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para la
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y la
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COMMITTEE ON FISHERIES

SUB-COMMITTEE ON FISH TRADE

Ninth Session

Bremen, Germany, 10-14 February 2004

Agenda Item 5

CITES ISSUES WITH RESPECT TO INTERNATIONAL FISH TRADE AND THE CITES/FAO MOU

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INTRODUCTION

1. The 25th Session of COFI agreed on a process of work related to CITES and commercially-exploited aquatic species to be followed by FAO. The process consisted of two major issues: a Work plan on CITES and Commercially-exploited Aquatic Species; and on-going discussions on a possible Memorandum of Understanding (MoU) between FAO and CITES. In relation to the Work plan¹, COFI agreed that there should be two expert consultations: one dealing with issues related to implementation of CITES regulations subsequent to listing a commercially-exploited aquatic species; and the second dealing with the legal issues and implications of the CITES listing criteria and the CITES Convention itself in relation to relevant international law covering fisheries. The Work plan also covered monitoring and participation by FAO in the CITES process to amend CITES Resolution Conf. 9.24. Further details on the Work plan are included as Appendix 1 to this document.

2. With reference to the possible MoU with CITES, the 25th Session of COFI expressed disappointment that consensus could not be reached on the draft MOU and agreed that work on the MoU should continue at opportune times including at the Ninth Session of the COFI Sub-Committee on Fish Trade in 2004. COFI delegated the authority to finalize the draft FAO/CITES MoU to the Sub-Committee on Fish Trade.

PROGRESS WITH THE WORKPLAN

The Expert Consultations

3. At the 25th Session of COFI the delegations of Norway and Japan offered to provide extra-budgetary resources to organize the expert consultations on the “Look-alike clause”, the application of the phrase “introduction from the sea”, listing criteria and other matters described in the Work plan. It was not possible to secure the required funding in time to hold either of the expert consultations prior to the Ninth Session of COFI-FT in February 2004. However, the above-mentioned donors have confirmed their willingness to provide financial assistance and FAO has been able to set aside Regular Programme funds during the 2004-2005 biennium to cover the shortfall in funds required for implementation of the Work plan (Appendix 1). Preparations for the implementation of the two expert consultations therefore commenced in September 2003 and the consultations are scheduled to be held during 2004.

Monitoring and Participation in the CITES Process to amend Resolution Conf. 9.24

4. The Eighth Session of the COFI Sub-committee on Fish Trade endorsed on behalf of COFI the report from the FAO Second Technical Consultation on the Suitability of the CITES Criteria for Listing Commercially Exploited Aquatic Species and agreed that the report should be conveyed to the CITES Secretariat as the formal FAO input to the CITES review process. It also agreed that the recommendations from the FAO Technical Consultation must be seen as a package, including the proposals on changes to the criteria, the emphasis on using the best scientific information available and the need for a strengthened scientific evaluation process and evaluating proposals on a case by case basis. The report and recommendations of the FAO Second Technical Consultation were duly conveyed to the CITES Secretariat.

5. Revisions to CITES Resolution Conf. 9.24 (the listing criteria and definitions) were discussed at the 12th Meeting of the CITES Conference of the Parties (CoP-12) in November 2002. A Working Group was formed to meet during the Conference to examine proposals for

¹FAO. Appendix F. Report of the twenty-fifth session of the Committee on Fisheries. Rome, 24-28 February 2003. *FAO Fisheries Report*. No.702. Rome, FAO. 2003. 89p.

revising the criteria put forward by the chairs of the CITES Animals Committee and Criteria Working Group. The representative of the FAO Fisheries Department to CoP-12 was included in that Working Group, which also included a number of other fisheries experts. The Working Group made good progress and considerable agreement was reached, but with a number of outstanding issues that were considered to need further discussion and work. The results from the working group were submitted to the plenary of CoP-12 as document CoP12 Com. I.3. That document included the most important recommendations from FAO. CoP-12 accepted this report and agreed that it would “form a basis for further discussion in recognition of the substantial and constructive efforts contributed by the Parties, the inter-sessional Criteria Working Group set up by CoP-11, FAO, the CWG set up during CoP-12, and others”. The Standing Committee was designated to oversee further discussion through the Animals and Plants Committees and the preparation of a new proposal for revision of the existing criteria (Resolution Conf. 9.24) for submission to CoP-13 in 2004.

6. Subsequently and in accordance with the decision of CoP-12, the 19th Meeting of the CITES Animals Committee in August 2003 agreed on a process and timetable for a review of different taxa against the criteria proposed in CoP12 Com. I. 3 to ensure the applicability of the criteria and guidelines. The reviews are scheduled to be completed by 5 December 2003 and will then be posted on the CITES web site. Comments on these will be received by the Animals and Plants Committees between 5 December 2003 and February 2004. In February 2004, a joint meeting² of the Animals and Plants Committees will be held to analyze the results of the taxonomic reviews, discuss revisions to CoP12 Com. I. 3, and prepare a draft resolution for consideration at the 13th meeting of the Conference of the Parties (CoP-13) in October 2004.

7. The FAO Secretariat will monitor this process and is planning on participating in the joint meeting of the Animals and Plants Committees in February 2004 and in CoP-13 in Bangkok in October 2004, to try to ensure that the FAO recommendations are included in any revisions to the existing criteria.

*The Terms Of Reference for an ad hoc Expert Advisory Panel for the Assessment of
Proposals to CITES for such Species*

8. COFI agreed to the Terms of Reference for an *ad hoc* Expert Advisory Panel to assess any proposals to CoP-13 for listing commercially exploited aquatic species³. These terms of reference are attached to this report as Appendix 3. No decisions were made by COFI on whether or not an *ad hoc* panel would be convened for CoP-13 if relevant proposals were made to the Conference of the Parties. At the time of writing this report the FAO Secretariat had not received any information on the probability of proposals being submitted for listing commercially-exploited aquatic species. However, given the agreement at CoP-12 to the listing on Appendix II of whale shark *Rhincodon typus*, basking shark *Cetorhinus maximus*, and Seahorses *Hippocampus* spp., it is considered likely that more commercially-exploited aquatic species will be proposed at CoP-13.

MOU BETWEEN FAO AND CITES

9. No agreement could be reached at the 25th Session of COFI on the wording of a draft MoU between FAO and CITES. Many Members expressed their strongly held view that CITES listings of commercially exploited marine species should be limited to exceptional cases only since in their view such listings have potentially serious negative consequences for normal fishing activities, particularly those of developing coastal States including small island States and their

² There is still debate about the venue of this meeting and whether or not it will be a joint meeting, or separate meetings of the two Committees.

³ FAO. Appendix E. Report of the twenty-fifth session of the Committee on Fisheries. Rome, 24-28 February 2003. *FAO Fisheries Report*. No.702. Rome, FAO. 2003. 89p.

economies. Other Members noted that any attempt to limit CITES authority to list commercially exploited aquatic species was inappropriate and that CITES has a legitimate role in the regulation of trade in such species while also recognizing FAO's primary role in fisheries management. Some Members also expressed the view that FAO should produce a draft MOU containing a process for increased cooperation without policy pronouncements. The final text of the draft MOU discussed by COFI⁴, which was not accepted by COFI, is attached to this report as Appendix 2. Disputed text is shown in square brackets.

10. The desirability and possible wording of an MOU between the two organizations was also discussed at the 49th meeting of the CITES Standing Committee from 22-25 April 2003. Agreement could not be reached at this meeting either and the summary report of the meeting (SC49 Summary Report at <http://www.cites.org/eng/ctee/standing/49/E49-SumRep.pdf>) states that "There were difficulties over semantics as well as fundamental principles."

11. The information available to the FAO Secretariat at the time of writing this report (December 2003) indicates that the fundamental differences of opinion on the respective roles of the two organizations in relation to commercially-exploited aquatic species remain. No further progress has therefore been made on the MOU.

OTHER MATTERS

12. During 2003, the Fisheries Department of FAO, at the request of the directly affected Member countries and of the CITES Secretariat, has been providing technical advice on Caspian Sea sturgeons. All the Acipenseriformes (paddlefish and sturgeons) are listed on CITES Appendix II with the exception of some species listed on Appendix I. The States bordering the Caspian Sea are experiencing some difficulties in conforming with CITES requirements concerning the conservation and management of the sturgeon species caught in their fisheries. FAO has been requested to provide advice on the methods used for assessing the status of sturgeon stocks and the basis of recommendations for annual total allowable catches and export quotas.

13. Further, the Caribbean queen conch *Strombus gigas*, listed on CITES Appendix II, is currently undergoing a review of the impact of international trade on the survival of the species (referred to by CITES as a Review of Significant Trade) in response to concerns about inadequate management and control by some countries harvesting and exporting the species. The 19th meeting of the CITES Animals Committee (18-21 August 2003) agreed on a series of recommendations for those countries for which there were concerns and proposed specific actions to address the problems being experienced. Their recommendations included encouragement to seek assistance from FAO and other appropriate organizations. At the time of writing this report, FAO is preparing to provide assistance as required and to the extent allowed by the limited resources of the Organization.

SUGGESTED ACTION BY THE SUB-COMMITTEE

14. The Sub-Committee may wish to:
- take note of preparations concerning the expert consultations on implications of a listing on a CITES Appendix and the legal issues related to CITES and commercially-exploited aquatic species;

⁴ FAO. Appendix G. Report of the twenty-fifth session of the Committee on Fisheries. Rome, 24-28 February 2003. *FAO Fisheries Report*. No.702. Rome, FAO. 2003. 89p.

- take steps to ensure that their national delegations to CoP-13 strive to ensure that the FAO recommendations on the listing criteria are included in any revisions to the existing criteria;
- reconsider the text of the draft MoU between FAO and CITES to see whether agreement can be reached at this stage; and
- advise on whether or not the FAO Secretariat will be required to convene an ad hoc Expert Advisory Panel for the assessment of proposals to CITES CoP-13 for commercially exploited aquatic species and, if so, how this will be funded.

APPENDIX 1: FAO WORK PLAN ON CITES AND COMMERCIAL- EXPLOITED AQUATIC SPECIES

1. The 25th Session of COFI agreed on the following process to be followed by the FAO Secretariat.

One Expert Consultation should be convened to address the following issues:

- CITES Article II Fundamental Principles, Paragraph 2(b), the “look-alike” clause;
 - Annex 3 of CITES Resolution Conf. 9.24 Criteria for Amendment of Appendices I and II, which deals with split-listing; and aquaculture issues as a group, noting the inter-relationships in these topics.
 - Administrative and monitoring implications of listing and down-listing, including the implications of Annex 4 of Res. Conf. 9.24 for this. It was agreed that this should also include an analysis of the socio-economic impact of listing on sturgeon, queen conch and a number of hypothetical listing proposals. It was suggested that participants to this consultation include those with direct experience in implementation of CITES regulations for such cases.
2. A second Expert Consultation should be convened to address:
- Applications of the phrase “introduction from the sea” in the definition of trade in Article I of the CITES Convention text, including consideration of the administrative costs associated with the various interpretations of this term.
 - An analysis of the legal implications of the existing CITES listing criteria and the CITES Convention itself in relation to the UN Convention on the Law of the Sea (UNCLOS) and related international law covering fisheries, and of any changes in those implications resulting from adoption of the proposals included in Appendix F to the Report of the FAO Second Technical Consultation.

FAO should continue to monitor and participate, where appropriate, in the on-going CITES process to amend Resolution Conf. 9.24, with a view to facilitating further progress.

IMPLEMENTATION OF THE PROPOSED FAO WORKPLAN ON CITES

3. Subject to the availability of the required extra-budgetary funding, the FAO Secretariat proposes to implement the recommendations by the 25th Session of COFI on a Work plan as follows:

First Expert Consultation: Implementation Issues

4. The first Expert Consultation will be convened in Rome during 2004 to address the issues related to implementation i.e. Paragraph 2(b), the “look-alike” clause; Annex 3 of CITES; and the administrative, monitoring and socio-economic implications of listing and down-listing. The Expert Consultation will be held in one language. Prior to the Consultation, a number of Consultants will be recruited to prepare background papers on the primary issues to be discussed:

- the implications of the “look-alike” clause for fisheries;
- application of Annex 3 on split-listing; and aquaculture issues;
- the administrative, monitoring and socio-economic implications of listing and down-listing (including the implications of Annex 4 of Res. Conf. 9.24), making use of case studies as appropriate.

5. In accordance with FAO regulations on Expert Consultations, a maximum of 8 external experts will be invited to the meeting and, as recommended by the 8th Session of COFI-FT, these will include experts with direct experience in implementation of CITES regulations for such cases.

6. The Consultation will generate a report evaluating the interpretation, implications and any potential problems relating to the main topics under discussion, for submission to the 26th Session of COFI in 2005.

7. The estimated budget for the preparations, implementation and reporting on the Expert Consultation is attached as Table 1.

Second Expert Consultation: Legal Aspects

8. The second Expert Consultation, on legal aspects of listing commercially exploited aquatic species in the CITES Appendices, will be held during 2004. The Expert Consultation will analyse CITES in the context of fisheries treaty law and other international law relevant to fisheries management. Among other matters, it will analyse the term “introduction from the sea”, the relationship between CITES and FAO and regional fisheries management organizations, the legal implications of the existing CITES listing criteria, as well as identify other possible legal implications resulting from the listing of commercially-exploited aquatic species and the possible adoption of the proposals included in Appendix F to the Report of the FAO Second Technical Consultation. Two papers, to be used as information papers for the Expert Consultation, will be produced to cover: (i) applications of the term “introduction from the sea”; and (ii) legal implications resulting from CITES listing of commercially exploited aquatic species.

9. The Expert Consultation will be held in Rome and in one language. Prior to the Consultation, consultants will be recruited to prepare the background papers on the two issues described above. In addition, input and active participation from the FAO Legal Department will be sought on these topics and in the Expert Consultation. The Consultation will generate a report that will be submitted to the 26th Session of COFI in 2005.

10. The estimated budget for the Expert Consultation is attached as Table 1.

Monitoring and participation in the on-going CITES process to amend Resolution Conf. 9.24.

11. The 19th Meeting of the CITES Animals Committee in August 2003 agreed on a process and timetable for a review of different taxa against the criteria proposed in CoP12 Com. I. 3 to ensure the applicability of the criteria and guidelines. The reviews are scheduled to be completed by 5 December 2003 and will then be posted on the CITES web site. Comments on these will be received by the Animals and Plants Committees between 5 December 2003 and February 2004. In February 2004, a joint meeting of the Animals and Plants Committees will be held to analyze the results of the taxonomic reviews, discuss revisions to CoP12 Com. I. 3, and prepare a draft resolution for consideration at the 13th meeting of the Conference of the Parties (CoP13) in October 2004.

12. It will be important for FAO to:

(i) prepare an appropriate response to the Animals and Plants Committees on the taxonomic reviews;

(ii) participate in the joint meeting of the Animal and Plant Committees in February 2004 to try to ensure that the FAO recommendations on listing criteria for commercially-exploited aquatic species are retained in CoP12 Com. I. 3; and

(iii) participate in CITES CoP-13 in October 2004 where any changes to CITES Res. Conf. 9.24 will be decided.

13. The costs of this participation are included in the budget in Table 1.

TABLE 1: PROVISIONAL BUDGET FOR WORKPLAN ON CITES

Action	Description	Outputs	Agencies/Consultants	Costs
<i>i) Expert Consultation on implementation issues</i>				
1	Working papers	Preparation of working papers for Consultation.	Selected consultants or organisations	\$ 20 000
2	Professional support in organization of Expert Consultation	Coordination of the preparation of papers and organisation of the Consultation.	Consultant for 2 months	\$ 12 000
3	Travel expenses	Costs of 8 experts to attend the EC for 5 working days. Working language: English.		\$ 32 000
4	Local organisational expenses	As required		\$10 000
5	Printing + translation of final report (3 languages)			\$15 000
	Sub-total			\$89 000
<i>ii) Expert Consultation on legal aspects</i>				
6	Working papers for the Expert Consultation	Two papers to be prepared, one analysing the term “introduction from the sea”, the other analysing legal implications of CITES listing	Selected legal experts to prepare two working papers.	US\$ 8 000
7	Travel expenses	Costs of 8 experts to the EC to be held in Rome, for 5 working days. Working language: English.		US\$ 32 000
8	Local organisational expenses	As required		\$10 000
9	Printing + translation of final report (3 languages)			\$15 000

	Sub-total			\$65 000
<i>iii) Monitoring and participation in CITES process to amend Resolution Conf. 9.24</i>				
10	Travel + DSA to joint meeting of CITES Animal and Plants Committees			\$4 000
11	Travel + DSA for participation in 13 th CoP in Bangkok, October 2004.			\$6000
	Sub-total			\$10 000
		TOTAL		US\$ 164 000

**APPENDIX 2: MEMORANDUM OF UNDERSTANDING BETWEEN THE
UNITED NATIONS FOOD AND AGRICULTURE ORGANIZATION
(FAO) AND THE CONVENTION ON INTERNATIONAL TRADE IN
ENDANGERED SPECIES OF WILD FAUNA AND FLORA (CITES)**

(From Appendix G, Report of the 25th Session of COFI)

(No consensus was reached on this text, see paragraph 48)

RECOGNIZING the primary role of sovereign States, FAO and regional fisheries management organizations in fisheries conservation and management,

RECOGNIZING further that the mission of FAO with respect to fisheries is to facilitate and secure the long-term sustainable development and utilization of the world's fisheries and aquaculture resources,

NOTING IN PARTICULAR FAO's three medium-term strategic objectives for fisheries namely: - Promotion of Responsible Fisheries Sector Management with priority given to the implementation of the Code of Conduct for Responsible Fisheries, Compliance Agreement, International Plans of Action, - Promotion of Increased Contribution of Responsible Fisheries and Aquaculture to World Food Supplies and Food Security and, - Global Monitoring and Strategic Analysis of Fisheries.

RECOGNIZING also the role of CITES in regulating international trade in species threatened with extinction which are or may be affected by international trade and those that may become threatened with extinction unless international trade in specimens of such species is subject to strict regulation as well as other species which must be subject to regulation in order that international trade in specimens of certain species threatened with extinction may be brought under effective control,

RECOGNIZING further that for marine species, the CITES Secretariat has an obligation to consult inter-governmental bodies having a function in relation to those species "especially with a view to obtaining scientific data" and "to ensuring co-ordination with any conservation measures enforced by such bodies."

TAKING account of the results of the 8th Session of the FAO Committee on Fisheries Sub-Committee on Fish Trade held in Bremen, Germany from 12 – 16 February 2002 (which was endorsed by the Twenty-fifth Session of the Committee on Fisheries (COFI) held in Rome from 24 to 28 February 2003) and in particular Paragraph 18 and Appendix F of the report of that meeting (FAO Fisheries Report No. 673) [and the view that CITES listings of commercially exploited aquatic resources should be limited to exceptional cases only and when all relevant bodies associated with the management of the species in question agree that such a listing would be advantageous].

NOTING that CITES cannot replace traditional fisheries management and the particular importance of consulting all relevant bodies associated with the management of the species when considering amendments to CITES appendices

ALSO TAKING account of the Decision of the 12th Conference of the Parties to CITES regarding the development of an MOU to establish a framework for cooperation between CITES and FAO,

BELIEVING that there is a need to strengthen the process in CITES for scientific evaluation of proposals for amendment of Appendices I and II concerning commercially-exploited aquatic species and improve communication between fisheries agencies and CITES authorities at the national level.

FAO AND CITES IN ORDER TO STRENGTHEN THE COOPERATION BETWEEN THEM HAVE DECIDED AS FOLLOWS:

1. The Fisheries Department of FAO and the CITES Standing Committee will send each other general information of common interest.
2. FAO will be invited as an observer to meetings under the auspices of CITES or its Committees that are of common interest and CITES will be invited as an observer to meetings of common interest held by the Fisheries Department of FAO, the FAO Committee on Fisheries or its subcommittees.
3. FAO and CITES will cooperate as appropriate to promote capacity building in developing countries for issues relating to commercially-exploited aquatic species listed on CITES appendices.
4. FAO will continue to provide advice to CITES and be involved in the process of revision of the CITES listing criteria.
5. CITES will inform FAO of all proposals for amendment of Appendices I and II concerning commercially-exploited aquatic species related to those species. Such information shall be provided to FAO as soon as possible to allow FAO to carry out a scientific and technical review of such proposals in a manner it deems appropriate and for the resulting output to be transmitted to the CITES Secretariat who will consider it in its deliberations to provide recommendations to the Parties to CITES regarding such proposals.
6. In order to ensure coordination of conservation measures, CITES will incorporate to the greatest extent possible the results of the FAO scientific and technical review of proposals to amend the Appendices, the responses from all the relevant bodies associated with management of the species in question, as well as the substance of the preambular paragraphs of this memorandum in its advice and recommendations to the CITES Parties. [In particular, this shall include the position that CITES listings of commercially exploited aquatic resources should be limited to exceptional cases only and when all relevant bodies associated with the management of the species in question agree that such a listing would be advantageous.]

This Memorandum may be cancelled by either signatory by giving notice to the other in writing at any time.

Director General, FAO _____ Date: _____

Chair, Standing Committee of CITES _____ Date: _____

APPENDIX 3: TERMS OF REFERENCE FOR AD HOC EXPERT ADVISORY PANEL FOR ASSESSMENT OF PROPOSALS TO CITES

(As adopted at the Twenty-fifth Session of COFI)*

1. FAO will establish an ad hoc Expert Advisory Panel for the Assessment of Proposals to Amend CITES Appendices I and II.
2. The Panel shall be established by the FAO Secretariat in advance of each Conference of the Parties, according to its standard rules and procedures and observing, as appropriate, the principle of equitable geographical representation, drawing from a roster of recognized experts, to be established, consisting of scientific and technical specialists in commercially-exploited aquatic species.
3. The Panel members shall participate in the Panel in their personal capacity as experts, and not as representatives of governments or organizations.
4. The Panel will consist of a core group of no more than 10 experts, supplemented for each proposal by up to 10 specialists on the species being considered and aspects of fisheries management relevant to that species.
5. For each proposal the Panel shall:
 - assess each proposal from a scientific perspective in accordance with the CITES biological listing criteria, taking account of the recommendations on the criteria made to CITES by FAO;
 - comment, as appropriate, on technical aspects of the proposal in relation to biology, ecology, trade and management issues, as well as, to the extent possible, the likely effectiveness for conservation.
6. In preparing its report, the Panel will consider the information contained in the proposal and any additional information received by the specified deadline from FAO Members and relevant RFMOs. In addition, it may ask for comments on any proposed amendment, or any aspect of a proposed amendment, from an expert who is not a member of the Panel if it so decides.
7. The Advisory Panel shall make a report based on its assessment and review, providing information and advice as appropriate on each listing proposal. The Panel shall finalize the advisory report no later than ?? days⁵ before the start of the CITES Conference of the Parties where the proposed amendment will be addressed. The advisory report shall be distributed as soon as it is finalized to all members of FAO, and to the CITES Secretariat with a request that they distribute it to all CITES Parties.
8. The general sequence of events will be as follows:
 - Proposals received by CITES
 - Proposals forwarded by CITES Secretariat to FAO
 - FAO forwards proposals to FAO Members and RFMOs and notifies them of deadline for receipt of comments
 - Member and RFMO comments and input received by FAO
 - Panel meets and prepares advisory report on each proposal
 - Panel report reviewed by FAO Secretariat and forwarded to FAO Members, RFMOs and CITES Secretariat.

* See paragraph 48 of the Report of the 25th Session of COFI

⁵ To be discussed with the CITES Secretariat