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from: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 18 September 2012

to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European  
Union

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Subject: Commission staff working document  
Assessment by the Commission services of proposals that might be submitted  
to CITES CoP 16 by the EU (based on draft proposals by the Member States  
and the Commission services)

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Delegations will find attached Commission document SWD(2012) 276 final.

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EUROPEAN COMMISSION

Brussels, 18.9.2012  
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**COMMISSION STAFF WORKING DOCUMENT**

**Assessment by the Commission services of proposals that might be submitted to CITES  
CoP 16 by the EU (based on draft proposals by the Member States and the Commission  
services)**

## COMMISSION STAFF WORKING DOCUMENT

### Assessment by the Commission services of proposals that might be submitted to CITES CoP 16 by the EU (based on draft proposals by the Member States and the Commission services)

#### A. INTRODUCTION

- (1) The 16th meeting of the Conference of Parties (CoP 16) to the Convention on International trade in endangered species of wild fauna and flora (CITES) will be held in Thailand from 3 to 15 March 2013. The aim of CITES is to ensure that international trade in wild animals and plants is not a threat to the survival of the species in the wild. The Convention is implemented in the European Union through Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein<sup>1</sup> and Commission Regulation (EC) 865/2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97<sup>2</sup>.
- (2) CoP 16 will discuss and decide on proposals for amendments to the Appendices I and II and on the interpretation and implementation of the Convention. Species under CITES are listed in Appendices based on their conservation status and levels of international trade. Appendix I contains species threatened with extinction for which commercial trade is prohibited. Appendix II includes species in which trade must be controlled in order to avoid utilization incompatible with their survival.
- (3) The present document lays out the view of the Commission Services in relation to the draft proposals submitted to the Commission by the Member States. It also contains proposals prepared directly by the European Commission services. On the basis of this working document, the EU will take a position on the proposals that it wishes to submit to the Conference of the Parties by the 4 October 2012 deadline foreseen pursuant to Article XV(1)(a) of the CITES Convention. After that date, the EU will, on the basis of a Council Decision, decide formally on its position on all issues which will be on the agenda of the CITES CoP meeting, including a confirmation of its own EU proposals.
- (4) It is recognised that beyond the issues addressed in this paper, there are other issues related to the upcoming CoP that will be addressed as part of the proposal for a Council Decision later this Autumn. This concerns in particular the position the EU should take in relation to the text proposed by the working group on CITES Resolution Conf. 14.6 (Rev. CoP 15) on introduction from the sea, including amendments to that text, if necessary.

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<sup>1</sup> OJ L 61, 3.3.1997, p.1.

<sup>2</sup> OJ L 166, 19.6.2006, p.1.

## **B. DRAFT PROPOSALS SUBMITTED BY EU MEMBER STATES TO AMEND APPENDIX I OR II OF THE CITES CONVENTION**

Germany proposes the inclusion of one shark species (*Lamna nasus*) in CITES Appendix II. In addition, in the context of the CITES Periodic Review process, France and Italy propose the "downlisting" from Appendix I to Appendix II of the Corsican swallowtail (*Papilio hospiton*) and Italy proposes a similar "downlisting" for the Abruzzo chamois (*Rupicapra pyrenaica ornata*).

### **(1) *Lamna nasus***

Content of the draft proposal: inclusion of *Lamna nasus* (porbeagle) in CITES Appendix II in accordance with Article II 2(a) of the CITES Convention, with an annotation that the entry into effect will be delayed by 18 months (proposed by DE).

#### *(a) Overview*

- This shark species occurs in temperate waters of the North Atlantic and Southern Oceans. It is highly vulnerable to over-exploitation in fisheries and very slow to recover from depletion due to its biological characteristics (slow growing, late maturing, long generation period and bearing small numbers of young). Unsustainable direct fisheries targeting *Lamna nasus* in the North Atlantic, resulting in a severe depletion of the stock, are well documented. Fewer data are available for Southern Hemisphere stocks, but most available data show declining trends. The meat and the fins of *Lamna nasus* specimens are found in international trade, which is believed to be one of the main drivers for the exploitation of the species.
- The EU has been prohibiting the harvest of *Lamna nasus* since 2010. The North East Atlantic Fisheries Commission (NEAFC) has enacted a similar prohibition. The listing of this species in CITES Appendix II was already proposed by the EU at CoP 14 in 2007. The proposal was rejected with 54 votes in favour, 39 votes against, and 12 abstentions (a 2/3 majority is required to adopt a listing proposal). A similar proposal was made by the EU at CoP 15 in 2010. The FAO ad hoc Panel tasked with examining the proposal, as well as IUCN and the CITES Secretariat, considered that the listing criteria for an Appendix II listing were met. While it had been supported by a 2/3 majority during a first vote in CITES Committee I, the proposal was eventually rejected in plenary session (84 in favour, 46 against and 10 abstentions).
- The draft proposal tabled by Germany is based on the reasoning that the North and Southwest Atlantic and Mediterranean stocks qualify for a listing in accordance with annex 2a A of CITES Resolution Conf. 9.24 (Rev. CoP15) and that the Southern hemisphere populations qualify for a listing in accordance with annex 2a B of the same Resolution. Unlike for the EU proposal at CoP 15, the proposal does not refer to the "look-alike" criteria in Annex 2b A to justify the listing in relation to some stocks.

#### *(b) Comments*

The Commission and the EU supported a similar proposal at the last CITES CoP in March 2010. Since then, no clear evidence of recovery has been observed. In addition, there has been very little progress at the international level (especially in Regional Fisheries Management

Organisations) for the management and conservation of the species. Compared to the previous proposal, the proposal contains additional data on the decline observed for the stocks in the southern hemisphere, on trade into and from the EU and on the identification material available for parts and derivatives of *Lamna nasus*. The EU and its Member States included *Lamna nasus* into CITES Appendix III in June 2012, in order to promote international cooperation through CITES instruments for the conservation of the species.

The Commission services consider that an Appendix II listing would be necessary to ensure that international trade is, in the future, supplied by sustainably managed and accurately recorded fisheries that are not detrimental to the status of the wild populations that they exploit.

(c) *Commission Services' assessment*

Favourable subject to the following considerations:

- the proposal should indicate in a clearer manner which elements are new compared to the proposal tabled at the 15<sup>th</sup> CITES Conference of the Parties, especially in relation to the data now available on the situation of the stocks in the Southern hemisphere, trade data and material for the identification of *Lamna nasus* parts and derivatives;
- the proposal should make a reference to the inclusion of *Lamna nasus* in CITES Appendix III which will enter into force on 25 September 2012. The proposal should further indicate that this Appendix III listing allows Parties to get familiar with trade patterns affecting *Lamna nasus* and the issuance of CITES documentation in relation to such trade. This Appendix III listing constitutes therefore a useful help in view of the implementation of a future Appendix II listing (which, according to the proposal, would enter into force 18 months after its adoption, i.e. in September 2014);
- the positive assessment provided by the FAO ad hoc Panel in relation to the proposal submitted at CoP 15 should feature more clearly in the proposal;
- the table in page 4 could be presented in a clearer manner;
- the reference to sports fishing (page 8) in some EU Member States needs to be verified against the background of the catch prohibition in place in the EU through Council Regulations (EU) No 43/2012 and No 44/2012.

(2) *Papilio hospiton*

Content of the draft proposal: transfer of the Corsican swallowtail (*Papilio hospiton*) from CITES Appendix I to CITES Appendix II prior to delisting, in accordance with the provisions of Resolution Conf. 9.24 (Rev. CoP 15), Annex 4 precautionary measures A1 and A2 a/b (proposed by FR and IT).

(a) *Overview*

*Papilio hospiton* was included in CITES Appendix I on 22 October 1987, following a proposal of the United Kingdom. At its 25th meeting (Geneva, 2011), the Animals Committee selected *P. hospiton* for review in the process of the Periodic Review of Appendices, to be

conducted between CoP 15 (2010) and CoP 17 (2016). This review was conducted by France and Italy (the only range States) and the proposal is the result of this review.

The species is endemic to the islands of Corsica (France) and Sardinia (Italy), and its reproductive cycle is closely linked to specific food plants. *P. hospiton* is widespread and locally abundant, although populations fluctuate between years. In a 2010 assessment, the species was categorized as Least Concern by IUCN. International trade from 1987 to 2010 involved seven bodies according to importers or five bodies according to exporters, mostly pre-Convention specimens traded for personal or scientific purposes, with three wild specimens traded for ‘circuses and travelling exhibitions’. The species occurs in a number of protected areas and is protected nationally and internationally.

The species does not meet the biological criteria for listing in Appendix I, laid out in Resolution Conf. 9.24 (Rev. CoP 15) in Annex 1 regarding population size and trends and area of distribution.

*(b) Comments*

The precautionary measures for the transfer of species from Appendix I to Appendix II indicate that species should only be transferred to Appendix II if they do not meet the biological criteria and if precautionary measures are in place (Resolution Conf. 9.24 (Rev. CoP 15), Annex 4): *P. hospiton* is not in demand for international trade, nor is its transfer to Appendix II likely to stimulate trade in, or cause enforcement problems for, any other species included in Appendix I (criterion A 2a). There may be some demand for the species from collectors. However, it is legally protected under the Habitats Directive and protected nationally in both its range States, with collection and sale prohibited. A considerable proportion of its range lies within protected areas and populations are considered able to withstand some level of collection.

A postal consultation of the CITES Animals Committee has been launched by the CITES Secretariat in accordance with paragraph (i) of Resolution Conf. 14.8 and possible comments would have to be integrated into the proposal in September 2012.

*(c) Commission Services' assessment*

Favourable subject to the following considerations:

- the proposal should point out that the species would remain in Annex IV (species of Union interest requiring strict protection) of the Habitats Directive (92/43/EEC) after the downlisting from CITES Appendix I to Appendix II;
- clarify how the Habitat Directive’s species conservation status assessment in Italy (according to which the status is ‘unfavourable – inadequate’ and is referred to under paragraph 7.2 of the proposal) is compatible with a downlisting into Appendix II;
- verify whether this downlisting from Appendix I to Appendix II should necessarily be considered as step supposed to prepare a complete delisting of the species from the CITES Appendices (as currently indicated in the draft proposal).

### (3) *Rupicapra pyrenaica ornata*

Content of the draft proposal: Transfer of the Abruzzo chamois (*Rupicapra pyrenaica ornata*) from CITES Appendix I to CITES Appendix II prior to delisting, in accordance with provisions of Resolution Conf. 9.24 (Rev. CoP 15), Annex 4 precautionary measure A1 and A2 and to meet the guidance on split-listing (Resolution Conf. 9.24 (Rev. CoP 15), Annex 3) (proposed by IT).

#### (a) Overview

*Rupicapra pyrenaica ornata* was included in CITES Appendix I on 1 July 1975. At its 25th meeting (Geneva, 2011), the Animals Committee selected *R. pyrenaica ornata* for review in the process of the Periodic Review of Appendices, to be conducted between CoP 15 (2010) and CoP 17 (2016). This review was conducted by Italy (the only range States) and the proposal is the result of this review.

The subspecies *Rupicapra pyrenaica ornata* is endemic to Italy, where it occurs in four isolated populations. Three of these populations are part of re-introduction programmes, with one of them numbering only a few animals, as the introduction process is still under way. In a 2008 assessment, *Rupicapra pyrenaica ornata* was considered to be Vulnerable by IUCN. The main threats include effects related to its small population size and competition for space and food with livestock. There has been virtually no reported international trade in recent years (2001-2010), according to both importers and exporters. The subspecies occurs in a number of protected areas and is protected nationally and internationally.

#### (b) Comments

The precautionary measures for the transfer of species from Appendix I to Appendix II indicate that species should only be transferred to Appendix II if they do not meet the biological criteria and if precautionary measures are in place (Resolution Conf. 9.24 (Rev. CoP 15), Annex 4).

The subspecies *R. pyrenaica ornata* is protected both nationally and internationally; the population trend of the taxon is increasing; the subspecies does not appear to be in demand in international trade and the listing is contrary to the current advice on split-listings.

However, *R. pyrenaica ornata* does meet some of the biological criteria for inclusion in Appendix I as outlined in Resolution Conf. 9.24 (Rev. CoP 15), Annex 1. The wild population is small (criterion A), although it is now increasing due to active management and protection. Similarly, the wild population has a restricted range (criterion B), although this range is now increasing due to the (re)introductions into protected areas which are expanding its geographic range and reducing genetic isolation.

International trade does not seem to constitute a threat. Furthermore, the current listing of *R. pyrenaica ornata* is inconsistent with measures for split-listing, which advise that this should be on the basis of national or regional populations rather than subspecies; split-listings that place some populations of a species in the Appendices, and the rest outside the Appendices, should normally not be permitted.

A postal consultation of the CITES Animals Committee has been launched by the CITES Secretariat in accordance with paragraph (i) of Resolution Conf. 14.8 and possible comments would have to be integrated into the proposal in September 2012.

(c) *Commission Services' assessment*

Favourable subject to the following considerations:

- the proposal should point out that the species would remain in Annex IV (species of Union interest requiring strict protection) of the Habitats Directive (92/43/EEC) after the downlisting from CITES Appendix I to Appendix II;
- the proposal could explain more clearly why the current split-listing leads to implementation and enforcement problems as described in Resolution Conf. 9.24 (Rev. CoP 15), Annex 3;
- verify whether this downlisting from Appendix I to Appendix II should necessarily be considered as step supposed to prepare a complete delisting of the species from the CITES Appendices (as currently indicated in the draft proposal).

**C. DRAFT RESOLUTIONS AND DRAFT DECISIONS SUBMITTED BY EU MEMBER STATES**

**(1) Proposed decision regarding trade in sei whales (proposed by the UK)**

(a) *Overview*

- The United Kingdom of Great Britain and Northern Ireland invites the EU and its Member States to propose that a Decision addressed to the CITES Secretariat is adopted at CoP 16; this Decision would (i) direct the Secretariat to request information from Japan on the steps taken to ensure that trade in whale products, in particular sei whales (*Balaenoptera borealis*) from the North Pacific, occurs in conformity with the CITES Convention and (ii) indicate that, in the absence of a satisfactory response, the Secretariat should refer the matter to the 65<sup>th</sup> meeting of the Standing Committee (which is scheduled to take place in July 2014) with a request to recommend further action to be taken.
- According to this proposal, Japan has been trading whale specimens of Annex I species for commercial purposes in breach of the CITES Convention. This is in particular the case for sei whales which are caught on the high seas in the North Pacific by vessels flying a Japanese flag and then brought back to Japan. Japan has been reporting trade in between 90 and 100 sei whale bodies annually between 2004 and 2010 according to the WCMC database. Unlike for other areas or species, Japan does not have a reservation against the Appendix I listing for this species in the North Pacific. As the specimens are caught on the high seas and subsequently landed in the same country as the flag State of the vessel concerned, the provisions on "introduction from the sea" apply and such trade is therefore subject to the provisions of the CITES Convention. While Japan indicates that whaling for such specimens takes place for scientific purposes, the proposal submitted by the UK alleges that trade of those specimens takes place for commercial purposes. According to the proposal, Japan is therefore in breach of the CITES Convention, in particular its Articles II.1 and III.5(c) (which state that trade in Appendix I specimens "must only be authorized in exceptional circumstances" and not for "primarily commercial purposes").

- As a result, the proposal suggests that the EU and its Member States request that a Decision is taken at CoP 16 so that the Secretariat investigates the matter and, in the absence of a satisfactory response, reports back at the 65<sup>th</sup> meeting of the Standing Committee and recommend the adoption of further action.

*(b) Comments*

The proposal relates to trade in sei whales from Japan which has been occurring for a number of years. There is no mention in the proposal of any initiative that would already have been taken within the CITES framework to examine the conformity of such trade with the CITES Convention. The proposal raises challenging questions relating to the definition of what should be considered as "introduction from the sea" or "primarily commercial purposes" within the CITES framework and to the link between the CITES provisions and those from the International Convention for the Regulation of Whaling. All those points would require a careful examination and are likely to generate considerable discussions with other CITES Parties.

Despite all those elements, no explanation is provided as to the reasons why the EU and its Member States should bring that matter directly to CoP 16, without considering the procedure foreseen in CITES Resolution Conf. 14.3 on CITES compliance procedures.

*(c) Commission Services' assessment*

Unfavourable

The proposal aims to address a possible case of non-compliance by a Party with its obligations under CITES. The European Commission services note that a specific Resolution (CITES Resolution Conf. 14.3 on CITES compliance procedures) has been agreed by the CITES Parties to address potential cases of non-compliance at the 14<sup>th</sup> meeting of the Conference of the Parties in 2007. The European Commission services believe that the EU and its Member States should follow CITES procedures. This reinforces the legitimacy of the CITES decision-making mechanisms and avoids that those procedures are misused by other Parties. In that respect, the European Commission's services note that, under CITES Resolution Conf. 14.3, a case of potential non-compliance by a Party should be brought to the knowledge of the CITES Secretariat and the Party concerned in the first place. It is then examined if needed by the Standing Committee, which is the central body within CITES for the conduct of compliance mechanism and the adoption of compliance measures. For those reasons, the Commission services do not consider it appropriate to propose that the case reported in the proposal by the UK is brought directly by the EU and its Member States to the 16<sup>th</sup> meeting of the Conference of the Parties.

In addition, the benefits of submitting a proposal to CoP 16 are uncertain, as the only tangible deliverable would be that the matter is raised with Japan and possibly put on the agenda of the 65<sup>th</sup> Standing Committee. The proposal could however negatively impact the discussion at CoP 16 on other issues of importance to the EU (notably listing proposals for shark species or the ongoing discussion on "introduction from the sea").

Rather than supporting the proposal submitted by the UK, the European Commission's services suggest that the matter is looked at carefully by the EU and its Member States after CoP 16 and, if relevant, pursued further in accordance with CITES Resolution Conf. 14.3.

## **D. PROPOSALS BY THE COMMISSION SERVICES**

### **(1) Proposed amendment to CITES Resolution Conf. 11.1 (Rev. CoP 15) on the establishment of Committees in order to address potential situation of conflict of interest within the Animals and Plants Committees**

#### *Proposal by the European Commission's services*

The European Commission's services propose that the EU and its Member States submit to the CoP 16 the proposal contained in Annex I to this document: it aims at introducing a new paragraph in CITES Resolution Conf. 11.1 (Rev. CoP 15) designed to address potential conflict of interest within the Animals and Plants Committees.

#### *Justification for the proposal*

Though they are appointed as individual experts and play an important role in the functioning the CITES Convention, Members of the Animals and Plants Committees are currently not subject to any provision on conflict of interest. This is at odds with many scientific and technical committees of other international Conventions. A recent example has shown that this absence might generate suspicions as to the impartiality and objectivity of the deliberations of the Committees.

At the 15<sup>th</sup> Conference of the Parties in March 2010, a process was launched to review that matter. It was subsequently discussed at the 61<sup>st</sup> session of the Standing Committee in August 2011. Despite the EU support to introduce safeguards within CITES to avoid situations of conflict of interest, the Standing Committee did not agree to pursue the issue forward. At the request of the Chair of the Animals Committee, the Standing Committee agreed however at its 62<sup>nd</sup> session in July 2012 to review the situation at its 63<sup>rd</sup> session, which will precede immediately the CoP 16 in March 2013. The CITES Secretariat will prepare a report to this end. While the European Commission wishes that a solution is found at the 63<sup>rd</sup> session of the Standing Committee, it notes that this meeting will be short and its agenda loaded with a lot of issues already.

As the matter is of great importance to the EU, the European Commission believes that the EU needs to table a proposal in view of CoP 16, which would be discussed at this meeting in case of lack of progress at the 63<sup>rd</sup> session of the Standing Committee.

#### *Summary of the proposal*

The proposal aims to ensure transparency during the election of the CITES Animals and Plants Committee members, in case of concrete conflict situations in the course of the Committees work and in external contacts of Committee members.

Firstly, before their election at CoP meetings, candidates to a position as member or alternate member of a Committee should disclose any interest that could call into question their impartiality, objectivity or independence in carrying out their duties. This would guarantee that the election of such members is done under a transparent mechanism. The disclosure of interests should be done via a declaration made publicly available and updated if relevant during the term of office.

Secondly, when a member or alternate, or the Secretariat, consider that a potential situation of conflict of interest might arise in relation to a particular item discussed at one Committee, the

Committee needs to be made aware of this in advance of the discussion. In such case, the principle should be that, while entitled to take part in the discussion, this particular member or alternate should not be entitled to take part in any decision in relation to this item. This would allow the respective member to share his or her expertise on the matter with the Committee while guaranteeing that the decision is adopted without considering potential vested interests.

Thirdly, it should be clarified that opinions expressed by the members or alternates outside the CITES framework do not commit the Committee or any other CITES bodies, unless they are explicitly tasked to do so by the Committee. This is a guarantee against the possible misuse of the status of members or alternates to the Committees for purposes which are not foreseen in their mandate.

**(2) Proposed amendment to CoP Rules of Procedure in relation to the provisions on the use of secret ballots**

*Proposal by the European Commission services*

The European Commission services propose that the EU and its Member States submit to the CoP the proposal contained in Annex II to this document with a view to amending the provisions in the CoP Rules of Procedure relating to the use of secret ballots.

*Justification for the proposal*

The current Rules of Procedure foresee that votes by secret ballot "*shall not normally be used*" for issues other than election of officers and host countries. Despite this decision, an important number of votes were taken via secret ballots at the latest CoPs (especially at CoP 15 where they were used in 14 instances). Secret ballots are regularly used for sensitive and important issues, relating to marine species or ivory trade in particular. Since CoP 9 in 1994, a vote can take place by secret ballot if a request for such procedure is seconded by 10 Representatives. It is a fact that voting by secret ballot has significantly increased after CoP 9.

The EU and its Member States brought this question to the attention of the CITES Standing Committee at its 61<sup>st</sup> session in August 2011. The Standing Committee decided that the Secretariat should report about how the provisions on secret ballots have been used in recent CoP meetings. This report was discussed at the 62<sup>nd</sup> session of the Standing Committee. At this occasion, a number of Parties indicated that they wished that the matter be brought up for discussion at the 16<sup>th</sup> meeting of the CoP and that amendments might be warranted to increase transparency in the voting procedure at the CoP. The EU and its Member States announced that they would produce a proposal at this occasion. Other Parties insisted on the need to maintain the possibilities for Parties to use secret ballots in order to preserve their independence.

*Summary of the proposal*

The European Commission's services therefore prepared a proposal designed to preserve the exceptional nature of the use of secret ballot for purposes other than election of officers and host countries. In that vein, the proposal states that a vote by secret ballot can only take place if a simple majority of representatives present and voting supports a motion to this end. Formally speaking, this proposal consists in amending rule 26 of the Rules of Procedure for the CoP.

**E. SUMMARY TABLE**

| <b>Proposal</b>  | <b>Commission Services' assessment</b> |
|--|--|
| Proposal to include porbeagle ( <i>Lamna nasus</i> ) into CITES Appendix II (DE)   | favourable                             |
| Transfer of the Corsican swallowtail ( <i>Papilio hospiton</i> ) from CITES Appendix I to CITES Appendix II (FR and IT)                                  | favourable                             |
| Transfer of the Abruzzo chamois ( <i>Rupicapra pyrenaica ornata</i> ) from CITES Appendix I to CITES Appendix II (IT)                                    | favourable                             |
| Proposed decision regarding trade in sei whales (UK)   | unfavourable                           |
| Proposed modification to CITES Resolution Conf. 11.1 on conflicts of interest at the Animals and Plants Committees (proposed by the Commission services) | favourable                             |
| Proposed modification to the rules of procedure of the CITES CoP (proposed by the Commission services)   | favourable                             |