

Plenary Presentation 1

CITES NON-DETRIMENT FINDINGS IN CONTEXT

David H.W. Morgan
Chief, Scientific Support Unit
CITES Secretariat

Background

1. The preamble to the Convention recognizes that international cooperation is essential for the protection of certain species of wild fauna and flora against over-exploitation through international trade and the urgency of taking appropriate measures to this end. However the point at which such over-exploitation starts has never been defined by the Parties.
2. Terms used in the operative part of the Convention text such as “threatened with extinction” (Article II paragraph 1) and “utilization incompatible with their survival” [Article II paragraph 2. (a)] in relation to inclusion of species in the Appendices have been largely defined through the adoption of Resolution Conf. 9.24 (Rev. CoP14) on *Criteria for amendment of Appendices I and II*. However, similar terms related to the issuance of permits such as “...detrimental to the survival of that species” [Article III paragraphs 2. (a), 3. (a) and 5. (a); and IV paragraphs 2. (a) and 6. (a)] and “maintain that species throughout its range at a level consistent with its role in the ecosystems in which it occurs” [Article IV paragraph 3] have been little elucidated by the Parties. These have become collectively known as the “non-detriment findings” (NDFs).
3. On the initiative of Mexico, through document CoP14 Doc. 35 presented at the 14th meeting of the Conference of the Parties (The Hague, 2007), the Parties decided to call for an international expert workshop on NDFs to enhance CITES Scientific Authorities’ capacities, particularly those related to the methodologies, tools, information, expertise and other resources needed to formulate NDFs.

Requirements of the Convention

4. In detail, the NDF requirements in the text of the Convention are:
 - a) Article III (Appendix-I species)
 - i) An export permit shall only be granted when ... a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species
 - ii) An import permit shall only be granted when ... a Scientific Authority of the State of import has advised that the import will be for purposes which are not detrimental to the survival of the species involved
 - iii) A [introduction from the sea] certificate shall only be granted when ... a Scientific Authority of the State of introduction advises that the introduction will not be detrimental to the survival of the species involved
 - b) Article IV (Appendix-II species)
 - i) An export permit shall only be granted when ... a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species
 - ii) A Scientific Authority in each Party shall monitor both the export permits granted by that State for specimens of species included in Appendix II and the actual exports of such specimens. Whenever a Scientific Authority determines that the export of specimens of any such species should be limited in order to maintain that species throughout its range at a level consistent with its role in the ecosystems in which it occurs and well above the level at which that species might become eligible for inclusion in Appendix I, 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
 - iii) A [introduction from the sea] certificate shall only be granted when ... a Scientific Authority of the State of introduction advises that the introduction will not be detrimental to the survival of the species involved

It is worth noting that there is no NDF required prior to export for species included in Appendix III, even from the State that included the species in the Appendices.

Guidance on NDFs from the Conference of the Parties (CoP)

5. Arising initially from a document by the United States of America discussed at the 5th meeting of the CITES Animals Committee (Vancouver, August 1991), the CoP adopted Resolution Conf. 8.6 on the *Role of the Scientific Authority* in 1992. This Resolution recommended, *inter alia*, that the findings and advice of the Scientific Authority of the country of export be based on the following elements relating to the species concerned:

- population status;
- distribution;
- population trend;
- harvest;
- other biological and ecological factors; and
- trade information.

Furthermore, it directed the Secretariat:

- a) in consultation with appropriate experts, to prepare general guidelines for conducting appropriate scientific reviews by Scientific Authorities to make findings as required by Articles III, IV and V of the Convention;
- b) to provide these guidelines to the Animals Committee and Plants Committee for review; and
- c) to coordinate regional workshops on the conduct of Scientific Authorities.

In pursuit of this directive by the CoP, the Secretariat issued a questionnaire on 18 May 1995 with Notification to the Parties No. 863 to study in detail how the Scientific Authorities of Parties were organized. As explained by the Secretariat at the 13th meeting of the Animals Committee (Prùhonice, September 1996), responses to the questionnaire did not make it evident that guidelines were required, though the need for training was often expressed. The Secretariat suggested that it could compile information from training seminars to be used as guidelines for Scientific Authorities.

6. At CoP10 (Harare, 1997), Resolution Conf. 8.6 (Rev.) was replaced by Resolution Conf. 10.3 on *Designation and role of the Scientific Authorities*. With this change, the directive to prepare general guidelines for conducting appropriate scientific reviews by Scientific Authorities was replaced by an encouragement to the Parties, the Secretariat and interested non-governmental organizations to develop and support workshops/seminars designed specifically to improve the implementation of CITES by Scientific Authorities. In response, IUCN led two workshops in October 1998 and October 1999, the second under contract from the Secretariat. These resulted in a report: *CITES Scientific Authorities' Checklist to assist in making Non-detriment Findings for Appendix II Exports*. The report was made available at CoP11 (Gigiri, 2000) as document Inf. 11.3 and has subsequently been published by IUCN (Rosser and Haywood 2002). The Checklist developed helps identify the factors that need to be taken into account when making an NDF and provides a tool to help Scientific Authorities in understanding the strengths and weaknesses of the information at their disposal. Also at CoP10, the Parties approved the general outline of a series of workshops for Scientific Authorities to test and promulgate the Checklist. Since then the Secretariat has organized 14 workshops at which the Checklist has been used as a training tool for Scientific Authorities:

Venue	Date	Participants
Bonn, Germany	November 2001	31 European Parties, one European non-Party, and one Asian Party
Abidjan, Côte d'Ivoire	December 2001	West African Parties
Managua, Nicaragua	September 2002	19 Parties from Central and South America and the Caribbean and two from North America

Kuala Lumpur, Malaysia	May 2003	6 Asian Parties
Phnom Penh, Cambodia	November 2003	6 Asian Parties and 1 non-Party
Antananarivo, Madagascar	July 2003	5 Parties from the Indian Ocean area
Suva, Fiji	February 2004	Oceania region Parties
Brisbane, Australia	August 2004	6 Parties and 4 non-Parties from Oceania
Lusaka, Zambia	June 2004	12 Parties from East and Southern Africa
Sofia, Bulgaria	March 2005	15 Parties
Brasilia, Brazil	November-December 2005	
Lomé, Togo	January 2006	10 Parties from West Africa
Paramaribo, Suriname	January 2007	7 Parties from NE South America and neighbouring Caribbean area
San Salvador, El Salvador	January 2008	Parties to Central America Free Trade Agreement

7. In Resolution Conf. 13.2 on *Sustainable use of biodiversity: Addis Ababa Principles and Guidelines*, Parties were urged, when adopting non-detriment-making processes and making CITES NDFs, to make use of the *Principles and Guidelines for the Sustainable Use of Biodiversity* (Secretariat of the Convention on Biological Diversity, 2004) taking into account scientific, trade and enforcement considerations determined by national circumstances. At CoP14, Parties further agreed to take into consideration some recommendations on this point made by the Animals and Plants Committees. These are contained in Annex 2 to the revised Resolution. The Committees recommended that, although the Addis Ababa Principles and Guidelines are not always immediately applicable to the decision-making process under CITES, particularly with respect to making NDFs, they could nevertheless support the existing IUCN guidance for the making of NDFs and would be valuable for the development of taxa-specific guidelines, for instance for tree species. They highlighted Principles 1, 2, 4, 5, 6, 7, 8, 9, 11 and 12 which, on a case-by-case basis, may be considered for possible development of further taxa-specific NDF guidelines.
8. In the *CITES Strategic Vision: 2008-2013* adopted at CoP14 in Resolution Conf. 14.2, the Parties set an objective that best available scientific information be the basis for non-detriment findings. Mandated by the CoP, the Standing Committee at its 57th meeting went on to agree indicators for this objective as follows:
- a) The number of surveys undertaken by exporting countries of:
 - i) the population status as well as the trends and impact of trade upon Appendix-II species; and
 - ii) the status of and trend in Appendix I species and the impact of any recovery plans.
 - b) The number of Parties that have adopted standard procedures for making non-detriment findings.
 - c) The number and proportion of annual export quotas based on population surveys; and
 - d) The number of Appendix-II species for which trade is determined to be non-detrimental to the survival of the species as a result of implementing recommendations from the Review of Significant Trade.
9. In Resolution Conf. 14.7 on *Management of nationally established quotas*, the Parties recognized the linkage between export quotas and NDFs and recommended guidelines. In particular, they agreed that an export quota system is a management tool, used to ensure that exports of specimens of a certain species are maintained at a level that has no detrimental effect on the population of the species. The setting of an export quota advised by a Scientific Authority effectively meets the requirement of CITES to make an NDF for species included in Appendix I or II and, for species in Appendix II, to ensure that the species is maintained throughout its range at a level

consistent with its role in the ecosystems in which it occurs. When export quotas are established for first time or revised, this should be as a result of an NDF by a Scientific Authority and this NDF should be reviewed annually.

10. Whilst the CoP has not adopted any specific guidance to Parties on the methodology for the establishment of NDFs, it has nevertheless in effect agreed to such findings in a number of circumstances:
 - a) The effect of Resolution Conf. 9.21 (Rev. CoP13) is that export quotas for Appendix-I species set by the CoP are interpreted as fulfilling NDF requirements by exporting and importing countries unless new scientific or management data have emerged to indicate that the species population in the range State concerned can no longer sustain the agreed quota.
 - b) Annual export quotas (Botswana: 5; Namibia: 150; Zimbabwe: 50) for live specimens and hunting trophies of cheetah (*Acinonyx jubatus*) were agreed at the eighth meeting of the CoP (Kyoto, 1992) on the basis of document Doc. 8.22 (Rev.). These were put into effect as an annotation to the Appendices.
 - c) In addition, in Resolutions 10.14 (Rev. CoP14), 10.15 (Rev. CoP14) and 13.5 (Rev. CoP14), the CoP has agreed to export quotas for whole skins or nearly whole skins (including hunting trophies) of leopard (*Panthera pardus*) from 12 African Parties, hunting trophies of markhor (*Capra falconeri*) from Pakistan and hunting trophies of black rhinoceros (*Diceros bicornis*) from Namibia and South Africa. Parties seeking to establish or amend such a quota for a species included in Appendix I are required to present supporting information including details of the scientific basis for the proposed quota, although further guidance has not been provided by the CoP. Recent successful proposals found in documents CoP13 Doc. 19.1 - 19.4 and CoP14 Doc. 37.1 however suggest that the CoP considers information on: distribution, population status, population trends, threats, utilization and trade, actual or potential trade impact, population monitoring, management measures and control measures to be important with respect to these Appendix-I species.
 - d) For hunting trophies of Appendix-I species more generally, Resolution Conf. 2.11 (Rev.), recommends that the Scientific Authority of the importing country accept the finding of the Scientific Authority of the exporting country that the exportation of the hunting trophy is not detrimental to the survival of the species, unless there are scientific or management data to indicate otherwise, but again the CoP has not determined more detailed guidance on this matter.

Some thoughts from the CITES Secretariat

11. On the basis of its own experiences in supporting the Scientific Authorities of Parties in their work over the years, the Secretariat offers the following observations:
 - a) Given the way that CITES operates and the competence of individual Scientific Authorities, the most useful 'unit of measurement' in determining whether exports will not be detrimental to the survival of the species is the national population of the country involved.
 - b) The coordination of NDF actions for shared populations of migratory or aquatic species has already been undertaken in the case of sturgeons and paddlefish (Acipenseriformes) but needs further consideration.
 - c) The CITES 'community' possesses huge experience in the implementation of the Convention, but sometimes has a tendency to search for solutions to problems only within the realm of its own experience and contacts. A wider vision may help provide novel solutions.
 - d) NDFs have strong connections to risk assessments and environmental impact assessments. Therefore, similar approaches and thinking that apply to these could be applied to making NDFs.
 - e) Implementation of any NDF guidance by Parties would be likely to be facilitated by promoting linkages and synergy with the requirements of other biodiversity-related MEAs. Pertinent standards might include the CBD *Voluntary guidelines on biodiversity-inclusive environmental impact assessment* (CBD 2006), Ramsar *Guidelines for incorporating biodiversity-related issues into environmental impact assessment legislation and/or processes and in strategic environmental assessment* (Ramsar Convention Secretariat, 2007), the CMS resolution on this subject (CMS 2002); and the work of the

International Association for Impact Assessment and in particular its Biodiversity and Ecology section (www.iaia.org).

- f) Most Parties exporting specimens of species included in Appendix-II do not have extensive resources to implement NDF protocols that require high levels of labour or expensive equipment. Such protocols therefore need to be as simple and practical as possible commensurate with the nature of the determination to be made.
12. In compliance with Decision 14.51, the Secretariat has been pleased to help in obtaining funds to support this international expert workshop on NDFs and to assist the Steering Committee in preparing for it. It will ensure that the proceedings resulting from the workshop are made available to the general public via the CITES website and facilitate their review at the forthcoming meetings of the Animals and Plants Committees. It will also report on all these activities at the 15th meeting of the Conference of the Parties (Doha, 2010).

References

Ramsar Convention Secretariat, (2007), *Impact assessment: Guidelines for incorporating biodiversity-related issues into environmental impact assessment legislation and/or processes and in strategic environmental assessment*. Ramsar handbooks for the wise use of wetlands, 3rd edition, Vol. 13. Ramsar Convention Secretariat, Gland, Switzerland.

Rosser, A.R. and Haywood, M.J. (Compilers). (2002). *Guidance For CITES Scientific Authorities: Checklist to assist in making non-detriment findings for Appendix II exports*. IUCN, Gland, Switzerland and Cambridge, UK. xi + 146pp.

Secretariat of the Convention on the Conservation of Migratory Species of Wild Animals, (2002), *Impact assessment and migratory species. Proceedings of the 7th meeting of the Conference of the Parties, Resolution 7.2*, Secretariat of the Convention on the Conservation of Migratory Species of Wild Animals, Bonn, Germany.

Secretariat of the Convention on Biological Diversity, (2004), *Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity (CBD Guidelines)*, Secretariat of the Convention on Biological Diversity, Montreal, Canada.

Secretariat of the Convention on Biological Diversity (2006) *Impact assessment: Voluntary guidelines on biodiversity-inclusive impact assessment. Proceedings of the 8th meeting of the Conference of the Parties, Decision VIII/28*. Secretariat of the Convention on Biological Diversity, Montreal, Canada.