on these species for a livelihood.

81. Listing of species under CITES may lead to the creation of illegal markets for some species. Domestic policy and regulation of a fishery, in response to a listing of a species in CITES, could convert *bona fide* fishers into poachers as occurred, for example, in queen conch in Jamaica, with significant socio-economic implications, unless there is effective education and strict control of such illegal activities.

82. There is a range of national regulatory interventions that may be generated in response to a CITES listing. Some of these may result in restructuring of fisheries with attendant adjustment costs. Fishers may have to bear such costs to a greater extent than processors and exporters as, for example, they may have to acquire new fishing gear, move to new fishing grounds, and target new species. As a consequence, the associated communities may have difficulty in readjusting to this new situation. It was suggested by some delegates that this occurred in India with regard to seahorses. In Jamaica, a quota management system was required in order to manage queen conch fisheries under CITES. However, the quotas were allocated mainly to larger companies resulting in a drop in the total number of processing plants, and consequently a reduction in employment. Social implications of such quota allocations are being studied. In formulating regulations to comply with a CITES listing, national authorities and, where appropriate, Parties should make every effort to mitigate any undesirable social and economic effects.

83. The consequences of fishing pressure falling on non-CITES-listed species should be carefully considered. This may be acceptable in the case of under-utilised fisheries resources, but would have negative consequences for fisheries under stress. In this context, providing training and alternative employment to fishers outside the fishing sector should be considered. Suitable incentives, including time-bound and targeted subsidies, may help fishers to move, when necessary, from currently exploited CITES-listed species to other sources of livelihood.

84. Different countries take different approaches to deal with the financial implications of a listing. Such financial implications may not need to be borne solely by the Government. The use of mechanisms, such as the 'user pays' principle, including permit application fees, to recover all or part of the costs associated with implementing a CITES listing is one approach used by some countries, including some developing States. In such an approach, consideration should be given to the ability of the various users to pay. For example, in the case of queen conch in Jamaica, the private sector has been paying for stock assessments in the fishing grounds in support of non-detriment findings.

F. RECOMMENDATIONS

85. The Expert Consultation agreed on the list of recommendations below that draws attention to actions that it considered would lead to improvements in the implementation of CITES listing of commercially-exploited aquatic species. FAO may wish to consider this list and possible follow-up action where appropriate.

1. States should, where necessary, consider and adopt protocols that lead to improved communication and co-ordination between national governmental agencies responsible for CITES implementation and those responsible for natural resource management, including fisheries.
2. Where appropriate, States should consider the utility of designating the government agency or agencies responsible for freshwater and marine species management as CITES Management Authority or Authorities for such species.
3. Clarification is needed of the terms '...the marine environment not under the jurisdiction of any State' and 'transportation into a State' in the definition of 'introduction from the sea' in Article I of CITES. It was noted that an FAO expert consultation will be addressing this in June 2004.
4. FAO may wish to request CITES to consider ways to ensure that there is sufficient responsiveness and flexibility in mechanisms for amending the Appendices with respect to commercially-exploited aquatic species.
5. FAO and CITES may want to give consideration to the nature of safeguard mechanisms for down-listing commercially-exploited aquatic species from Appendix I to Appendix II and the manner in which they might be applied.
6. States should take note of the array of initiatives that FAO and CITES have undertaken or are undertaking to assist Customs and others in identifying specimens and species, and to continue to work towards an international standard for traceability of fishery and aquaculture products.
7. FAO may wish to request CITES Parties considering the listing of species for look-alike reasons to examine alternative approaches that would effectively address enforcement and identification issues to avoid unnecessary listing of look-alike species.
8. CITES Parties may want to give consideration to FAO's concern that inflexible adherence to the guidance on split-listing (i.e. the invocation to avoid split-listings that list some populations, but not the rest) could result in aquatic species or stocks that would not otherwise qualify for listing being placed in Appendix II.
9. States should take note that CITES permitting procedures are flexible and are able to address trade for a wide range of aquaculture systems. The aquaculture sector and CITES Authorities should strive for greater communication and coordination to ensure this flexibility is maintained.

10. Consideration of the case studies did not provide sufficient information on the costs and benefits of a CITES listing. It is, therefore, recommended that studies could be made on the following: (a) the impacts of listing commercially-exploited aquatic species on CITES appendices, on employment, income and food security in developing countries to understand the costs and benefits to fishing communities from such listings; and (b) the costs and benefits for research associated with non-detriment findings, processing of permits and certificates, and inspections of imports and exports.
11. Where a listed species within a range State is not subject to fisheries management regulation, or where such regulation is inadequate, capacity-building within that State should be undertaken to assist it to meet its obligations under CITES. In particular, assistance should be provided to developing countries in this circumstance.
12. Implementaton of the FAO Code of Conduct for Responsible Fisheries and the associated international plans of action should help to reduce the incidence of listing proposals for commercially-exploited aquatic species. FAO should continue its efforts to ensure the progress in this direction, including the provision of assistance, where necessary, to developing countries.
13. States may want to consider for CITES-listed species whether to use mechanisms, such as the 'user pays' principle, to recover all or part of costs associated with processing permits, conducting research studies for non-detriment findings, and inspecting import and export shipments.

G. ADOPTION OF THE REPORT

86. The report of the Expert Consultation was adopted on 28 May 2004.

Agenda

1. Opening of the Expert Consultation
2. Welcome by Mr Ichiro Nomura, Assistant Director-General, FAO Fisheries Department, FAO
3. Introduction of participants and nomination of Chairperson and Vice Chairperson of the meeting
4. Adoption of the Agenda
5. Review of the draft structure for the report of the Consultation; discussion and decision on the structure of the report
6. Constitution of the working groups, allocation of duties and designation of chairperson/moderator and rapporteur for each working group
7. Split into working groups. Drafting of sections of report in those working groups
8. Drafting of the report
9. Working groups present progress reports and discussion
10. Working group finalize sections of the report
11. Secretariat consolidates draft report
12. Adoption of the report

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Welcome by Mr Ichiro Nomura, Assistant Director-General,
FAO Fisheries Department, FAO

Distinguished experts,

It is my pleasure to welcome you to this Expert Consultation on “Implementation Issues Associated with Listing Commercially-exploited Aquatic Species on CITES Appendices”

Many of you here have worked closely with CITES in the past and I will not attempt to give you any background on that Organization which you know so well. You may not, however, be as familiar with the work that FAO has been undertaking in relation to CITES and commercially-exploited aquatic species. FAO has been working on this topic since shortly after the 10th session of the CITES Conference of Parties in 1997 in Harare, Zimbabwe. At that meeting a proposal was tabled for the creation of a CITES working group for marine fisheries. The proposal was motivated by concerns that some commercially-exploited fish species might qualify to be listed on the CITES appendices.

Some FAO Members were concerned that the CITES criteria and evaluation process might not be appropriate to deal with exploited and managed fishery resources and brought the matter to the next meeting of FAO Members. That was the COFI Sub-Committee on Fish Trade in Bremen, Germany in June 1998. There it was proposed that FAO should consider the suitability of the CITES listing criteria for commercially-exploited aquatic species and the need for amendments to or appropriate interpretation of the CITES criteria in relation to such species. This marked the start of an intense and fruitful, but often difficult, engagement by FAO with CITES.

Most of the work that FAO has been undertaking up until now has been on the listing criteria and the Organization has proposed some significant improvements to the listing criteria for application to commercially-exploited aquatic species. Those recommendations have, so far, been well-accepted by CITES and included in their draft, revised criteria for consideration by the 13th Conference of the Parties in October. In the same field, in July this year FAO will, for the first time, undertake a formal scientific evaluation of listing proposals for four taxa of marine fish and invertebrates that have been submitted for consideration by CoP-13. Again, that contribution from FAO is being encouraged by CITES.

This Expert Consultation marks a new direction in FAO work on CITES and is the first major activity by FAO that goes beyond the criteria and listing process and focuses instead on what happens if and when a commercially-exploited aquatic species is listed on one of the three Appendices. Regulation of trade in many commercially-exploited aquatic species will present particular problems that need to be considered and many fisheries agencies are still unfamiliar with the role and mechanisms of CITES. This Consultation is intended to address both of these problems.

The particular issues identified by COFI for consideration at this Consultation include:

- the implications of the “look-alike” clause and spilt-listing;
- aquaculture and the implementation of a CITES listing;

- the administrative and monitoring implications of listing and down-listing, including the implications of Annex 4 of Res. Conf. 9.24, dealing with the precautionary approach; and
- the socio-economic implications of a CITES listing.

You have been selected, as a personal capacity and not as a representative of the organization you belong to, on the basis of your particular expertise in one or more of these topics and FAO is looking to you to help us to advise and inform Members on the issues, the problems that they are likely to encounter, and means to minimise any negative implications and difficulties in implementation. The report from this meeting will, I am sure, be received with considerable interest by the 26th Session of COFI early next year. Finally, I would like to thank you all for giving up your time to help us in this important task. I would also like to thank the governments of Norway Japan and the United States for their budgetary contribution in which made the convening of this important consultation possible. We look forward to receiving the results of your deliberations.

I wish you a fruitful and enjoyable meeting.

The Expert Consultation on Implementation Issues Associated with Listing Commercially-exploited Aquatic Species on CITES Appendices was held at FAO Headquarters from 25 to 28 May 2004. It was held in response to the instruction by the Twenty-fifth Session of the FAO Committee on Fisheries (COFI) that an Expert Consultation should be convened to address the following issues, related to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES):

- CITES Article II Fundamental Principles, Paragraph 2(b), the 'look-alike' clause;
- Annex 3 of CITES Resolution Conf. 9.24 Criteria for Amendment of Appendices I and II, which deals with split-listing; and aquaculture issues as a group, noting the inter-relationships in these topics.
- Administrative and monitoring implications of listing and down-listing, including the implications of Annex 4 of Res. Conf. 9.24 for this. It was agreed that this should also include an analysis of the socio-economic impact of listing on sturgeon, queen conch and a number of hypothetical listing proposals.

After extensive discussions, the Consultation agreed on a number of key recommendations addressing issues such as: the need within States for improved communication and co-ordination between their national governmental agencies responsible for CITES implementation and those responsible for natural resource management, including fisheries; concerns by FAO Members on the need for a sufficiently responsive and flexible mechanism for listing and de-listing; approaches to minimise potential problems associated with implementation of the look-alike clause and inflexible avoidance of split-listing; aquaculture and CITES; the social and economic implications of a CITES listing; and others.

