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UNRESOLVED QUESTIONS

The text of the CITES Convention provides for certain procedures to be followed when specimens are taken from international waters—what the Convention calls “introduction from the sea.” However, the document was drafted before the U.N. Convention on the Law of the Sea¹ (UNCLOS) entered into force and leaves room for varying interpretations of how it should be applied.

Background

Since the ninth Conference of the Parties (CoP) in 1994, and at several subsequent meetings of the CITES Parties, the role of the Convention in regulating trade in marine species taken on the high seas has continued to be discussed. The effective implementation of CITES for species taken outside the jurisdiction of any state—Introduction from the Sea—is key to ensuring CITES’ effectiveness as a tool in the conservation of commercially exploited and vulnerable marine species.² Introduction from the Sea impacts species in Appendices I (Article III.5) and II (Article IV.6).³

Introduction from the Sea is an important CITES provision for many marine species. The Parties discussed this issue extensively at CoP14 in 2007 and adopted a Resolution⁴ and Decision⁵ on it. The Decision directed the Standing Committee to continue its work to reach consensus on interpreting and implementing Introduction from the Sea for CITES-listed species. The Standing Committee’s Introduction from the Sea Working Group convened September 14-16, 2009, in Geneva. The Secretariat has submitted CoP15 Document 27,⁶ in consultation with the chair of the Standing Committee, based on discussions of the working group and consultations with the Parties.

Issues that the Parties have yet to clarify include the term “State of introduction” and the process for issuing certificates of introduction from the sea. Several species are already included in the CITES Appendices where this provision of the treaty is relevant, and Parties are issuing certificates. If the issue is not resolved at CoP15,

Parties will continue to interpret these issues. Resolving the issue would ensure consistent interpretation on a global scale. Lack of agreement should not be used to preclude including species on the Appendices that might benefit from such listings and fully qualify for inclusion.

Article I(e) of the Convention defines “introduction from the sea” as “*transportation into a State of specimens of any species which were taken in the marine environment not under the jurisdiction of any State.*” The phrase “marine environment not under the jurisdiction of any State” was not initially defined, but it was agreed at the last CoP to mean “*those marine areas beyond the areas subject to the sovereignty or sovereign rights of a State consistent with international law, as reflected in the United Nations Convention on the Law of the Sea*”—i.e., the high seas. This definition was incorporated into CITES Resolution Conference 14.6.

Article III.5 of CITES sets out the procedure to be followed for specimens of Appendix I species that are to be introduced from the sea.⁷ Article IV.6 sets out the procedure for specimens of Appendix II species.⁸ The Convention does not define the term “State of introduction,” so it can be interpreted to mean the *flag State* of the vessel that catches the specimen or the *port State* where it is first landed.

We draw the Parties’ attention to the recent agreement at the U.N. Food and Agriculture Organisation (FAO) on a new treaty dealing with illegal, unreported and unregulated fishing and the role of port States—the Port State Measures Agreement (PSMA)—which is now open for signature.⁹ The 91 countries that participated in the negotiations are virtually all CITES Parties, and all major fishing countries have been involved. It is therefore vital that the CITES Parties consider the PSMA provisions in their deliberations on the issue of Introduction from the Sea.

According to CoP15 Document 27, the working group meeting in September 2009 agreed that the term could be legally interpreted to mean either the port State of landing or the flag State of the vessel (or combinations of these), but the group could not reach consensus. We urge the Parties to find a solution that is consistent with international law and practice.

Recommendation of the Pew Environment Group
We believe that assignment of responsibility to the flag State is more consistent with international law for several reasons, including:

1. International law (e.g., UNCLOS, the U.N. Fish Stocks Agreement¹⁰) assigns primary responsibility for compliance to the **flag State** rather than the port State.
2. The new FAO PSMA recognizes the primacy of the **flag State**.
3. There are also ports of convenience that are willing to accept landings without checking for conformity with fisheries law (the working group raised concerns about flags of convenience).
4. If the port State is the State of introduction, it would have difficulty dealing with specimens that had been transferred at sea from the catch vessel to that of a different flag State (a “reefer”) before coming to shore.
5. If the flag State fails to exercise its duties responsibly, the port State still has the right to refuse to accept the landing—this happens already and is provided for in the PSMA.

6. In other implementation matters, CITES effectively deals with jurisdictions that are not internationally recognized, and this approach could be adopted for fishing entities (the working group raised concerns about the ability to deal with non-recognized jurisdictions);
7. Many fishing jurisdictions, such as the European Union, give **flag States** the primary responsibility for compliance with domestic and international fisheries law.

Both the flag State and port State have obligations under the CITES treaty as well as relevant international law, including regional fisheries management organization rules and measures. It is vital that port States and flag States cooperate closely in exercising these obligations, and that they both support and comply with the provisions of the CITES treaty and other applicable international law. Flag States should not land specimens of CITES-listed species that are not acquired in accordance with all relevant CITES requirements (and in conformity with other applicable international law), and port States should refuse such landings unless they can be satisfied that they were acquired in accordance with CITES and in conformity with other applicable international law.

We encourage the Parties to reach agreement on all of these issues at CoP15, but should this not be the case, the draft decision to extend the work to CoP16 should be adopted. We stress that whether or not this issue is resolved at CoP15 should have no bearing on decisions to include species in the Appendices, pursuant to Article XI of the Convention.¹¹

¹ www.un.org/Depts/los/convention_agreements/convention_overview_convention.htm.

² CITES treaty Article I(e), www.cites.org/eng/disc/text.shtml.

³ *Ibid.*

⁴ www.cites.org/eng/res/14/14-06.shtml.

⁵ www.cites.org/eng/dec/valid14/14_48.shtml.

⁶ CITES, “Interpretation and implementation of the Convention: Trade control and marking: Introduction from the Sea,” CoP15 Document 27, www.cites.org/eng/cop/15/doc/E15-27.pdf.

⁷ CITES treaty Article III, “Regulation of Trade in Specimens of Species Included in Appendix I,” www.cites.org/eng/disc/text.shtml#III.

⁸ CITES treaty Article IV, “Regulation of Trade in Specimens of Species Included in Appendix II,” www.cites.org/eng/disc/text.shtml#IV.

⁹ FAO, “New treaty will leave ‘fish pirates’ without safe haven,” www.fao.org/news/story/en/item/29592/icode.

¹⁰ The U.N. Agreement for the Implementation of the Provisions of the U.N. Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, www.un.org/Depts/los/convention_agreements/convention_overview_fish_stocks.htm.

¹¹ CITES treaty Article XI, “Conference of the Parties,” www.cites.org/eng/disc/text.shtml#XI.

