

§ 23.88 What are the resolutions and decisions of the CoP?

(a) *Purpose.* Under Article XI of the Treaty, the Parties agree to resolutions and decisions that clarify and interpret the Convention to improve its effectiveness. Resolutions are generally intended to provide long-standing guidance, whereas decisions typically contain instructions to a specific committee, Parties, or the Secretariat. Decisions are often intended to be implemented by a specific date, and then they expire.

(b) *Effective date.* A resolution or decision adopted by the Parties becomes effective 90 days after the last day of the meeting at which it was adopted, unless otherwise specified in the resolution or decision.

Subpart H—Lists of Species**§ 23.89 What are the criteria for listing species in Appendix I or II?**

(a) *Purpose.* Article XV of the Treaty sets out the procedures for amending CITES Appendices I and II. A species must meet trade and biological criteria listed in the CITES resolution for amendment of Appendices I and II. When determining whether a species qualifies for inclusion in or removal from Appendix I or II, or transfer from one Appendix to another, we will:

(1) Consult with States, Tribes, range countries, relevant experts, other Federal agencies, and the general public.

(2) Utilize the best available biological information.

(3) Evaluate that information against the criteria in paragraphs (b) through (f) of this section.

(b) *Listing a species in Appendix I.* Any species qualifies for inclusion in Appendix I if it is or may be affected by trade and meets, or is likely to meet, at least one biological criterion for Appendix I.

(1) These criteria are:

(i) The size of the wild population is small.

(ii) Area of distribution is restricted.

(iii) There is an observed, inferred, or projected marked decline in the population size in the wild.

(2) Factors to be considered include, but are not limited to, population and range fragmentation; habitat avail-

ability or quality; area of distribution; taxon-specific vulnerabilities due to life history, behavior, or other intrinsic factors, such as migration; population structure and niche requirements; threats from extrinsic factors such as the form of exploitation, introduced species, habitat degradation and destruction, and stochastic events; or decreases in recruitment.

(c) *Listing a species in Appendix II due to actual or potential threats.* Any species qualifies for inclusion in Appendix II if it is or may be affected by trade and meets at least one of the criteria for listing in Appendix II based on actual or potential threats to that species. These criteria are:

(1) It is known, or can be inferred or projected, that the regulation of trade is necessary to avoid the species becoming eligible for inclusion in Appendix I in the near future.

(2) It is known, or can be inferred or projected, that the regulation of trade in the species is required to ensure that the harvest of specimens from the wild is not reducing the wild population to a level at which its survival might be threatened by continued harvest or other influences.

(d) *Listing a species in Appendix II due to similarity of appearance or other factors.* Any species qualifies for inclusion in Appendix II if it meets either of the criteria for listing in Appendix II due to similarity of appearance or other factors. These criteria are:

(1) The specimens of the species in the form in which they are traded resemble specimens of a species listed in Appendix II due to criteria in paragraph (c) of this section or in Appendix I, such that enforcement officers who encounter specimens of such similar CITES species are unlikely to be able to distinguish between them.

(2) There are compelling reasons other than those in paragraph (d)(1) of this section to ensure that effective control of trade in currently listed species is achieved.

(e) *Other issues.* We will evaluate any potential changes to the Appendices, taking into consideration other issues, including but not limited to, split-listing, annotation, listings of higher taxa and hybrids, and specific listing issues

related to plants and commercially exploited aquatic species.

(f) *Precautionary measures.* We will evaluate any potential transfers from Appendix I to II or removal of species from the Appendices in the context of precautionary measures.

(g) *Proposal.* If a Party determines that a taxon qualifies for inclusion in or removal from Appendix I or II, or transfer from one Appendix to another, a proposal may be submitted to the Secretariat for consideration by the CoP.

(1) The proposal should indicate the intent of the specific action (such as inclusion in Appendix I or II); be specific and accurate as to the parts and derivatives to be included in the listing; ensure that any proposed annotation is consistent with existing annotations; state the criteria against which the proposal is to be judged; and provide a justification for the basis on which the species meets the relevant criteria.

(2) The proposal must be in a prescribed format. Contact the U.S. Scientific Authority for a copy (see §23.7).

§ 23.90 What are the criteria for listing species in Appendix III?

(a) *Purpose.* Article XVI of the Treaty sets out the procedures for amending Appendix III.

(b) *General procedure.* A Party may unilaterally, at any time, submit a request to list a species in Appendix III to the CITES Secretariat. The listing will become effective 90 days after the Secretariat notifies the Parties of the request.

(c) *Criteria for listing.* For a Party to list a species in Appendix III, all of the following criteria must be met:

(1) The species must be native to the country listing the species.

(2) The species must be protected under that country's laws or regulations to prevent or restrict exploitation and control trade, and the laws or regulations are being implemented.

(3) The species is in international trade, and there are indications that the cooperation of other Parties would help to control illegal trade.

(4) The listing Party must inform the Management Authorities of other range countries, the known major im-

porting countries, the Secretariat, and the Animals Committee or the Plants Committee that it is considering the listing and seek their opinions on the potential effects of the listing.

(d) *Annotation.* The listing Party may annotate the Appendix-III listing to include only specific parts, products, derivatives, or life stages, as long as the Secretariat is notified of the annotation.

(e) *U.S. procedure.* The procedure to list a species native to the United States in Appendix III is as follows:

(1) We will consult with and solicit comments from all States and Tribes where the species occurs and all other range countries.

(2) We will publish a proposed rule in the FEDERAL REGISTER to solicit comments from the public.

(3) If after evaluating the comments received and available information we determine the species should be listed in Appendix III, we will publish a final rule in the FEDERAL REGISTER and notify the Secretariat of the listing.

(f) *Removing a species from Appendix III.* We will monitor the international trade in Appendix-III species listed by us and periodically evaluate whether each species continues to meet the listing criteria in paragraph (c) of this section. We will remove a species from Appendix III provided all of the following criteria are met:

(1) International trade in the species is very limited. As a general guide, we will consider removal when exports involve fewer than 5 shipments per year or fewer than 100 individual animals or plants.

(2) Legal and illegal trade in the species, including international trade or interstate commerce, is determined not to be a concern.

(g) *Transferring a species from Appendix III to Appendix I or II.* If, after monitoring the trade and evaluating the status of an Appendix-III species we listed, we determine that the species meets the criteria in §23.89(b) through (d) of this section for listing in Appendix I or II, we will consider whether to submit a proposal to amend the listing at the next CoP.