CITES and Commercial Fisheries

Relationship between CITES and FAO and RMFOs

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Foreword

This paper has not been prepared as a contribution to the review of the CITES criteria for amendment of Appendices I and II. It is published relative to the broad discussion surrounding the potential listing of commercially-exploited marine resources and the related potential conflict between CITES and the fisheries community, in which the review of the criteria is playing a significant role. Nor was it prepared to indicate that everything is fine in fisheries and that, therefore, there is no need to list marine species in CITES appendices. Its purpose is to explain how CITES works and how it would or could affect the fisheries community if such resources would be included in CITES appendices without the agreement or support of the latter. It is primarily directed to the representatives of the fisheries community, whose knowledge of CITES is, in general, insufficient. It is hoped that this paper would help them to act efficiently at all levels to achieve their own objectives and to prevent them measures they do not consider appropriate, if not counterproductive, from being imposed upon them.

Introduction

During the time the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) was in preparation, a process started in the early 60's, as well as at the plenipotentiary conference (Washington, D.C., March 1973) where it was adopted, it became obvious that, for various reasons, the coverage of marine species subject to large-scale fisheries was not envisaged. No such species were included in the Appendices I and II adopted at that time.

Nevertheless, considering how the Convention is drafted, there is no doubt that any wild animal or plant species, including those living in the high seas, may be listed in CITES appendices, with the condition however, in principle at least, that they are or may be affected by trade, as this latter term is defined by the Convention. This is recalled by the Conference of the Parties to CITES in the preamble of its Resolution Conf. 9.24 on Criteria for amendment of Appendices I and II. In Washington already, a number of marine species were included in Appendices I and II, in particular whales and sea turtles, and even a few fishes such as the coelacanth, which certainly had and still has a commercial value but is not subject to a large-scale fishery.

In addition, when CITES makes reference to marine species and to intergovernmental bodies having functions in relation to those species, or to other treaty, convention or international agreement that afford protection to marine species, it is clear that the reference is essentially to whales, the International Convention for the Regulation of Whaling, and the International Whaling Commission (IWC), although neither the treaty nor the institution is ever mentioned in the CITES text. The only treaty expressly mentioned is the Law of the Sea, a reference that says that nothing in CITES shall prejudice the present and future claims and legal views of any State concerning the Law of the Sea and the nature and extent of coastal and flag State jurisdiction.

Although CITES has not been changed since its inception, except on a point not relevant to the issue under consideration, the idea that commercially-exploited marine fish species should be included in the appendices emerged around 1990 and has made serious progress since 1992. This was

undoubtedly the result of an increased pressure from certain NGOs, which might have been genuinely concerned by problems linked to the exploitation of the marine resources or which found in CITES a forum for the exposure of their views and philosophies unequaled in the field of conservation and protection of wildlife particularly when compared to FAO and Regional Fisheries Management Organizations (RFMOs). They were able to persuade a few governments to support their views and to submit some amendment proposals, although not with the success they expected.

At the eighth meeting of the Conference of the Parties to CITES (CoP8, Kyoto, 1992), Sweden proposed the listing of the Atlantic blue-fin tuna partly in Appendix I and partly in Appendix II. The proposal was, however, withdrawn with a commitment by the International Commission for the Conservation of the Atlantic Tuna (ICCAT) to take appropriate measures in favour of the species, which it did, at least to some extent. The proposal was however re-submitted by Kenya, for consideration at CoP9 (Fort Lauderdale, 1994), but withdrawn a few days later. At CoP10 (Harare, 1997), the United States of America proposed the inclusion in Appendix I of all Pristiformes but the proposal was largely rejected. In addition, the United States proposed the establishment of a working group on marine fish species. This was also rejected. On the other hand, the proposal by Germany and the United States to include all Acipensiformes in Appendix II was accepted by consensus. It was supported in particular by the largest producers of caviar, the main sturgeon product occurring in international trade. Finally, at CoP11 (Gigiri, 2000), the listing in Appendix I or II of three shark species was proposed by Australia, the United Kingdom and the United Sates. The three proposals were rejected, although the basking shark *Cetorhinus maximus* proposal lost by a very short majority.

After the rejection of its proposal to include the basking shark in Appendix II, the United Kingdom requested its inclusion in Appendix III. This entered into force on 13 September 2000. Apart from animals, dead or alive, which are, by definition, subject to the provisions of Article V of the Convention on the regulation of trade in specimens of species included in Appendix III, the United Kingdom asked that fins and parts of fins only be subject to CITES controls, as made possible by Article I, paragraph (b) (ii). It is worth noting that CITES does not cover the trade in specimens of Appendix-III species taken in international waters.

To present a complete explanation of CITES' relationship with marine species, it is necessary to add that all stony corals were included in CITES Appendix II at CoP5 (Buenos Aires, 1985), except the black coral which was already listed in Appendix II at CoP3 (New Delhi, 1981). Giant clams (Tridacnidae) were all listed in Appendix II at CoP4 (Gaborone, 1983) and CoP5 and the queen conch *Strombus gigas* was included in Appendix II at CoP9 (Fort Lauderdale, 1994). Although these species, as well as Acipenseriformes, are subject to significant international trade, they can not be put in the category of marine species subject to large-scale global fisheries. None of them were included in CITES appendices in spite of the opposition of the main range States and of nations with an important fisheries industry, and none were subject to reservations.

In conclusion, possibly with the exception of the basking shark which has just been included in Appendix III, it may be said that no marine species subjected to a large-scale fishery is listed in CITES appendices, in spite of some serious efforts.

How the Concerns of the Fisheries Community Emerged:

In view of the above conclusion, one may wonder why the fisheries community (States, organizations, industries, people) should be concerned by CITES, a phenomenon that has emerged only recently, although opposition expressed at several meetings of the Conference of the Parties has to be kept in mind. The fisheries community might consider it sufficient merely to attend the

meetings at which listing proposals regarding marine resources are considered to guarantee that a majority of Parties will successfully oppose their adoption.

However, after the adoption by CITES of new criteria for amendment to Appendices I and II at CoP9 (Resolution Conf. 9.24) and in spite of the failed attempt to create a working group on marine species at CoP10, and certainly also in view of the increased efforts of certain NGOs to have fish species listed in CITES appendices, a number of delegates and observers came to the conclusion that some of the criteria present dangers for the fishing industry, in particular the biological criteria for inclusion in Appendix I.

The Sub-Committee on Fish Trade of the Committee on Fisheries (COFI) of FAO, at its meeting in Bremen, in 1998, was alerted and a review of the criteria was proposed. The Subcommittee appointed "an ad hoc group to make suggestions on how such a process of scientific review might best be pursued, leading perhaps to proposals for amendment to and/or appropriate interpretation of the CITES criteria in the context of marine fish species under large-scale commercial harvest". The FAO ad hoc Group met in November 1998 in Cape Town and suggested steps for scientific review of the current CITES criteria. The suggestions were considered at the 23rd session of COFI (Rome, February 1999) and were endorsed.

It is worth indicating at this stage that, in accordance with Resolution Conf. 9.24, the text and the annexes of this Resolution should be fully reviewed before CoP12 (scheduled for the second half of 2002) with regard to the scientific validity of the criteria, definitions, notes and guidelines and their applicability to different groups of organisms. At CoP11, terms of reference for the review were adopted, which included the establishment of a Criteria Working Group (CWG) and of a review process and a time table.

The CWG, chaired by Robert W. Jenkins from Australia, former Chairman of the CITES Animals Committee, and administered by the CITES Secretariat, was to be composed of 12 members chosen from the Members and Alternate Members of the CITES Animals and Plants Committees. The CWG was also directed to co-opt four experts to assist in the conduct of the review, including representatives from organizations such as FAO and ITTO (International Tropical Timber Organization).

The CWG met in Canberra (Australia) from 2 to 4 August 2000 and has submitted a report to the Secretariat for circulation to and consultation with the Parties and relevant international organizations. Then , according to the approved process, the Animals and Plants Committees will have a joint meeting (it is scheduled on 7 to 9 December 2000 in Shepherdstown, West Virginia, USA) including the co-opted experts to prepare a new report, which should also be subject to consultation by the Parties. In November 2001, the Chairmen of the Animals and Plants Committees will prepare the final report for submission to the CITES Standing Committee before the end of that year. Finally, in March-April 2002, the Standing Committee is to consider the adoption of the report and its presentation to CoP12, where revised criteria should be adopted.

The FAO Secretariat, assisted by three consultants, considered the report of the FAO ad hoc Expert Group and prepared a comprehensive report entitled *An Appraisal of the Suitability of the CITES Criteria for Listing Commercially-exploited Aquatic Species*, which was published by FAO as Fisheries Circular No. 954. The FAO Secretariat then produced another document, *The Key Points of an Appraisal of the Suitability of the CITES Criteria for Listing Commercially-exploited Aquatic Species*, a summary of the key points and conclusions described in the Fisheries Circular.

At the end of June 2000, FAO convened in Rome a Technical Consultation on the Suitability of the CITES Criteria for Listing Commercially-exploited Aquatic Species. The Technical Consultation, which included representatives of 60 FAO Members and observers from international governmental and non-governmental organizations, was a significant step in the process started by FAO. The only purpose of the Consultation was, however, to consider the document on the key points just mentioned.

As the Technical Consultation began, it became readily apparent to a number of participants, representing either FAO Members or organizations, that some issues of significance were not treated in the document at all, or, if they were addressed such attention was not as deeply as it should have been. It was all too clear to participants who were involved in the past in CITES business that those who had prepared the document, as well as the Fisheries Circular No. 954, as well as many of the participants in the Technical Consultation, had a rather poor knowledge, if any, of CITES or of the implications the proceedings of the Consultation may have on large-scale fisheries. Nevertheless, the Consultation was certainly useful. Several important issues were raised (even if they were not discussed) and many participants improved their knowledge of CITES and of its potential effects on commercial fisheries.

Comments on the FAO Documents:

The following comments are not made to examine details which have no actual significance for the purpose of this paper. They are made to explain how CITES works and to deal with issues that are related to the effects that listing of species in CITES appendices will or might have on fisheries.

Species under Consideration:

The documents deal with most aquatic species commercially exploited. They cover not only marine and freshwater species, fishes and invertebrates, but also marine mammals and birds, as well as reptiles and amphibians, although no reference is made to the latter two categories. Similarly, reference to corals, which are also commercially exploited aquatic species, is very limited, except that coral fish and invertebrate species are evoked. The documents deal with a number of species that are already listed in the CITES appendices, such as whales, some other marine mammals, giant clams and the queen conch, and a rather small number of fish species, mainly living in freshwaters.

This large range of coverage includes issues of a variety of natures, some of which do not seem to pose serious problems within CITES, as explained earlier, and some of which are not clearly relevant to FAO/COFI and/or regional marine agreements. Whales, for instance, as well as sea turtles, constitute specific cases. It might have been preferable if the documents would have focused its attention on species subjected to large-scale commercial harvest, as suggested in the proposal accepted in Bremen in 1998. That approach was in fact endorsed afterwards by the Technical Consultation, which justifiably decided to consider fish and invertebrate species only and to limit the scope of its work to marine and large freshwater bodies.

Extinction Risk for Aquatic Organisms

The FAO documents consider this issue at length, taking into account various factors. This is a rather technical section that this paper will not discuss. However, it must be noted that the importance given to the risk of extinction illustrates a wrong perception, that exists within the fisheries community in particular, that CITES deals or should deal exclusively with species threatened with extinction.

Contrary to what might be concluded from the full title of CITES, that Convention does not cover species threatened with extinction or endangered species only. Therefore, the title does not reflect the actual coverage of CITES and it should have been changed, as was proposed in the draft CITES Strategic Plan prepared by a working group of the CITES Standing Committee. The change was however not retained in the Strategic Plan adopted at CoP11. This would continue to mislead those who are not familiar with CITES.

The broader coverage of CITES is confirmed by the history of development of CITES, as well as by the following definitions of the three appendices in which the species it covers are included.

Appendix I shall include all species threatened with extinction which are or may be affected by international trade. It does not necessarily include all those species and it is obvious that it also includes species that are either not actually endangered or not actually or potentially affected by international trade.

Appendix II shall include all species which although not necessarily now threatened with extinction (this illustrate the contradiction with the title) may become so unless their trade is subject to strict regulation, and other species which must be subject to regulation in order that trade in certain listed species may be brought under effective control.

Appendix III includes species, at the request of individual Parties, that are subject to regulation within such Parties and in need of co-operation of other Parties in the control of trade. Many of these species, even if endangered in the country having requested the listing, are not endangered at the global level. In fact, many are not threatened and may be quite abundant beyond the borders of the Party requesting Appendix III listing. By definition, the species, or populations thereof, living in international waters may not be included in Appendix III. Nevertheless, any Party may request the inclusion in Appendix III of a species occurring in its territorial waters if it is subject to regulation (see above the case of the basking shark in the waters of the United Kingdom).

It is important for the fisheries community to be aware of this rather confusing technicality. The fisheries community should not believe that just because a species is not actually endangered that it can not be listed in CITES appendices. Listing on CITES appendices is not limited to species on the brink of extinction because of commercial harvesting or because of significant mortality as by-catch. The current appendices contain many species of this type.

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Contrary to what might be concluded from the full title of CITES, that Convention does not cover species threatened with extinction or endangered species only. … It is important for the fisheries community to be aware of this. A commercially-exploited species that is not actually endangered may in fact be listed in CITES appendices. … Considering the current lists of species in CITES appendices, it appears obvious that many commercially-exploited marine species could be listed in Appendix II on the basis of the criteria in force and because of the way CITES is implemented by the Conference of the Parties.

The Context of CITES in Marine Conservation Systems:

This section also contains statements that illustrate the lack of understanding of CITES, as explained above. The first sentence of Fisheries Circular No. 954 states that "Because CITES is designed to assist with the conservation of species at risk of extinction, it is a conservation tool of last resort".

Later in the same Circular, it is stated that: "Since generally CITES regulations would be invoked at very low populations of mature fish, … " Considering the current lists of species in CITES appendices, it appears obvious that many commercially-exploited marine species could be listed in Appendix II on the basis of the criteria in force and by the way CITES is implemented by the Conference of the Parties.

These two citations may explain also, at least in part, why the drafters of the documents and the fisheries community have failed to deal with a number of issues related to CITES implementation and do not perceive all the risks linked to the listing of marine species in CITES appendices. Their representatives should understand their misperception and make efforts to correct it. They should also know that those who actively try to have such species listed have extensive and proper knowledge of CITES and of the way to use it. Although those seeking to list commercially desireable species have failed so far to obtain CITES listing of marine species subject to large-scale fisheries, they have a history of success with many other species.

This section, after providing a list of institutional arrangements to promote marine conservation, including the FAO Code of Conduct for Responsible Fisheries, explains in some detail the objectives and techniques of fisheries and ecosystem management. Despite the fact that the statement that CITES management would apply at the species level while functional fisheries management would apply at the stock level is at least partially erroneous, an important point that is made states that CITES regulations must be accompanied by appropriate fisheries and ecosystem management measures to ensure success. This is quite correct. However, in practice, this is rarely the case.

On the first point, it must be said that CITES does not work exclusively at the species level, as will be explained in more detail in the next section. It may be questioned also whether it is appropriate to speak about CITES management. Although some of the CITES provisions refer to the management of the species concerned, in particular in Article IV, paragraphs 2(a) and 3, CITES is not really a management instrument. CITES deals exclusively with international trade, which is only one element to take into consideration when a species is subject to management. It is probably the right time to remind the reader that CITES has no effect on the exploitation of listed marine species occurring within the waters under the jurisdiction of any State as long as specimens of these species are not exported.

On the second point, the remark of the FAO Circular is very pertinent. Indeed, if management measures are taken for species listed in CITES appendices this is the responsibility of the range States, and possibly of those helping them, not of CITES *per se*. For many people, States and organizations alike, the listing of species in the CITES appendices, in particular in Appendix I, is an achievement in term of conservation. Such listings should be considered as an alert that measures have to be taken to prevent the continuing depletion and possible extinction of any species. Under no circumstances can nor should CITES replace a sound management regime for fisheries. Control of international trade, as CITES implies, must not be considered as more than an additional measure that could be valid in specific conditions. In other words, CITES will not correct bad fisheries management. Conversely, good fisheries management does not need, in most cases, trade controls as provided for by CITES.

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Then the same section tries to determine the species for which CITES listing is a priority. It concludes, as summarized in the other FAO documents, that problems arise [in management] when high levels of profitability or lack of alternatives encourage violation of management rules for species which are biologically vulnerable and where the fishery systems are unable to ensure compliance with management regulations. In these cases, additional measures such as the CITES mechanism to curb trade and hence to reduce value are appropriate. Hence the species most at risk of extinction and for which criteria for listing under CITES might be more closely examined would be those:

*of high **value** to allow particularly profitable operations (**economic risk**);*
*which are highly **vulnerable** to exploitation (**bio-ecological risk**);*
*for which normal management rules are non-existent or systematically **violated** (**compliance risk**).*

The highest risk for the resources (including risk of extinction) and the area of greatest potential effectiveness of international trade measures is where all three factors are high. For species low in any one of the factors, trade restrictions are unlikely to be effective conservation tools. In particular, for endangered species of little market value, a CITES listing, although possibly giving additional moral force to conservation initiatives, offers little incremental protection beyond whatever other conservation actions have been taken.

This is an interesting approach which should be considered in more depth to determine, where appropriate, which species meet these criteria and could or should be listed in CITES appendices to improve conservation initiatives. This was not done at all at the FAO Technical Consultation.

In addition, two remarks have to be made about the above conclusions. First, it is not evident at all that curbing trade will necessarily reduce the value of the resource. Second, and once again, the reasoning seems to apply only or at least essentially, in the views of the drafters, to species that would be potential candidates for inclusion in CITES Appendix I. Nevertheless, the conditions described correspond rather well to those existing for the sturgeon species in the Caspian Sea, which produce a very large portion of the caviar in trade. These species are **vulnerable**, if not yet endangered, the management measures that have been adopted are seriously **violated** through poaching and illegal trade, and the main product, caviar, is of high **value**.

The listing of sturgeons in CITES appendices thus appears retroactively justified, although if it has some effect on the illegal trade, it does not seem to have prevented poaching, and the value of legal caviar is continuously increasing. The Fisheries Circular however does not refer to sturgeons. It refers to red corals, species that are surprisingly not listed in CITES appendices and are not subjected to the large-scale exploitation under consideration by FAO and in this paper.

<u>Evaluation of CITES Criteria with Respect to their Applicability to Exploited Marine Species:</u>

This section, the largest of the Fisheries Circular, first describes the approach to the evaluation, and states from the onset that CITES typically operates at a species level, whereas fisheries management typically operates at the level of individual stocks. This is repeated later in the same section when examining Issues Regarding Split-listing and Higher Taxa, as well as in the following section on Populations and Sub-populations, where the definition of ‘species’ in the text of the Convention

(Article I) is acknowledged and which includes 'geographically separate populations' of a species or subspecies. Although not fully correct, the statement largely reflects the truth. Nevertheless, the following has to be kept in mind.

The term 'population' in CITES is used in two different ways. First, in the text of the Convention, Article I(a) and in Resolution Conf. 9.24 Annex 3, under Split-listing, it is used as a 'geographical unit', the limits of which are mostly national bounderies. Elsewhere in Resolution Conf. 9.24, in particular in Annex 5, the term 'population' refers to the total number of animals of a species, without forgetting that 'species' may be interpreted as a 'geographically separate population' in the first acceptation of the term. The term 'sub-populations' is never used in the context of CITES to designate a 'geographical unit' that may be listed separately in the appendices. There is however one exception for a terrestrial species, the vicuña.

For certain aquatic species, whales for example, it is likely that CITES would list them on the basis of populations or stocks, as defined by the IWC, in case of transfer to Appendix II. This is the case for the minke whale, whose West Greenland population (stock) is excluded from Appendix I and listed in Appendix II under Cetacea spp. This confirms that it is not fully correct to state that CITES and traditional fisheries management differ in their approach to conservation at the stock level vs. species level. However, there is probably also a difference between what constitutes a 'stock' for marine fish species vs whale species, and this may strengthen the statement in the Fisheries Circular.

In the case of commercially-exploited fish and invertebrate species, it is obvious however that if stocks were listed in different appendices (this was proposed in 1994 for the Atlantic blue-fin tuna) or if some were listed in Appendix II and others not listed at all, the enforcement problems, that will be examined at a later stage in this analysis, will be considerable and the risk of fraud, which is always very difficult to detect, will be extremely serious.

Further, both FAO documents indicate clearly that imperfect criteria risk producing false alarms (listing of species which are not at risk) and misses (failing to list species when and where appropriate), which might have serious consequences on either the fisheries or the conservation of the species concerned. They then make a distinction between target and by-catch species, noting that 'look-alikes' should not be extended to non-threatened target species whose exploitation endangers other species. Such problems should be dealt with by instruments other than trade restrictions. To have noticed this important distinction is commendable and significant, as Article II, paragraph 2(b), although generally described as the 'look-alike' provisions, may also be used to cover this type of circumstances.

The consideration of the **biological criteria for Appendix I**, included in Annex 1 to Resolution Conf. 9.24, constitutes the key part of this section and indeed of the whole document. That discussion is conducted in association with that of the definitions, notes and guidelines included in Annex 5 of the same Resolution. While it is not the purpose of this paper to comment on that analysis, because this was essentially the work of the Technical Consultation and should be left to fisheries scientists. However, it must be said that, in our opinion, the main purpose of the analysis and of the recommendations to be made should be to ensure, that in the context of fisheries concerns, the biological criteria would be revised as to prevent the inclusion in Appendix I of CITES of any species (stock) subject to large-scale fisheries unless such listing is fully justified and has the support of the fisheries community.

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… the main purpose of the analysis and of the recommendations to be made should be to ensure, that in the context of fisheries concerns, the biological criteria would be revised as to prevent the inclusion in Appendix I of CITES of any species (stock) subject to large-scale fisheries unless such listing is fully justified and has the support of the fisheries community.

In this context, the FAO documents illustrate the lack of suitability of the current CITES criteria when, for example, they indicate, regarding criterion C of Annex 1 to Resolution Conf. 9.24, that this criterion "presents both conceptual and practical problems for applications to harvested marine species. The core conceptual concern is that the decline criterion may cause many false alarms. Many marine species may have experienced declines sufficiently large to prompt listing although the population remains so large that there is negligible risk of biological extinction. Listing such species could cause unnecessary social and economic disruption and would weaken the moral force of CITES' listing of those species which are truly at risk of extinction."

Taking that into account, it may be said that criteria for listing in Appendix I should be so drafted that no species or stock that is subjected to large-scale fisheries could meet them. An endangered species (that would meet reasonable criteria for listing in Appendix I) would most likely be considered as economically (not biologically) extinct and, indeed, not qualified for large-scale fisheries.

Regarding the **criteria for Appendix-II listing**, it is interesting to note that the FAO documents consider those criteria concerning listing under Article II, paragraph 2(a), of CITES (they are included in Annex 2a of Resolution Conf. 9.24) exclusively on the biological and management point of view. On the other side, with regard to those criteria concerning listing under Article II, paragraph 2(b) (they are included in Annex 2b of Resolution Conf. 9.24), the documents analyze them in light of the potential effects of the listing for 'look-alike' reasons. This paper will not comment on the biological and management aspects for the same reasons as for criteria for Appendix I. On the other hand, and although the comments made in the FAO documents about 'look-alike' species are largely correct, it must say that the documents miss totally the general consequences, in term of implementation and enforcement, of the listing in Appendix II, under whatever criteria, of marine species or stocks subject to large-scale fisheries. This part of the documents has to be considered, therefore, as the weakest of the whole appraisal of CITES criteria.

Both FAO documents indicate that criterion A of Annex 2b poses a problem for commercial fisheries because the products of commercial fisheries are very commonly marketed in processed form. Thus the species of origin of the product is often impossible to identify without sophisticated and expensive testing. As a matter of fact, the problem is in no way specifically linked with the listing in Appendix II of 'look-alike' species. It is indeed in relation to any listing in Appendix II, for two reasons. Firstly, CITES has one set of provisions applicable to the trade in Appendix-II species, whether the species has been listed in accordance with Article II, paragraph 2(a) or paragraph 2(b) and, in the appendices no annotation or whatever is made to differentiate the purposes of listing. Secondly, in accordance with Article I, paragraph (b) (ii), any **readily recognizable part or derivative** of an Appendix-II species is subject to the provisions of the Convention.

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It may be argued, of course, that many fish products are not readily recognizable and, therefore, should not be covered by the CITES provisions. However, so far, the Conference of the Parties to CITES has always been very restrictive in the interpretation of the term 'readily recognizable'. On one side, the establishment of a minimum list of specimens to be considered as 'readily recognizable' has never been agreed upon. On the other side, in accordance with Resolution Conf. 9.6, 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 an animal of a species included in the appendices shall be considered as 'readily recognizable'. For example, at the last meeting of the Conference of the Parties (Gigiri, 2000), the Conference rejected a proposal to exempt cosmetics including infinitesimal quantities of caviar, because the mention 'caviar' appeared on the cosmetics tubes or boxes. It also refused to exempt blood and tissue samples.

CITES implies, in addition to the provision of non-detrimental findings by the Scientific Authority, a considerable volume of **paperwork** for specimens of a species listed in Appendix II entering the international trade. The prime example is the issue of an export permit or re-export certificate for any shipment, in accordance with the provisions of Article IV, paragraph 2 or 5. Furthermore, many importing countries require, as a **stricter domestic measure** taken in accordance with Article XIV, paragraph 1, issuing an import permit also for specimens of Appendix-II species. The acquisition of all necessary papers may require several weeks in a number of countries.

In the case of large-scale fisheries, this paperwork may be complicated seriously when the operations take place within the territorial waters of a State but are conducted by a ship from another State, e.g. under the terms of a bilateral agreement. When the ship will leave the territorial waters of the first State, this will be considered as an export, and it is that State that will have to issue the proper export permit. The question of proper permits would become even more complicate if the ship is not moving to one country only and if the specimens, after having been imported, are then subject to re-export under different forms. In additon, the specimens may be transhiped and mixed with other shipments and this might create insoluble complications.

Another complication will occur when a species included in Appendix II is also the subject of **aquaculture** operations. CITES has special provisions for species bred in captivity, but in many cases, if not all, they would not be applicable to specimens produced by means of aquaculture. Therefore, the provisions to implement and the paperwork to undertake will be the same as for wild-taken specimens. However, in certain circumstances, it would be possible to consider aquaculture as a form of **ranching**, i.e. under the definition of this term given by CITES, the rearing in a controlled environment of specimens (this includes eggs) taken from the wild (Resolution Conf. 10.18). If this is the case, all products of that type of aquaculture should be considered, in accordance with Resolution Conf. 9.6, as readily recognizable and, therefore, subject to CITES controls. In addition, for species included in Appendix I, the trade in ranched specimens would be possible only after the transfer to Appendix II of the species or population concerned.

The term 'trade' is defined by CITES to include export, re-export, import and **introduction from the sea**. The latter term means transportation into a State of specimens of any species which were taken in the marine environment not under the jurisdiction of any State. The limits of this marine environment are not defined in the text of the Convention. Further, the Conference of the Parties has not defined them through any of its Resolutions or Decisions. An attempt by Australia to have such a definition adopted at CoP11 failed. Thus the delimitation of such environment is left to the discretion of each coastal Party. It is worth adding that when CITES refers to trade, it refers to 'international

trade' as indicated in the title of the Convention. National trade, including in specimens of marine species taken in the territorial waters of the State where they are landed, is not subject to the provisions of CITES, as already stated above.

For specimens "introduced from the sea," CITES includes specific provisions in various Articles. The introduction from the sea of any specimen of an **Appendix-I species** requires the prior grant of a certificate from the Management Authority of the country of introduction, which shall only be granted when a Scientific Authority of the same State has advised that the introduction will not be detrimental to the survival of the species and the Management Authority is satisfied that the specimen is not to be used for primarily commercial purposes. For a living specimen the proposed recipient shall be suitably equipped to house and care for it (Article III, paragraph 5).

The introduction from the sea of any specimen of an **Appendix-II species** also requires the prior grant of a certificate from the Management Authority of the country of introduction, which shall only be granted when a Scientific Authority of the same State has advised that the introduction will not be detrimental to the survival of the species and the Management Authority is satisfied that any living specimen will be so handled as to minimize the risk of injury, damage to health or cruel treatment. In addition, regarding the certificate of introduction from the sea, CITES provides that the advice from the Scientific Authority may be formatted in consultation with other national scientific institutions or international scientific authorities for periods not exceeding one year for total numbers of specimens to be introduced (Article IV, paragraphs 6 and 7).

As indicated earlier, "introduction from the sea," by definition, does not exist for **Appendix-III species**.

Article XIV, paragraph 4, of CITES includes special provisions with respect to marine species included in Appendix II. The main provision states that any State that is a party to CITES, and which is also party to any other treaty, convention or international agreement in force at the time when CITES went into effect (1 July 1975) that provides protection for marine species, shall be relieved of the obligations imposed on it under CITES with respect to trade in specimens of those species. Those specimens must have been taken by ships registered in that State and in accordance with the provisions of such other treaty, convention or agreement. The obligations referred to in that paragraph are those in relation to the "introduction from the sea" provisions just mentioned. However, under the provisions of **paragraph 5** of the same article, any export of a specimen taken in accordance with paragraph 4 requires a certificate issued by a Management Authority of the State of introduction (this confirms the kind of obligations referred to in paragraph 4) to the effect that the specimen was taken in accordance with the provisions of the other treaty, convention or international agreement in question.

It is likely, if not obvious, that the two above referenced paragraphs of Article XIV were drafted with the International Convention for the Regulation of Whaling and IWC in mind. They are, however, applicable to marine species covered by other treaties, conventions or international agreements, if they were in force on 1 July 1975. They should not be numerous, in particular because a number of such instruments have been superseded by others that entered into force after that date. In any case, it is only when the specimens "introduced from the sea" are used for consumption within the country of introduction that no CITES paperwork is necessary.

The Conference of the Parties to CITES has adopted a **standard form for permits and certificates** through Resolution Conf. 10.2, which was revised at CoP11. Nevertheless, neither the certificate of introduction from the sea nor the certificate referred to in paragraph 5 of Article XIV mentioned in

the preceding paragraphs of this paper are covered by Resolution Conf. 10.2 or the amendments to it adopted at CoP11. For the certificate of introduction from the sea, suggestions were made in the proposal from Australia that failed to be approved at CoP11, as already indicated. For the time being, the format of such certificates is left to the discretion of individual Parties. However, they have to be issued by a designated Management Authority.

The FAO Fisheries Circular No. 954 tries to make a parallel comparison with "similar situations [that] have been encountered in the past, for example, when the look-alike provision was invoked to protect species of orchids at risk of extinction".

It is, however, seriously misleading to compare CITES provisions applicable to Appendix-II plants and those applicable to Appendix-II animals, including fish and invertebrates. For plants listed in Appendix II, as well as in Appendix III, CITES provides that any part or derivative may be exempted of its provisions. In fact, only the parts and derivatives that are specifically designated are covered by CITES provisions. Consequently, either a number of specimens, such as seeds, cut flowers and even seedlings and tissue cultures *in vitro* are in general excluded or only specifically designated specimens, such as logs, sawn wood and veneer sheets of timber species, are covered. This permits a limitation of the CITES controls to those specimens actually in need of controls.

For animals, such exemptions are not possible for Appendix-II species. They exist for Appendix-III species only, which are listed by individual countries. This possibility was used by the United Kingdom, when it requested the listing of the basking shark in Appendix III. It specified that 'fins and parts of fins' were the only parts to be covered and subjected to CITES controls (see above).

In view of the above comments, it is obvious that the listing in Appendix II of commercially-exploited marine fish and invertebrate species would generate extremely serious problems of implementation and enforcement, in many cases without any conservation justification or benefit. This was expressly recognized by the CITES Secretariat in its provisional assessment of the amendment proposals submitted for consideration at CoP11. That assessment stated, for example, with respect to the proposed inclusion of the whale shark in Appendix II: "The Secretariat is concerned about the complications that acceptance of this proposal would have for enforcement".

If this was true for a species subject to a (relatively) limited international trade, one can only imagine the problems that would occur with other species harvested in much larger quantities and under various schemes, as well as with those traded globally and under many different processed forms.

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This paper has already considered the issue of split-listing referred to by the FAO documents after the CITES critera was analyzed. However, they do not make any reference to the listing of **higher**

taxa (taxa above the species level) except in the title of the subsection. Annex 3 of Resolution Conf. 9.24 provides indications regarding the use of higher taxa within CITES, however, in referring only to cases where all species of a taxon are included in Appendix I or II or in Appendices I and II. What is not said is that a number of higher taxa are listed in CITES appendices although not all species so included are in trade or, if in trade, deserve to be considered as 'look-alike'species.

At present, all Acipenseriformes, all giant clams (Tridacnidae) and all higher taxa of stony corals are included in Appendix II, except a few species included in Appendix I, and, at CoP10, the United States proposed, without success, the listing of all Pristiformes in Appendix II. The listing in Appendix II of higher taxa of commercially-exploited fish or invertebrates might also have serious effects on the fishery industries.

The FAO documents then deal very briefly with issues regarding **precautionary measures** that are included in Annex 4 to Resolution Conf. 9.24. They correctly notice the risks associated with the use of clause A. That clause refers to action in the best interest of the conservation of the species in case of uncertainty, in misguided attempts to list non-threatened target species of fisheries which take by-catches of endangered species. That clause is also advocated by those opposed to any use of wild animals, in favour of the listing of as many species as possible in CITES appendices. They want to ignore that the sustainable use of natural resources is often a prerequisite to their actual conservation and the principles of adaptive management.

Clause A should not be interpreted in any circumstances to mean that the species shall be included. There are cases where the non-listing may be more in the interest of the survival of the species than the listing. This was invoked in CITES, in particular for rare endemic species, of plants or animals, not to alert collectors about rarities, but this could possibly be evoked also in other circumstances, including for marine species. For example, the main expert in seahorses, although concerned with the conservation of several species, did not recommend their inclusion in CITES Appendix II at the last meeting of the Conference of the Parties, because this might have had damaging effects. It should therefore be possible to use clause A to advocate the non-listing of certain commercially-exploited marine species.

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The Fisheries Circular No. 954 states that clause B is *specific to the revision of listings under Appendices I and II*. In fact, it deals essentially with the **transfer of species from Appendix I to Appendix II**. That clause is qualified as sensible and prudent and as applicable equally well to marine as to terrestrial species. No doubt that clause B is prudent. If properly implemented it could also be sensitive. However, it is obvious that the Conference of the Parties to CITES is in general very prudent, if not reluctant, to transfer from Appendix I to Appendix II, or to withdraw from the latter, species that are subject or potentially subject to international trade. One of the main arguments used by those opposed to any such transfer is that the authorization of any legal trade, as limited as it could be, would be used as an incentive for more trade, including illegal trade, without recognizing

that the listing in Appendix I of a species has never stopped illegal trade. Such attitude amounts to considering CITES as not working and unable to control a limited trade.

In addition, for species occurring in more than one State, for migratory species and for species living in the seas, whether or not in international waters, the reluctance is even higher because, this is very often just a pretext, the species is endangered in some of the range States or some countries are opposed to any exploitation of the species or of 'look-alike' species, even if their populations are situated far away from that on which some sustainable use should be conducted. On this important aspect of CITES perception and implementation, the debates that have taken place in several successive meetings of the Conference of the Parties regarding species like the African elephant, sea turtles and whales, just to mention a few, are more than illustrative.

As we have seen before with several examples, it is relatively easy to prevent the listing of a species in CITES Appendices I and II, as it happened with the blue-fin tuna in 1992 or with three shark species in 2000. On the contrary, it is extremely difficult to transfer a species from Appendix I to Appendix II because of the CITES voting procedures. In effect, all decisions concerning amendments to Appendices I and II require, in accordance with Article XV of the Convention, a **two-thirds majority** of the Parties present as well as balloting with "yes" or "no" votes. Abstentions are not taken into consideration.

In other words, if it is, in one direction or the other, not very difficult to find a deadlocking minority of one third of the Parties, which may include Parties without any interest in the species under consideration, it is indeed far more difficult to gain the needed two-thirds majority, in particular for a transfer from Appendix I to Appendix II. In addition to the trade argument mentioned above, politics and even emotion are often used, openly or not, to prevent the re-opening of international trade in a species subject to a commercial trade ban under Appendix I. In such circumstances, to believe that CITES is based on science only and that "species had been listed in the CITES appendices on the basis of scientific and technical criteria", as stated by the CITES Secretary General at CoP11 (document Plen. 11.3), strongly suggsts such a belief is based on naivety if not bad faith.

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<u>Populations and Sub-populations:</u>

Comments on that issue have already been made earlier in this paper. However, the section of the FAO Fisheries Circular dealing with populations and sub-populations raises a number of potential issues and risks that must be underlined for those reasons already expressed but also at least in light of what is actually taking place within CITES.

As already indicated, split-listing exists within CITES, in particular for species with a large distribution, although it is not recommended in Annex 3 of Resolution Conf. 9.24 because of the enforcement problems this creates. If split-listing is not allowed while the species concerned is listed in the more restrictive appendix, Appendix I, this would seriously penalize the States that are properly managing their populations because they would denied the possibility of any economic benefit from such management because they are denied export rights. The African elephant for several southern African countries is a good illustration of that, as is the hawksbill turtle for Cuba.

It is obvious that the risks to "exporting" nations with sound management schemes in place are higher for commercially-exploited fish and invertebrate species, as shown in the FAO document. However, the conclusion drawn by the FAO document is in total contradiction with the objectives of those who want to list this type of species in CITES appendices. This conclusion is so important that it must be repeated here: "The difficulty in implementing other than a global trade restriction, and the potential social and economic disruption for exploiters that have effective management in place, underscore that trade restrictions should be considered as a conservation measure of last resort. Except under exceptional circumstances, conservation of marine fishery resources would be best achieved through strengthening tools of national and international fisheries and ecosystem management."

In accepting this conclusion, one must recognize that it would appear nearly impossible to achieve the goal it implies through the adoption of global CITES criteria for all species of wild fauna and flora, unless it is accepted, within CITES, that a species should not be listed in Appendix I if any population of it is properly managed and may be used sustainably. Further, the range state in question must be left in charge of other populations and given the responsibility to prevent any utilization until they too have recovered.

To achieve this within CITES is extremely difficult, at least when the species is already listed in Appendix I. The prevalence of management over trade controls is going beyond CITES purposes and could only be achieved through ways other than listing criteria, such as agreements or memoranda of understanding between CITES and the interested fisheries organizations, whether or not the species meets the CITES criteria.

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This section of the FAO document makes reference again to listings in **Appendix III**. It notes that national jurisdictions may list a species of national concern, without explicit consideration of the global status of the species. It adds that such voluntary listing presents similar implementation problems to those linked with split-listings. The risk has to be recognized but it is most probably much less important than for Appendix-II species as, for any Appendix-III species, as already indicated, only the trade in specimens of the animals occurring in the national waters of the country or countries requesting the listing may be restricted by the CITES provisions, and the controls may be limited to selected parts and derivatives, in addition to whole specimens.

On the other hand, the FAO document does not deal with other issues generated by listings in

Appendix III. For example, in the third paragraph of the preamble of CITES Resolution Conf. 9.25 (Rev.), the Conference of the Parties recognizes that, "for a species with a natural distribution that goes beyond the territory of the Party requesting its inclusion in Appendix III and its immediate neighbours, such inclusion may not necessarily need to cover all range States". Nevertheless, when the United Kingdom requested the listing of the basking shark in Appendix III, in June 2000, it did not take that into account. If so, it would have required the listing in Appendix III of the UK population of the basking shark only, or possibly of the population of the North Sea. This procedure, which is made possible by the definition of the term 'species' in CITES, was followed, upon a recommendation from the Secretariat, with the mahogany *Swietenia macrophylla* when it was included in Appendix III for the first time. To do the same for the basking shark would have prevented the numerous other range States being obligated to issue certificates of origin for any shipment of fins and parts of fins.

Although the issuance of **certificates of origin**, by the range Sates that have not requested the listing of a species in Appendix III, does not a "non-detriment finding," it nevertheless represents significant paperwork. Indeed, in accordance with Resolution Conf. 10.2, revised at CoP11, although not within the section into consideration here, the certificates of origin, which have to be issued by a competent Management Authority, should contain a series of information provided in section V of the Resolution that are not very different from export permits for Appendix-II spécimens.

The action by the United Kingdom may be interpreted, therefore, as an expression of its willingness not only to benefit from the co-operation of the other Parties for the control of trade in specimens from its national population, the actual purpose of Appendix-III listings, but also, to impose CITES provisions on the trade in certain specimens on all other range States. Such a global imposition was not allowed at CoP11 when the listing of the species in Appendix II was rejected. In principle, this should not affect the trade in the species and its level of exploitation, except possibly in the United Kingdom, where the species is already protected. It would, however, oblige all other Parties to undertake a paperwork burden without gaining any conservation benefit whatsoever. In practice, this might have detrimental effects on a legitimate trade if certain Parties implement stricter domestic measures, such as the requirement of import permits or of certifications that any imported shark fins or part of fin are not originating from basking sharks taken in the national waters of the United Kingdom.

Unfortunately, nothing may prevent a Party to act as the United Kingdom and to request an Appendix-III listing, on the condition that the species concerned is subject to regulation within its jurisdiction. Of course, any other Party may enter a **reservation** to such listing but a reservation has an effect only if the other partner country in a transaction has also entered the same reservation (see below).

Key Concerns and Conclusions:

Both FAO documents include the same items under this section, although classified in a different order. They summarize what is said in the core of the documents and also omit those issues underlined in this paper. There is no reason to go through each item only to repeat the same comments. However, one conclusion does deserve special consideration: "The current flexibility of CITES criteria, when interpreted with their guidelines and definitions, is an important and positive feature. With the single major modification proposed for the use of Criterion C, the current criteria and guidelines have sufficient flexibility to allow a reasoned approach to individual proposals for listing, as long as the evaluation process is conducted in a scientifically sound and transparent way and takes into account the unique characteristics of each case."

It would be a serious error for the fisheries community to consider any negative consequentces associated with CITES interfering with fisheries issues unfounded. The historical development of CITES since its inception as well as the pressure exerted by some government and a number of NGOs to have marine fish and invertebrate species subject to a large-scale exploitation listed in CITES appendices suggest such listing will infact bring with it serious risk to the fisheries community.

Extreme vigilance must be maintained to avoid decisions that will be very difficult to correct at a later stage. This is particularly true and refers almost exclusively to the biological criteria, which, once again, are for listing of species in Appendix I. In fact, the main concern should be with regard to listings in Appendix II, for which the only alert is about the 'look-alike' provision which, as stated in the FAO documents, should simply be used with sufficient circumspection. This is not really a CITES speciality.

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Suggestions for Rewording Biological Criteria for Listing Species in CITES Appendix I

The purpose of this paper, as repeatedly stated, is not to deal with this aspect of the comprehensive issue. Therefore, no comments are made on the suggestions for rewording proposed in Annex 4 of the FAO Fisheries Circular. However, at the very end of that Annex, it is stated that no change is proposed to the **trade criteria** or to Annex 3 [of Resolution Conf. 9.24]. The trade criteria are those included in Annexes 2a and 2b of Resolution Conf. 9.24 regarding the inclusion of species in Appendix II, in accordance with Article II, paragraph 2(a) and paragraph 2(b) respectively. This may be interpreted as a recognition, for the fisheries community, that the flexibility of the criteria and their reasonable implementation by the Conference of the Parties to CITES are sufficient safeguards to avoid unnecessary listings. On the other hand, this may also be interpreted as a recognition that it is not through the revision of the current criteria that unnecessary listings would be automatically avoided. The purpose of this paper is also to demonstrate the correctness of the second interpretation and to alert the fisheries community accordingly.

The FAO Technical Consultation (Rome, 28-30 June 2000):

The background of the Consultation and of its purpose was presented in the opening address by Mr I. Nomura, Assistant Director-General of the FAO Fisheries Department. The Consultation had to focus in particular on the evaluation of the CITES criteria in relation to exploited marine species, the suggestion for rewording the criteria and the question of populations and sub-populations. Particular attention should have been given to this issue as well as to key concerns and conclusions enumerated in the FAO documents. But, no time was available for that exercise, which would have been important.

Pre-Consultation Comments:

Comments from four Member States and two NGOs on the FAO documents were submitted in a written form to the FAO Secretariat before the Consultation and were distributed to the attending parties. They were also discussed during the meeting. For those reasons, they will not be repeated here, although a few points must be revisted.

The United States, which believes that CITES can be an effective adjunct to other international mechanisms and to fisheries management in general, disagreed that CITES listings are 'trade restrictions' and that listings and functional fisheries management are mutually exclusive. The examples used (queen conch and stony corals), however, do not deal with species actually falling under the category of those subjected to large-scale fisheries, although they are subjected to significant levels of exploitation and trade. The United States noticed also that the FAO documents seem to focus primarily on criteria for listing under Appendix I, while largely ignoring the existence of Appendix II.

Norway maintained that the CITES criteria were not established and are not suitable for commercially-exploited marine fish species. In its views, it was uncertain if CITES had any role to play on marine fish species in general, such species being better dealt with in fisheries management organizations.

Japan noticed, apparently with regret, that the FAO papers were a review of biological criteria and did not contain a discussion on basic management liability for fisheries resources. Nor did they delinate the role of CITES and FAO as well as other international fisheries management organizations. Japan expressed its belief that the role of CITES on fisheries resources should be discussed and clarified before discussion of appropriateness of the CITES criteria to the subject.

The World Conservation Union (IUCN) indicated that FAO and CITES are well placed to play complementary roles to serve the conservation and sustainable use of commercially-exploited species. It contested that CITES is purely a trade restriction agreement, stating that it also promotes use, in particular when species are transferred form Appendix I to Appendix II. IUCN criticized the overemphasis on biological differences between aquatic and terrestrial species and indicated that the biological criteria for Appendix I were far from the most important aspect to be considered in the review of the CITES criteria. Appendix II is likely to be far more relevant to aquatic species and FAO should give most of its attention to this aspect of the criteria.

Whether CITES is or not a treaty made exclusively to restrict trade in the species listed in its appendices is a question two of the above comments answer negatively where Appendix II is concern. Regarding Appendix I, there is no doubt, CITES retricts international trade to some categories of non-commercial transactions and fully prohibits any import for commercial purposes. In addition, the interpretation given by the Conference of the Parties to the term 'primarily commercial purposes' used in CITES is very restrictive [the term 'commercial purposes' should be defined by the country of import as broadly as possible so that any transaction which is not wholly 'non-commercial' will be regarded as 'commercial' (Resolution Conf. 5.10)].

With regard to Appendix II, it is correct to say that CITES does not necessarily retrict trade in the listed species. Nevertheless, for many species, in particular among those subject to a significant trade, some forms of restrictions are imposed either by the Conference of the Parties or by individual Parties. For example, this is done through the establishment of annual export quotas.

As stated in Article IV, paragraph 3, "Whenever a Scientific Authority determines that the export of specimens of any such species should be limited in order to mainatin 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, the Scientific Authority shall advise the appropriate Management Authority of suitable measures to be taken to limit the grant of export permits for specimens of that species." In fact, it could be asked, if the trade in a species does not need to be restricted to some extent, which would be the purpose to list it in CITES appendices, unless it would be a 'look-alike' species.

To say, as IUCN did, that CITES, in certain instances is used to promote use and to illustrate that point by citing the transfer of species from Appendix I to Appendix II seems rather excessive. In such circumstances, at least for most of the few species so transferred and subject to an international trade of a certain importance, it may be more appropriate to say that CITES tolerated some trade. However, such a tolerance is refused repeatedly for other species, including marine animals, or populations thereof, in particular under the arguably unjustified pretext that any legal trade promotes illegal trade. Similarly, IUCN itself can be singled out as following that same prejudice by means of its history of recommending against a transfer, while recognizing that the species or population in question is not endangered and does not meet the criteria for inclusion in Appendix I. It's position on whales is a perfect case in point.

CITES is not opposed to the sustainable use of species of wild fauna and flora, but the term "sustainable use" is never used in the text of the Convention. However, the promotion and regulation of the sustainable management of and of a responsible trade in wild fauna and flora constitute parts of the first objective of the newly adopted Strategic Plan for the Convention (CoP11, Gigiri, 2000). This does not prevent certain people, organizations and States to try to use CITES to prevent international trade, and sustainable use, of these resources by promoting the listing of new species, including commercially-exploited marine species, or opposimg the transfer of species from Appendix I to Appendix II or even by deleting species from the appendices.

Finally, it is interesting to note that both the United States and IUCN were of the opinion that Appendix II is of high importance and that FAO has not examined it as it deserved. This conclusion is not contested in this paper.

Recommendations of the Technical Consultation

The Technical Consultation has adopted a report and a number of recommendations addressed to the 24th Session of the Committee on Fisheries (COFI). These recommendations were placed in two categories, those regarding criteria and those regarding the process. These recommendations deserve some further consideration and remarks as follows.

1. The first two recommendations refer to the biological criteria and are essentially of a technical and scientific nature. For that reason, as was stated earlier, they are not subject to comments in this paper. Nevertheless it is necessary to insist on saying that the revised criteria should be so drafted that no species of commercially-exploited fishes and invertebrates will become eligible for inclusion in Appendix I without appropriate justification. This should include the agreement of FAO and relevant Regional Fishery Management Organizations (RFMOs).

2. Also recommended is the need to reconcile the language regarding species, populations and population-units used in CITES and the community of fisheries science and management. It

should be clarified whether the reconciliation is possible not only at the level of the language but also at that of the fisheries management. This would certainly be a fundamental aspect of the relationship between CITES and the fisheries community if a fruitful and efficient co-operation has to be established.

The next recommendation expresses the need to improve the understanding of listing species in Appendix II, because there were differences of opinion as to whether it relates to reducing the risk of extinction and/or promoting sustainable use. The differences of opinion are not surprising and they exist also within CITES. As stated above, the text of the Convention never uses the term 'sustainable use'. The title refers to endangered species, i.e. species threatened with extinction and in the preamble, the Contracting States recognize that international co-operation is essential for the protection of certain species against over-exploitation through international trade. In addition, Article II states that "Appendix II shall include all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival". We may thus say that CITES relates first to reducing the risk of extinction. CITES however is not opposed to all trade. It allows trade which is not detrimental to the survival of the species concerned. Allowing trade and promoting trade are not equivalent. Even in the Strategic Plan for the Convention adopted at CoP11 (see above), the first objective does not speak about the promotion of 'sustainable use' but of the 'sustainable management' of wild fauna and flora.

The next two recommendations denote that the Technical Consultation became more conscious of the significance of Appendix II during the discussions. They ask for a review of the criteria for listing in Appendix II, particularly under Article II, paragraph 2(a), to ensure their consistency, clarity and practicality. They also call for a review of problems and potential solutions in relation to such listing, However, they demonstrate that the documents under consideration and the time available in the Consultation, as well as its terms of reference, were not appropriate to deal with such tasks.

5. The recommendation, mentioned above, about the review of the criteria for listing in Appendix II, raises another question. Is it possible for CITES to draft and adopt criteria that would take into consideration the specific problems linked with species (and in particular, species found in international waters) exploited on a large scale and subject to considerable international trade under many various forms? In other words, is it possible to adopt criteria under which no such species would be included in Appendix II unless the inclusion is fully justified and implementable? For the reasons expressed in this paper, it seems extremely difficult, if not impossible, to develop criteria that would be practical, even if they are clear and consistent.

A comparison has often been made in the past between the trade in marine species subject to large-scale exploitation and the trade in timber. There was a certain logic in the comparison, in economic terms in particular, but two main differences must be mentioned. On one side, timber is produced by plant species and, as explained earlier, for plant species listed in Appendix II, parts and derivatives to be subject to CITES controls have to be specified. For all timber species listed in CITES Appendix II, the only specimens to be controlled in trade are logs, sawn wood and veneer sheets, i.e. raw material only.

For animal species such a selection, as already seen, is not possible and all specimens must be subject to the CITES provisions, unless it is admitted that they are not 'readily recognizable'.

On the other side, timber species are terrestrial and occur within the boundaries of individual States. The physical control of international trade and the granting of the necessary documentation is therefore much easier than for specimens taken in international waters or for those which, rather often, do not go through Customs control when moving from the national waters of the State in which they were taken to the State of destination.

The last recommendation regarding criteria asks for a review of problems and potential solutions in relation to listing fisheries resources in Appendix II under Article II so as to minimize unnecessary negative impact on the fishing industry and communities. This paper, it is hoped, should help in the conduct of this extremely important exercise. It is believed that it has gone through most, if not all, of the problems but still has to propose potential solutions. How the exercise would be conducted by COFI, to which the recommendation is addressed? An answer to this question may be found in the penultimate recommendation regarding the process, which recommends to COFI to establish in FAO a Working Group of appropriate technical experts to consider problems and potential solutions in relation to listing fisheries resources under Article II.

If in the last recommendation regarding criteria the specific reference to paragraph 2(b) of Article II was deleted before adoption, that reference, for an unknown reason, was maintained in the penultimate recommendation regarding the process. This is regrettable, for reasons explained earlier with respect to the problem of parts and derivatives. In addition and because COFI only may decide the establishment of a working group of technical experts, the work will not be undertaken before the next COFI meeting. This is raising another question. How will the conclusions of the working group be considered, knowing that COFI, after its 2001 meeting, will not meet again before CoP12? Could the COFI Subcommittee on Fish Trade undertake such a task at its next meeting in February 2002, this is a further question.

7. The first recommendation regarding the process relates to the refinement of the criteria, definitions and guidelines. This is a scientific and technical task in which this paper is not involved. It is important, in particular with respect to listings in Appendix I.

8. The next recommendation is to encourage the use of the national competence in fisheries while elaborating proposals for listing in CITES of resources exploited in marine and large freshwater bodies.This is certainly of significance, although we may wonder why such a recommendation was felt necessary. It may denote that participants in the Consultation were of the opinion that the co-ordination at the national level is not good enough between bodies in charge of fisheries and those in charge of CITES. This was confirmed in the report of the Consultation where was noted the need of consistency in the mandates provided by respective member governments to CITES, FAO and regional fishery organizations. Indeed, proposals are submitted on behalf of the State, supposedly in the interest of the whole State not of a particular governmental body.

   Instead of this recommendation, or at least in addition to it, it would have been convenient to encourage the use of the national competence in fisheries while Parties have to make their decisions on amendment proposals submitted by other Parties and, if appropriate, while establishing their delegations to CITES meetings when proposals or other issues concern marine resources.

9. Under the next recommendation, COFI should request to the FAO Secretariat to propose effective mechanisms to contribute to the review of CITES criteria and to the implementation

of Article XV of CITES regarding consultation with FAO, RFMOs and States in evaluating proposed listings.

The process to review the CITES criteria has already been engaged by CITES, as indicated earlier. A representative of the FAO Secretariat has participated as an external expert in the meeting of the Criteria Working Group held in early August in Canberra, and he should participate also in the joint meeting of the Animals and Plants Committees to be held in early december in West Virginia, in the United States. In addition, the report prepared by the Criteria Working Group has been circulated, on 31 August, by the Secretariat to all CITES Parties and to relevant international organizations, including FAO and RFMOs, which have the opportunity to provide any comments and suggestions for changes before 15 October.

The report and the comments and suggestions will then be considered at the December joint meeting just mentioned, at which FAO (in addition to its representative in the CWG) and any RFMO may participate as observers if invited by the Chairman of the Animals Committee (the invitation should be requested to the Chairman). Parties will be consulted again in early 2001, and FAO and RFMOs will have the possibility to attend, as observers, the meeting of the Standing Committee to be held sometimes in early 2002, during which the final report prepared by the Chairmen of the Animals and Plants Committees will be considered before presentation to CoP12, in the second semester of the same year. Thus fisheries communities will have ample opportunities, at national and international levels, to make their views known and to tray to ensure that the revised CITES criteria will be acceptable to them.

The second part of the recommendation, which deals with the FAO contribution to the implementation of Article XV of the Convention regarding consultation in evaluating the proposed listings, is not as easy to implement as may think. The time period between the communication of the proposals to FAO and intergovernmental bodies having a function in relation to the species concerned and the date at which the views expressed and data provided by these bodies have to be sent to the Secretariat for communication to the Parties is rather short (about three months). In addition, as it is the usual rule with intergovernemental organizations, the FAO Secretariat does not appear to be in a position to provide other things than athe data available to it. Contrary to the CITES Secretariat, it is not allowed to provide recommendations of its own in favour or against proposals such as for inclusion in CITES appendices. The issue must have been discussed previously within the proper instances and the views formally approved. This is illustrated by the answer provided by the FAO Fisheries Department to the CITES Secretariat about the three shark species proposed for inclusion and considered at CoP11. The answer consisted exclusively in the provision of FAO Web sites concerning the species in question. In such circumstances, and considering that COFI meets every two years only, it appears difficult to find a mechanism that would allow the FAO Secretariat to go further than it has when consulted by the CITES Secretariat, except to request CITES not to consider any proposed listing in its appendices of fisheries resources before the relevant proposals have been considered at a COFI meeting. This would be difficult to obtain. Similarly, the FAO observers at CITES meetings of the Conference of the Parties are not in a position to make any recommendation during the discussion of amendment proposals. At CoP11, the observer from FAO remained silent when the shark proposals were considered.

The situation is or may be different for RFMOs, or some of them at least, since they can meet more frequently or may have other possibilities to take position. At CoP11 however, concern was expressed, and echoed by several Parties and one observer, that intergovernmental bodies

other than the FAO had not been consulted by the CITES Secretariat under the terms of Article XV. Under the meeting report (Com. I. 11.13) it does not seem that the Secretariat provided any explanation to that and, at the Technical Consultation, the Secretariat confirmed that only the FAO was consulted. Therefore a mechanism should be established to make sure that all relevant RFMOs be consulted when proposals on species of concern are submitted.

If direct contacts are difficult to establish, because the CITES Secretariat does not know which are the relevant bodies, the FAO Department of Fisheries could possibly serve as an intermediary and communicate the requests of data and views from the CITES Secretariat to them. On the other hand, at CoP11, one RFMO was in a position to express clear opposition to the listing of shark species in Appendix I or II.

10. It is then recommended that the FAO Fisheries Department be called to play a facilitating role in improved dialogue and communications among member States, RFMOs and CITES. It is added that FAO may put the issue on the agenda of the next meeting of RFMOs and FAO to be held before next COFI meeting (February 2001) and invite CITES to attend the meeting. This would certainly be a good initiative which could help improving understanding of each other concerns. This supposes however that the meeting be well prepared to have the right questions discussed and answered (see also below).

11. Concern about de-listing procedures is expressed. Fisheries management and aquaculture development are active processes and risks to resources may change due to environmental shifts, improvement of management schemes or restocking programmes. There is therefore a need for a sufficiently objective, flexible and responsive mechanism for listing and de-listing. The mechanism for listing in and delisting from CITES Appendices I and II exist and is described in Article XV of the Convention. It may not be changed without an amendment to the text, which is nearly impossible to obtain. The mechanism is completed by the criteria adopted by the Conference of the Parties in Resolution Conf. 9.24 to be reviewed. In principle, the mechanism is flexible and responsive, in the sense that changes to the appendices may be adopted not only at meetings of the Conference of the Parties, as they are in general, but also between such meetings through postal procedures.

In practice, things are not so easy, so flexible or responsive, as they could be, in particular with regard to delisting or transfer from Appendix I to Appendix II. Concerning the postal procedure, which has been used a few times in the past, with or without success, the following may be said. If an urgent amendment has to be adopted and if it is not likely to raise objections, the postal procedure is likely to work. It did in the past, e.g. for the inclusion of the giant panda in Appendix I when two skins smuggled to Hong Kong were discovered and demonstrated that the species was in trade. However, if the proposal is controversial, with a single objection formulated by a Party the proposal must be submitted to a postal vote. The vote is valid only if the Secretariat receives the votes of at least one-half of the Parties. The deadline for voting is relatively short and not many Parties, for whatever reasons, are casting a vote. In the absence of the quorum, the proposal is referred to the next meeting of the Conference of the Parties. For the postal procedure a two-thirds majority of Parties casting an affirmative or negative vote is also required. In the whole CITES history, a few amendments were adopted without objection, some proposals were withdrawn because objections were received and to avoid a vote, and one proposal was submitted to a vote but the quorum was far to be reached.

As said earlier in this paper, no matter how good the criteria could be, this will not prevent

the use, openly or preferably not, of other than trade or scientific arguments to decide upon a proposal. The precautionary principle is also frequently evoked, sometimes excessively, when delistings or transfer from Appendix I to Appendix II are under consideration. Therefore, objectivity is by far not guaranteed, in particular with species the trade potential and commercial value of which are evident.

12. The penultimate recommendation, about the establishment of a working group of technical experts, has been examined under point 6. above. No need to repeat what was said then. However, the group could also be directed to examine under which conditions the listing in CITES appendices, especially in Appendix II, of species or stocks of fisheries resources could or should be recommended. This could be done in using the three **V criteria** described in Fisheries Circular No. 954 and examined earlier in this paper, as well as other potential criteria. This of course would extend the terms of reference of the working group and would not have much to do with the 'look-alike' issue with which it should deal in particular under the recommendation.

13. It seems appropriate to revise the language of Annex 4 on the precautionary measures to reflect advances in understanding of the implementation of the precautionary approach in conservation, particularly of resources exploited by fisheries in marine and large freshwater bodies, as well as its advances in fisheries, as proposed in the last recommendation to COFI, although there was some opposition. It should be made clear in particular that the listing of a species in CITES appendices, either in Appendix I or in Appendix II but for different reasons, is not necessarily in the best interest of the species concerned.

<u>Other Issues that May or May not Have Been Considered at the Technical Consultation:</u>

1. Resolution Conf. 9.24 under review by CITES components, as well as by FAO, is composed of a core Resolution and of six Annexes, including one (Annex 2) split in two parts (Annexes 2a and 2b). The documents prepared by FAO and examined by the Technical Consultation deal exclusively with the Annexes concerning the criteria and conditions for amendment of CITES Appendices I and II. However the review process conducted by CITES is supposed to cover the whole text of the Resolution. It is therefore useful to examine whether some items of the core Resolution deserve consideration and whether changes should be suggested to meet the requirements or concerns of the fisheries community. This would apply also to Annex 6, which provide the format for proposals to amend the appendices.

   In the preamble, four paragraphs are worth noting. First, the Conference of the Parties recognizes that the range States of a species subject to an amendment proposal should be consulted and that the intergovernmental bodies having a function in relation to that species should be consulted as well. In the text of the Convention, the consultation of intergovernmental bodies is required for marine species only. Second, the Conference notes the competence of certain intergovernmental organizations in relation to the management of marine species. This complement of course the former paragraph and is in line with the text of the Convention. Third, the Conference recalls that the international trade in all wild fauna and flora is under the purview of CITES. This has been said in the introduction of this paper. However, this should not mean that all species, even if they meet CITES criteria for inclusion in Appendix I or II should automatically be listed. There are circumstances, in particular for marine resources, under which CITES would not appear as the appropriate instrument to ensure at best the conservation and sustainable use of the species concerned. It is suggested that this also should be stated in the preamble to the Resolution. To some extent at least, this

is what is proposed by the CITES Criteria Working Group in its report : "Parties should avoid the inclusion in Appendix II of species that are in international trade, but managed in such a manner that there is negligible risk that, in the near future, the species will qualify for inclusion in Appendix II under the provisions of Annex 2a to this Resolution".

Fourth, the Conference recognizes that by virtue of the precautionary principle, in case of uncertainty, the Parties shall act in the best interest of the conservation of the species concerned. As said about the last recommendation of the Technical Consultation to COFI, this does not mean necessarily that the species in question must be listed in CITES appendices. It may be worth saying that also.

In the operative part of the Resolution, the Conference of the Parties resolves in the same sense as in the last paragraph of the preamble just mentioned, again without any indication that the precautionary principle should not necessarily work towards more restrictions. In fact, the Resolution does not leave any room for adaptive management, a notion that can not be ignored anymore. In two of the next three paragraphs, the Conference resolves that any species that is or may be affected by trade should be included in Appendix I if it meets at least one of the criteria listed in Annex 1, or that any species that meets the criteria for inclusion in Appendix II listed in Annex 2a should be included in that appendix in accordance with Article II, paragraph 2(a). A similar resolution is then made for listing in Appendix II under Article II, paragraph 2(b). No exception is envisaged, e.g. for species managed under other intergovernmental bodies.

Split-listing is referred to in paragraph e) in relation with the criteria in Annex 3. Paragraph f) is about species of which all specimens in trade have been bred in captivity. They should not be listed in the appendices if there is no probability of trade in specimens of wild origin. This of course does not necessarily apply to species subject to aquaculture, which are not subject to any specific reference in Resolution Conf. 9.24. In Annex 6, however, under Utilization and trade and under Management measures, the proponent should provide details respectively of commercial captive-breeding operations and of programmes to manage populations of the species in question, e.g. captive breeding, ranching, etc., which may include aquaculture without specifying it. Considering the current development of aquaculture, it appears that it should taken into account in a more specific way.

The Conference of the Parties resolves also that the views, if any, of intergovernmental organizations with competence for the management of the species concerned should be taken into account. This supposes that such views are known. As seen earlier, under point 9. of the previous section of this paper, neither FAO nor any other organization has submitted views on the shark proposals before CoP11, because they were either not consulted or not in a position to provide more than data. This resolution might need to be reinforced for organizations dealing with marine species as they are the only one referred to in the text of the Convention for which the CITES Secretariat has the obligation to consult to get such views. Nevertheless, it is mainly to these organizations to make sure that their views be clearly expressed before and at meetings of the Conference of the Parties.

Regarding Annex 6, apart from what is said above, no further comments are made is this paper. However, it would be certainly useful that fisheries experts consider it carefully to spot possible issues of concern, either on what is said or on what is not said. For example, this Annex does not make any specific reference to species which occur in international waters.

2. Some delegations at the Technical Consultation stressed that the review should not be limited to biological criteria but should include social and economic aspects of fisheries. Such aspects were considered to some extent in the Fisheries Circular No. 954, in particular to underline risks of false alarms or missings because of bad criteria and potential problems with the listing of 'look-alike' species. The conclusion of the section on Populations and Subpopulations, which is repeated above under the same section of this paper, is very clear in that sense.

The need to consider the social and economic aspects of fisheries is of critical importance. It appears however difficult to introduce them in the criteria for amendment of Appendices I and II. They should be used separately to prevent unjustified listings or listings which are not of last resort. This should therefore be seriously considered by COFI and RFMOs before and while negotiating co-operation with CITES.

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As it has been indicated under point 10. of the previous section of this paper, the need of a dialogue and communication between FAO and RFMOs and CITES was subject to a recommendation of the Technical Consultation. Several delegations suggested discussions to explore the relationship between them, including how CITES might complement FAO's efforts towards implementation of the Code of Conduct for Responsible Fisheries and International Plans of Action. The establishment of such relationship, as indicated throughout this paper, is of great importance to avoid actions from one side that could be detrimental to actions from the other side.

As also suggested, while trade, including international trade, may be a factor of threat, other factors have to be considered and taken into account. CITES is dealing only with international trade and it should not ignore institutions dealing with other factors. CITES should avoid interfering in the activities of directly and primarily concerned bodies without their agreement, unless it becomes obvious that such interference, in last resort, appears fully justified.

This does not mean that CITES must be bound by the decisions taken by the other bodies, or vice versa, as it is happening with the International Whaling Commission. Under the pretext that IWC is imposing a moratorium on any commercial whaling, the Conference of the Parties to CITES refuses to transfer species or stocks from Appendix I to Appendix II, although it is obvious that they do not meet the criteria for inclusion in Appendix I. There is no reason for an organization with more than 150 member States to necessarily follow an organization with no more than 40 member States. At present of course, the situation with FAO and RFMOs is not comparable to that with IWC. It is obvious however that those who were able to change the IWC policy and are now maintaining CITES in the same track are also trying to use CITES with the same objectives with respect to fisheries. In addition to that, a number of people, who are not necessarily opposed to the sustainable use of natural

resources but are concerned by the actual problems faced by fisheries, believe that CITES could contribute to the solution of these problems. However, they are not taking into account the new problems that CITES listings would generate.

This does not mean either that CITES can not play a positive role with regard to the conservation of marine resources under particular conditions, as demonstrated with some of these resources. In addition, CITES may play a role of incentive, as it did when the listing of the Atlantic blue-fin tuna was proposed in 1992. ICCAT had to take more conservative measures to prevent further proposals and the eventual listing of the species in CITES appendices.

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Twice in this paper a reference is made to **stricter domestic measures** that may be adopted by Parties in accordance with Article XIV, paragraph 1, of the Convention. Under that Article, the Parties have the right to adopt domestic measures that are stricter than those provided by the Convention with regard the conditions for trade, taking, possession or transport of specimens of species included in the appendices, or the complete prohibition thereof. Many Parties, in particular the main importing countries, have adopted such stricter domestic measures and would most likely also implement them to marine resources that could be listed in CITES appendices. A number of Resolutions and Decisions of the Conference of the Parties to CITES, which are not binding the Parties unless their provisions are included in the national legislation, may be considered as stricter measures or are calling for the implementation of stricter domestic measures.

It is also in reference to this Article that the Conference of the Parties or even the Standing Committee of CITES has been able in the past to recommend to Parties to apply sanctions against some individual Parties or non-party States, including the prohibition of trade in CITES species.

The CITES Resolution that will replace Resolution Conf. 8.9 on the Trade in wild-caught animal specimens (document Doc. 11.41.2 Annex 1), directs the Animals Committee, in co-operation with the Secretariat to review the biological, trade and other relevant information on Appendix-II species, with a view to identify problems with the aim of ensuring implementation of Article IV, paragraphs 2(a), 3 and 6(a), and to make recommendations when and where appropriate. Primary recommendations include, for example, administrative procedures, specific quotas, zero quotas or temporary restrictions on exports.

Secondary recommendations include, for example, field studies or evaluation of threats to

populations or other relevant factors, including illegal trade, habitat destruction, internal or other uses, designed to provide the information necessary for a Scientific Authority non-detriment finding. Upon failure of a Party to satisfy the Secretariat that it has fulfilled specific requirements of the Resolution, the Secretariat has to recommend to the Standing Committee that all Parties take strict measures, including as appropriate suspension of trade in the affected species with that Party. This Resolution, which is known as the Resolution on significant trade, although it does not make reference to Article XIV, paragraph 1, is directly relevant to that paragraph, the strict measures just mentioned calling in fact for 'stricter domestic measures', in particular when a suspension of trade is recommended. The Resolution would of course be of direct interest to the fisheries community if commercially-exploited fish and invertebrate species would be listed in Appendix II. Therefore, the fisheries community must be aware of it and of its potential implications.

5. Article XXIII of CITES provides that any State, when depositing its instrument of ratification, acceptance or approval of, or accession to the Convention the right to enter a **specific reservation** with regard to any species included in Appendix I, II or III. Specific reservations may also be entered by any Party when an amendment to Appendix I or II has been adopted but only during the period of time of 90 days between the date of adoption of the amendment and its date of entry into force (Article XV, paragraph 3). For Appendix-III species, there is no deadline for entering a reservation (Article XV, paragraph 2). Until a Party withdraws its reservation, it shall be treated as a State not a Party to the Convention with respect to trade in the species covered by the reservation.

   Consequently, if a Party disagrees with the listing of any species in CITES appendices, it has the possibility not to implement the CITES provisions to the trade in that species through the entering of a specific reservation. However, if it is willing to trade in specimens of the species for which it has a reservation with a country which has not entered a similar reservation, it will have to meet the requirements of Resolution Conf. 9.5 on trade with States not party to the Convention, i.e. to satisfy conditions which are comparable to those the Parties have to satisfy. On the other hand, the reserving Party may trade freely with any other reserving Parties or with non-party States.

   With regard to listings in Appendices I and II, reservations constitute a measure of last resort and in general they are of limited effect. It is much more efficient to prevent a listing than to enter a reservation after the listing has been accepted. For Appendix-III listings, which are unilateral decisions imposing to all Parties to implement provisions they may consider as useless or counterproductive, reservations are more efficient, in particular for importing countries but also for the range States that have not requested the listing.

   A list of current specific reservations is maintained by the CITES Secretariat.

At the Technical Consultation, it was suggested that the use of '**quotas**' by CITES might benefit from imputs regarding the use of various types of quotas in modern adaptive fisheries management. It is worth therefore describing what is meant by CITES when quotas are established, either by the Conference of the Parties or by individual Parties on a voluntary basis. In the case of CITES, quotas are always fixed to determine the maximum number or quantity of specimens of a species that may be exported in a given year. In no circumstances, so far, the term 'quota' has been used in CITES to determine a percentage or a portion of a global number or quantity of specimens for a given species, although this might become necessary for specimens of species occuring in international waters to split a global number

or quantity between several countries.

The quotas established by the Conference of the Parties are either included in annotations to listed species and constitute an integral part of the listing, or are included in specific Resolutions. These quotas may only be changed by the Conference of the Parties, on the basis of proposals to amend Appendices I and II or of proposals to amend the relevant Resolution. Any Party may inform the other Parties, through the Secretariat, of quotas it has established, as a management measure, for any of the species listed in CITES appendices occurring in its territory. It has no obligation to do so but if it does, it has to indicate the quota on each export permit concerning the species, as well as the number or quantity of specimens of that species already exported during the year.

Conclusions

The first conclusion of this paper should be that CITES is not, except under very specific circumstances, an appropriate instrument to manage commercially-exploited marine species, in particular those subject to large-scale fisheries, and to promote their sustainable use. The need of such management and sustainable use is fully recognized but they should be left to competent organizations such as FAO and RMFOs, which would have the possibility at any time to suggest or request an involvement of CITES if they consider it justified.

With the decision to undertake an appraisal of the suitability of the CITES criteria for listing commercially-exploited aquatic species, COFI has implicitly acknowledged that these species may fall within the purview of CITES. It is therefore important that FAO and other institutions involved in the management and conservation of marine resources do their best to ensure the adoption by CITES of criteria acceptable to them. This should be the work of scientists and technical managers and is not dealt with in this paper. This action has started with the preparation of Fisheries Circular No. 954 and has continued with the Technical Consultation. The participation of a representative of FAO in the CITES Criteria Working Group is also part of the exercise and it is hoped that FAO, RMFOs, their Member States, the fisheries industry and relevant NGOs will also contribute in sending their comments to the CITES Secretariat now that the report of the CITES Criteria Working Group and the proposed revised criteria have been circulated.

Nevertheless, this would not be sufficient because it is difficult to believe that criteria, as good as they could be, would always prevent the listing of species in CITES appendices against the wish of the fisheries community. To guarantee that, further work should be undertaken before the 12th meeting of the Conference of the Parties to CITES, where the revised criteria should be adopted and where marine species might be proposed for inclusion in CITES appendices. Considering that CoP12 should be held during the second half of 2002, the time available is not so long. In addition, the fact that the only meeting of COFI before CoP12 will take place in February 2001 should not facilitate the adoption of decisions that may be significant for the future of the relationship between FAO, fisheries bodies and CITES. The following actions appear necessary, some of which are fully or partially covered by recommendations to COFI of the FAO Technical Consultation:

To contribute to the adoption of biological criteria, definitions and guidelines for inclusion in CITES Appendix I that would prevent the listing in that appendix of species (including stocks) even if they may be momentarily over-exploited but are not actually endangered.

To contribute to the adoption of criteria, definitions and guidelines for inclusion in CITES Appendix II that would prevent the listing in that appendix of species (including stocks) simply because

they appear in international trade or look like such species.

To contribute to the revision of other parts of Resolution Conf. 9.24, including the precautionary measures, to ensure that they are not in contradiction with but take into account the interests of the fisheries community.

To review problems in relation to listing fisheries resources in Appendix I, II or III. This should be one of the tasks of the working group of technical experts recommended by the Technical Consultation. This paper should facilitate this review.

To propose solutions, through the criteria or otherwise, to the problems identified, and a more convenient alternative to the listing of species (including stocks) in CITES appendices.

To determine the circumstances or conditions that could justify the listing of marine resources in CITES appendices as a complementary management tool to conserve them and ensure their sustainable use (e.g. on the basis of the three V criteria described in Fisheries Circular No. 954).

To prepare a memorandum of understanding or similar document to define the relationship between FAO and/or RMFOs and CITES with the intent, in particular, to prevent the listing in CITES appendices of marine resources against the interests and wish of the fisheries community.

To develop mechanisms or other means to ensure co-ordination at the national level, where appropriate, between fisheries and CITES authorities, for the preparation of amendment proposals to CITES appendices, the analysis of and taking of decisions on amendment proposals submitted by other Parties and the establishment of the national delegation to CITES meetings.

To develop a mechanism to ensure that FAO and RMFOs are properly and timely informed of relevant amendment proposals to CITES appendices, in accordance with Article XV of the Convention, and that they have the authority and possibility to express their views and recommendations to the CITES Secretariat and at meetings of the Conference of the Parties and that they do express them.

Last but not least, to make every efforts to ensure that marine resources are properly managed and sustainably used to prevent the use of mismanagement as a pretext to list such resources in CITES appendices.

Lausanne, 31 August 2000